RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 1358/2025

Ganga Kumari D/o Bhika Ram, Aged About 29 Years, Resident Of Jakhari, Tehsil Raniwada, District Jalore (Raj.).

----Petitioner

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Versus

1. State Of Rajasthan, Through Chief Secretary, Government Of Rajasthan, Jaipur.
2. Secretary, Department Of Social Justice And Empowerment, Government Of Rajasthan, Jaipur.
3. Secretary, Department Of Personnel, Government Of Rajasthan, Jaipur.
4. Secretary, Rajasthan Public Service Commission, Ajmer.
5. The Director General Of Police, Police Head Quarter, Rajasthan, Jaipur.

----Respondents

For Petitioner(s) : Mr. Vivek Mathur
Mr. Prakash Kumar Balout
Mr. Dhirendra Singh Sodha

For Respondent(s) : Mr. Deepak Chandak for
Mr. B.L. Bhati, AAG
Mr. Piyush Bhandari for
Mr. Praveen Khandelwal, AAG
Mr. Mahesh Thanvi
Ms. Pragya Thanvi

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order

Reportable

Judgment Reserved on :-24/02/2026

Pronounced on :- 30/03/2026

By the Court (Per: Arun Monga, J):-

1. Thus spoke their Lordships of Supreme Court of India –

> "*Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of the transgender community undergo, nor appreciates the innate feelings of the members of the transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the transgender community and in public places like railway stations, bus stands, schools,*

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workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables, forgetting the fact that the moral failure lies in society's unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change [1]*."*

x – x – x – x - x

"By recognising TGs as third gender, this Court is not only upholding the rule of law but also advancing justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only just solution which ensures justice not only to TGs but also justice to the society as well. Social justice does not mean equality before law in papers but to translate the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to TGs which legitimately belongs to them.

x – x – x – x - x

Once it is accepted that TGs are also part of vulnerable groups and marginalised section of the society, we are only bringing them within the fold of the aforesaid rights recognised in respect of other classes falling in the marginalised group. This is the minimum riposte in an attempt to assuage the insult and injury suffered by them so far as to pave way for fast-tracking the realisation of their human rights."[2]

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2. In the aforesaid backdrop, Ganga, a transgender/third gender (TG), has approached this court seeking not charity, not sympathy, but the enforcement of her rights that already stand affirmed by constitutional jurisprudence. The Supreme Court in its judgment rendered in *NALSA v. Union of India*[3], (quoted above) unequivocally recognised transgender persons as a "third gender"; declared that their identity, dignity and autonomy are integral to the guarantees of equality, liberty and life under the Constitution and directed "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".

1. K.S.Panicker Radhakrishnan, J. NALSA v UOI (2014) 5 SCC 438, opening para 1.
2. Dr. A.K. Sikri, J. Concurring view in NALSA V UOI (2014) 5 SCC 438, para no. 132 and 133.
3. (2014) 5 SCC 438.

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3. India is just not a country alone, it is a civilisation. A civilisation steeped in religiosity, one where divinity is invoked in every sphere of life and sacred traditions are revered with profound devotion. Religious scriptures in India hold transgenders in immense importance, but in reality, quite often they are denied even the basic humane treatment by our society. Our mythology features several figures associated with transgender or third-gender identities, often depicted through gender transformations or androgyny. These include deities and characters like *Mohini*[4], *Ila (or Sudyumna)*[5], *Arjuna (as Brihannala)*[6], and *Ardhanarishvara*[7]. Certain deities are actively worshipped, especially by transgender communities. *Bahuchara Mata*[8] has devotees (including those who self-castrate) seeking her blessings at temples like in Gujarat through festivals, vows, and rituals. Other figures like *Angalamma*[9] and *Yellamma*[10] also receive devotion, especially from transgender groups, viewing them as protective and auspicious.

4. Reality, in striking contradiction, is that those who do not conform to conventional gender binaries are often denied even the most basic dignity. Transgender persons continue to live on the margins of society, facing stigma, burdened by exclusion and systemic entrenched deprivation. Their exclusion from mainstream stands in stark dissonance with civilisational and spiritual heritage/

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4. Mohini: Vishnu's female avatar who enchanted demons during the churning of the ocean to secure the nectar of immortality for the gods; considered the first transgender figure in texts like the Mahabharata.
5. Ila/Sudyumna: A king cursed to alternate between male and female forms monthly, marrying Buddha while female and losing memory of the other gender.
6. Brihannala (Arjuna): Arjuna lived as a eunuch dancer in King Virata's court during exile, embodying a third-gender role akin to hijras.
7. Ardhanarishvara: Shiva and Parvati's half-male, half-female form, symbolizing gender unity; sometimes linked to transgender themes in modern interpretations.
8. A form of Shakti, is the patron goddess of hijra community.
9. A fierce guardian deity and a powerful manifestation of Goddess Parvati, holds central significance for the *Thirunangai* (Tamil Transgender/transfeminine) community. (Enrouteindianhistory.com)
10. Revered Hindu mother goddess (Shakti), revered as a patron deity by the Jogappa community, a traditional transgender group in Karnataka and Maharashtra. (Enrouteindianhistory.com)

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mythology and scriptures which do not merely acknowledge gender diversity; rather embrace and revere it and embody it as a conception of identity that transcends rigid gender binaries. They reflect an ancient acknowledgment of gender fluidity and plurality within the Indian civilisational ethos.

5. Despite this rich cultural acknowledgment, the lived current social reality of transgender persons in contemporary India continues to remain one of profound disadvantage, as they still are among the most vulnerable sections of society. Their social exclusion, economic vulnerability, and institutional discrimination continue to define their daily existence.

6. The above debate, therefore, raises a fundamental question i.e. can a society that venerates gender diversity in its spiritual imagination continue to deny even the basic human right of dignity, equality and constitutional protection to those (TGs) who embody that very diversity in real life?

7. The issue before us is not whether such rights exist. For, those rights have already been accorded the highest recognition and declared by the Apex court of the country. The real question is whether those rights will remain lofty pronouncements in judicial text or whether they will be translated into lived realities for those whom the Constitution seeks to protect?

8. With this prelude, let us now deal with the case in hand, by examining what is impugned herein vis-a-vis the position in law.

8.1. Issuance of writ in the nature of *certiorari* is sought herein to quash a notification dated January 12, 2023, issued by the

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Government of Rajasthan, Department of Social Justice and Empowerment whereby TGs have been declared as OBC without providing any reservation as a separate category.

8.2. The petitioner further seeks directions and/or an order in the nature of *mandamus,* directing the respondent to provide horizontal reservations in the public services of the State Government for the transgender community as per the mandate of NALSA judgment, *ibid*, wherein, by way of order of the court, the Supreme Court of India has made certain declarations and issued directions as under:-

ORDER OF THE COURT[11]

> *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 surveillance centres since hijras/transgenders face several sexual health issues.*
> *135.5. The Centre and State Governments should seriously address the problems being faced by hijras/transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.*
> *135.6. The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.*
> *135.7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.*
> *135.8. The Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.*
> *135.9. The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life."*

11. Jointly in NALSA V UOI (2014) 5 SCC 438.

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The petitioner thus seeks indulgence of this court in light of the aforesaid directions given by the Supreme Court.

BRIEF FACTUAL NARRATIVE/PLEADINGS

9. Let us first briefly take note of the facts and circumstances that have collectively led to assailing of the State Government's notification dated 14.02.2022 through the instant writ petition.

9.1. The petitioner, a transgender individual, is seeking a class action in this Court to benefit her entire community. She asserts that not only she, but the entire transgender community faces extreme discrimination and harassment in various aspects of life, resulting particularly from the denial of employment opportunities. She submits that the lack of reservation for transgender individuals in educational institutions and public employment further marginalises them. The absence of affirmative action perpetuates the cycle of poverty, discrimination and deprivation faced by transgender persons.

9.2. Petitioner also highlights that many transgender individuals out of sheer extreme poverty are forced into begging or sex work due to the lack of employment opportunities. This violates their fundamental rights under the Constitution, including the right to equality and equal opportunity.

9.3. It may be noteworthy that this petition is one of the multiple foray of petitioner before this court seeking indulgence to address the alleged marginalisation of the transgender community in society.

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9.4. The petitioner had previously filed a D.B. Civil Writ Petition bearing No. 10672/2021, wherein the following prayers were made:

> *A. By an appropriate writ order or direction, the Rule 7 of the Rajasthan Police Subordinate Service Rules, 1989, be amended to provide 1 percent horizontal reservation for persons belonging to the transgender community.*
> *B. To provide 1% horizontal reservation for transgender individuals, an appropriate writ, order, or direction should be issued to add a new entry under the form of 7(e) to the Rajasthan Police Subordinate Service Rules, 1989.*
> *C. Alternatively, Rule 7 of the Rajasthan Police Subordinate Service Rules, 1989 should be quashed and subsequently amended to include 1% horizontal reservation for transgender individuals.*

9.5. Vide a Division Bench order dated 14 February 2022 passed by this Court above Writ Petition was disposed of. The operative part of the said order reads as under:

> *"Amongst various directions, which have been issued by the Supreme Court, in paragraph 135.3, it has been categorically directed to the Central Government as well as State Government to take steps to treat transgenders as socially and educationally backward classes of citizens and extend all kinds of reservations in cases of admission in educational institutions and for public appointments.*
> *Such a direction clearly casts an obligation on the part of the State to work out reservation in such manner and to such extent as it may decide on the basis of relevant data available. Much time has lapsed since the directions were issued by the Supreme Court in the case of National Legal Services Authority (supra) and the State should have come out with proper rules, regulations and legislations to provide special treatment as directed by the Supreme Court.*
> *Taking into consideration the nature of exercise required to be undertaken by the State, we hereby direct the State to complete the exercise expeditiously and we grant maximum period of four months to do the needful.*
> *As far as present selection process is concerned, we would only say that presently the petitioner would be allowed to participate in the process of selection and her candidature shall not be rejected only on the ground that she is third gender. Subject to the directions as stated hereinabove, this petition is finally disposed off granting relief to the petitioner in the manner and to the extent as indicated above. This petition is partly allowed.*"

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9.6. The petitioner was later compelled to file a contempt petition (1211/2022) before this court to enforce the aforesaid DB order dated February 14, 2022.

9.7. During pendency of the contempt proceedings, State of Rajasthan issued a notification dated January 12, 2023 (assailed in this petition), English translation of which reads as under:-

> *"In continuation of the previous notifications issued by the State Government, the State of Rajasthan has added the names of various castes and classes to the list of Other Backward Classes. This addition complies with the order of Hon'ble High Court of Jodhpur in D.B. Civil Writ Petition No. 10675/2021, Ganga Kumari vs. State of Rajasthan & Others. The Transgender (Third Gender) community is now included at serial number 92 in the authorised list of Other Backward Classes."*

9.8. To be noted here that vide impugned notification dated 12.01.2023 (Annexure-2), the State Government ordered inclusion of the transgenders in the category of Other Backward Classes (OBC) at serial No. 92, stated to be in compliance with the direction of this Court in DB Civil writ petition No. 10675/2021 Ganga Kumari v. State of Rajasthan.

9.9. Subsequently, the Division Bench of this Court (of which one of us i.e. Yogendra Kumar Purohit, J, was a member), vide an order dated 18 August 2023, observing that in light of issuance of impugned notification, there is no contempt made out and thus disposed of/dismissed the contempt petition.

9.10. In the circumstances, petitioner filed yet another writ titled being Ganga Kumari vs State of Rajasthan and Ors. (D.B. Civil Writ Petition No. 8242/2024)impugning the notification dated 12.01.2023. However the same was dismissed as withdrawn with

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liberty to file a fresh one by providing better particulars viz. data regarding population of TGs and the extent of reservation provided to the OBCs in the State of Rajasthan.

9.11. It is now stated that the office of the Registrar (General) under the Census Commissioner conducts the census in India. The census is conducted every ten years in India. The last census was conducted in the year 2011; however, owing to the outbreak of the novel COVID-19 pandemic, the 2021 census could not be conducted. As per the 2011 census, the total population of the State of Rajasthan is 6,85,48,437. While conducting the 2011 census, the Government of India did not enumerate the caste-wise population, other than those of the Scheduled Castes and Scheduled Tribes.

9.12. It is stated that the population of O.B.Cs. in the State of Rajasthan is estimated to be 35.6 million (as per online sources). The O.B.C. community is estimated to constitute around 52% of the total population. The reservation provided to the Other Backward Classes (O.B.Cs.) is 21%.

9.13. It is stated that by petitioner that as per the 2011 census, the population of transgenders in the State of Rajasthan was 16,517. However, the current estimated population of transgenders (now declared OBCs) is approximately 23,000.

REPLY/ADDITIONAL AFFIDAVIT OF THE RESPONDENTS

10. Stand of the respondents is that the petitioner has failed to present any compelling evidence or statistical data demonstrating that separate horizontal reservations for transgender individuals

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would actually benefit them in terms of proportional representation under the existing roster system. Mere assertion without empirical justification cannot justify judicial intervention in policy matters.

10.1. Matters related to the structure of reservations, whether vertical or horizontal, are exclusively within the legislative and executive domains. Judicial intervention is limited to evaluating policies against constitutional principles. The relief sought involves a policy decision about reservation structuring, which is beyond judicial review under Article 226 of the Constitution. Judicial review can only assess the legality and constitutionality of State actions, not re-frame or redesign policies, let alone create a new reservation class.

10.2. Transgender individuals have already been classified under the OBC/SEBC category, as per the Supreme Court's declaration in NALSA that they should be treated as "socially and educationally backward classes." Consequently, they are entitled to all benefits associated with this classification, including vertical reservations in employment and education.

10.3. Keeping in view the marginalization suffered by the transgender community, the State has taken proactive measures, including issuing the Transgender UtthanKosh Guidelines, 2021, to extend benefits such as scholarships, vocational training, medical aid, and self-employment support. The allegation that transgender persons are denied employment opportunities is incorrect. The

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State Government has already extended multiple welfare schemes and skill development programmes.

10.4. It is incorrect to allege that there is no reservation for transgender persons. The State has already recognized transgender persons as a backward class and included them in the OBC list vide notification dated 12.01.2023, thereby entitling them reservation in education and public employment.

10.5. For the transgender community the State Government has already extended multiple welfare schemes and skill development programmes. Vocational training has been imparted to 44 transgender persons through the Rajasthan Skill and Livelihood Development Corporation, and 22 transgender persons have been provided employment after such skill development programmes.

ADDITIONAL AFFIDAVIT OF THE RESPONDENTS

11. Another additional affidavit dated 12.11.2025 has been filed by respondent wherein, inter alia, challenge of the notification herein is objected stating that a civil writ petition no. 461/2025 Kiran A.R. &Ors. Vs. Union of India &Ors. came to be filed before the Supreme Court challenging the NEET-PG 2025 admission notice dated 16.04.2025 and information bulletin issued by the National Board of Examination in Medical Sciences (NBEMS). Ground taken therein, inter alia, is that the National Board of Education in Medical Sciences (NBEMS) failed to provide horizontal reservation to transgenders persons in postgraduate medical admissions and further seeking direction to provide 1% horizontal

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reservation for transgender candidates across all vertical categories in NEET-PG admission.

11.1. Hon'ble Supreme Court in the aforesaid matter vide order dated 06.10.2025 has directed the State Governments to file their respective affidavits indicating the time within which, the judgment of this court in National Legal Service Authority Vs. Union of India (supra), is translated into action by framing necessary rules for admission to educational institutions.

11.2. Thus, the issue raised in the present writ petition for granting relief of horizontal reservation is identical with issue pending before the Hon'ble Supreme Court in the afore-mentioned case. Instant writ petition is accordingly liable to be dismissed.

ARGUMENTS ON BEHALF OF PETITIONER

12. Mr. Vivek Mathur, learned counsel for the petitioner would urge that the impugned circular is discriminatory and violative of the petitioner's fundamental rights guaranteed under the Constitution because it simply places transgender persons within the OBC category instead of granting them horizontal reservation, thereby effectively denying them meaningful reservation benefits. It is argued that such classification ignores situations where a transgender person is born in a Scheduled caste/Scheduled Tribe/ Socially & Educationally Backward class (for short SC/ST/SEBC) family. The impugned notification creates a dichotomy as-

(i) A transgender person who belongs to the SC/ST/SEBC category family, must choose between claiming the SC/ST/SEBC quota or the transgender quota.

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(ii) If opting for the SC/ST/SEBC quota, such transgender person would forfeit the claim for transgender quota and must compete within the SC/ST/SEBC category. Conversely if choosing for transgender quota, such person would lose the pre-existing claim under the SC/ST/SEBC quota. This is disadvantageous to the transgenders.

(iii) Additionally, if the individual is already from the SC/ST/SEBC category, such person would not receive any further affirmative benefit for being a transgender.

12.1. Pursuant to the Court's order dated 20.11.2025, an additional affidavit has been filed on behalf of the respondents. It shows that since the issuance of the impugned circular/notification dated 12.01.2023, any transgender has not been benefitted by it. It is submitted that the impugned circular is thus nothing but a meaningless illusion for the transgender.

12.2. It is further argued by Mr. Mathur that the transgender community cannot be treated as a caste-based group such as SEBC and that the impugned circular/decision runs contrary to the directions of the Supreme Court in National Legal Services Authority v. Union of India, which recognized transgender persons as a distinct class entitled to reservations in education and public employment.

12.3. Impugned circular/notification disregards the fact that transgender individuals require exclusive reservation as separate class.

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12.4. By failing to provide horizontal reservation and instead subsuming transgender persons within the OBC category, the State has curtailed an important right recognized in the NALSA judgment. The circular is legally untenable because it only creates a sub-category within the OBC category. It is urged that transgender persons require a distinct and exclusive form of reservation rather than being absorbed into an already reserved category.

12.5. Impugned circular creates administrative confusion regarding whether transgender candidates should be considered under a transgender category or the OBC category, thereby frustrating the objective of reservation for transgender recognized by the Supreme Court. It is also contended that the State failed to recognize that transgender identity is a legitimate aspect of human diversity and that members of the transgender community face severe social and economic discrimination and that denial of horizontal reservation to them perpetuates the historic disadvantages suffered by the community.

12.6. State is required to act reasonably, rationally and fairly in public interest. The impugned circular is arbitrary and inconsistent with these constitutional standards. This Court must exercise its jurisdiction as the impugned circular is against the requirement of doctrine of affirmative action for uplifting the weak and downtrodden community and violates the petitioner’s fundamental rights. The State is obligated to take affirmative action to ensure due representation of the TG community in public services.

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Despite a direct finding that TG reservation should be based on gender identity, the Government disregarded this and instead passed the impugned circular in circumvention and violation of the mandate of the SC.

12.7. It is also pointed out that the State of Karnataka and Tamil nadu have taken positive steps by granting horizontal reservation to transgenders in public employment and educational institutions. On that analogy, it is urged that directions be issued to the respondents to grant similar benefits to the transgenders in the State of Rajasthan.

ARGUMENTS ON BEHALF OF RESPONDENTS

13. Mr. Praveen Khandelwal learned AAG, appearing on behalf of the respondents has contested the aforesai1d submissions advanced on behalf of the petitioner. Arguments have been addressed on the lines of the defense taken in their reply and additional affidavit, as already referred here in above and it is urged that the writ petition merits dismissal in light thereof.

13.1. He would also argue that due to the dismissal of the contempt petition by this court vide order dated 18.08.2023, no further indulgence is warranted. The court has already addressed the matter, and there's no evidence of any violation of the court's order or judgment rendered in NALSA (supra).

13.2. The learned counsel for the respondent would also argue that a since a writ petition under Article 32 of the Constitution of India has been filed in the Supreme Court, seeking same/similar

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relief, which is currently pending, this petition should be dismissed on that ground as well.

DISCUSSION AND ANALYSIS

14. We have heard the opposing arguments and perused the case file. We shall now proceed to address the issue under adjudication herein.

15. First and foremost, adverting to the objection of respondents to dismiss the petition in light of DB contempt order dated 18.08.2023. Having seen the said order, we find that while dismissing the contempt petition, this Court though observed that the impugned notification is pursuant to its earlier directions issued vide order dated 14 February 2022, but there's no discussion or finding regarding it being in true compliance of the Supreme Court judgement in NALSA (supra). In any case, adjudication of the impugned notification ibid was neither the prayer nor otherwise was it undertaken by this Court. Petitioner's case herein is that entitlement of reservation to the transgenders as envisaged in the judgement rendered by Supreme Court in NALSA (supra) has not been incorporated in the notification, which was within the scope of the contempt jurisdiction.

16. Qua the objection of pendency of Writ Petition Civil No. 461/2025 Kiran A.R. & Ors. Vs. Union of India & Ors. pending before the Hon'ble Supreme Court, it would be apposite to have a look at the prayer clause therein, which reads as below:

> *"(a) Issue an appropriate writ, order, or direction declaring the impugned admission notice dated 16.04.2025 and the information bulletin issued thereunder unconstitutional and in contravention of directions of this Hon'ble Court in National Legal Services Authority v. Union of India, (2014) 5 SCC 438.*

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(b) Issue an appropriate writ, order, or direction in the nature of mandamus quashing the admission notice dated 16.04.2025 and the information bulletin issued thereunder. Direct the Respondents to issue a fresh admission notice that provides compartmentalised horizontal reservation to the Petitioners (or for transgender persons) by reserving 1% of seats for transgender persons in each vertical category.
(c) For costs of this Petition.
(d) Pass such other order(s)/direction(s), as deemed fit and proper by this Hon'ble Court in the facts and circumstances of this case to ensure justice."

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17. In light of the aforementioned prayer, we believe that in the case, *ibid*, the Hon'ble Supreme Court is currently addressing the legality of admissions in medical colleges as per the notice dated 16.04.2025. Part of the relief sought in this regard concerns whether transgender individuals should be granted 1% horizontal reservation in each vertical category for admission in the medical colleges.

18. Our primary concern here is the impugned State Government notification dated 12.01.2023, which raises the question of its alignment with the Supreme Court judgement rendered in National Legal Services Authority (supra) and its consequences, which, we are of the view, with due respect, was neither under challenge in the contempt jurisdiction of this court nor is it the subject matter of the proceedings pending before Hon'ble the Supreme Court in the lis, *ibid*.

19. We shall, therefore, now proceed to advert to merits and the legality of the impugned notification.

20. Before we do so, it is pertinent to note that in course of the pendency of the instant petition, this Court had directed the State vide an order dated 20.11.2025 to provide the number of

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transgender individuals who have benefited from the impugned circular/notification ever since it has been issued. Respondents' candid stand deposed in their additional affidavit, supra, is that the circular under challenge has not benefited any transgender individual till date.

21. Following the Supreme Court's judgement in NALSA(supra), the Government of India enacted the Transgender Persons (Protection of Rights) Act, 2019. This Act legally mandates State governments to take appropriate steps for the welfare of transgender individuals. Enacted by the Parliament of India, the 2019 Act provides for the legal recognition and rights of transgender individuals in the country and safeguards. It also directs the appropriate government to implement dedicated welfare measures to address the systematic discrimination faced by transgender people in India. Chapter IV, Section 8 of the Act clearly outlines this obligation, which is reproduced below for ready reference:-

CHAPTER IV: WELFARE MEASURES BY GOVERNMENT

"8. Obligation of Appropriate Government:

(1) The appropriate government must ensure the full and effective participation of transgender individuals in society and their inclusion.

(2) The government must implement welfare measures as prescribed to safeguard the rights and interests of transgender individuals and facilitate their access to government-established welfare schemes.

(3) The government must develop welfare schemes and programs that are transgender-sensitive, non-stigmatizing, and non-discriminatory.

(4) The government must take steps to rescue, protect, and rehabilitate transgender individuals to address their needs.

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(5) The government must take appropriate measures to promote and protect the right of transgender individuals to participate in cultural and recreational activities."

21.1. Section 8 of the 2019 Act thus mandates the government to ensure effective societal participation and inclusion of transgenders. Section 9 of the Act, *ibid,* prohibits discrimination.

22. In the aforesaid statutory backdrop, adverting back to case in hand, in the context of Article 14 of the Constitution, the Supreme Court's judgement in the case of NALSA vs Union of India(supra) has already established that transgender and gender-diverse individuals are a distinct class of human beings, separate from the male and female categories. Supreme Court has mandated that steps be taken to ensure that transgender individuals are not discriminated against or prejudiced. The argument for horizontal reservation stems from the NALSA Judgement (supra), which recognised transgender persons as a distinct socio-religious and cultural group. This community must be acknowledged as a 'third gender', separate from male and female categories. Gender identity is fundamental to an individual's dignity, autonomy, and self-determination. The NALSA[12] Judgement *inter alia* held as below:

"76. Self-identified gender can be male, female, or a third gender. Hijras, who identify as persons of the third gender, are neither male nor female. As mentioned earlier, gender identity refers to a person's internal sense of being male, female, or transgender. For instance, Hijras don't identify as female because they lack female genitalia or reproductive capability. This distinction sets them apart from both male and female genders, and they consider themselves neither man nor woman but a "third gender." Consequently, Hijras belong to a distinct socio-religious and cultural group and should be recognised as a "third gender" separate from male and female. The State of Punjab has

12. NALSA V UOI (2014) 5 SCC 438, para 76.

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> *incorrectly treated all transgender individuals as male, which is not legally sustainable. In contrast, the State of Tamil Nadu has implemented several welfare measures to protect the rights of transgender individuals, which we must acknowledge. A few states like Kerala, Tripura, and Bihar refer to transgender individuals as "third gender" or "sex." Certain states recognise them as third category."*

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23. NALSA judgment(supra) thus acknowledges the fundamental rights of transgender persons under the Constitution, including the right to self-determination of gender identity. The Supreme Court judgement also recognised that transgender persons are vulnerable and marginalized section of the society facing systemic discrimination. Consequently, the Court issued directions to safeguard and enforce their rights under the Constitution of India. Supreme Court in no uncertain terms directed the Centre and State Governments to take steps to treat TGs as socially and educationally backward classes of citizens and extend all kinds of reservation. Thus, there are two parts of the directions, i.e.,

A. Treat TGs as an educationally and socially backward class;

B. Extend all kinds of reservations.

24. We are concerned here with the second part of the direction. The basis of NALSA judgement(supra) is that the concept of gender is not binary and that transgender persons have a right to self-determination. Recognition of gender identity is a fundamental right. As noted, the respondents have issued the impugned notification dated 12.01.2023 thereby adding the transgenders at serial No. 92 in the authorised list of Other Backward Classes.

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25. There are no recent statistics available on the number of transgender individuals in State of Rajasthan. The last survey conducted on transgender people was during the 2011 Census conducted by the Government of India. As per the website maintained by Ministry of social justice and empowerment, the figures placed before us from the 2011 Census are as below (all figures are approximately):-

Total population[13]:	6,85,48,437
OBC population[14]:	3,24,23,410
Transgender population[15]:	16,517

The above survey predates the judgement of the Hon'ble Supreme Court of India in NALSA (supra). The figures above are though of year 2011, but unmistakably they demonstrate that the transgender population constitutes an exceedingly small, indeed, minuscule fraction of the total population i.e., 0.024 % and even that of the OBC segment i.e., 0.046%. There is no reasonable basis to assume that a fresh census would materially alter this proportion.

26. Transgenders are from various vertical categories, such as unreserved/general merit or reserved categories like Economically Weaker Sections, Other Backward Classes, Scheduled Castes and Scheduled Tribes. We are of the opinion that, in a regime of reservations, particularly horizontal reservations, proportionality is not merely desirable but foundational. Any such reservation must

13. Census of India (2011).
14. Handbook on Social Welfare Statistics by Ministry of Social Justice and Empowerment.
15. Ministry of Social Justice and Empowerment as per Census (2011).

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bear a rational nexus to the population share of the beneficiary class. Tested on this touchstone, the proportion of the transgender population has to be borne in mind for creation of a separate horizontal reservation category.

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26.1. However, if such a reservation were to be carved out, given the extremely low proportion, its operational impact would be virtually illusory, reserved roster points for transgender candidates would arise only at long and irregular intervals. The consequence would be systemic frustration as the eligible candidates would be compelled to wait for inordinate periods before a single opportunity arises. Far from advancing their cause, such a framework would operate to their detriment, rendering the promise of separate reservation largely symbolic and practically ineffective.

26.2. Additionally, the implementation of such a horizontal reservation would entail significant administrative and logistical complications. The long-term maintenance of accurate records and the precise calibration of roster points across multiple vertical and horizontal categories under the rota-quota system would pose serious challenges, increasing the risk of inconsistency and error.

27. That said, there can be no manner of doubt that transgender persons constitute a vulnerable and marginalized segment of society, warranting affirmative measures. The situation is even more acute for those born into SC/ST/SEBC families, who suffer compounded and intersecting disadvantages. They (the

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transgenders) are the victims of societal discrimination and marginalization.

28. Having perused the impugned notification, it seems to us that TGs belonging to SC/ST/SEBC do not get any real benefit by being declared as OBC. In fact, a serious anomaly arises from the impugned notification/circular dated 12.01.2023. Let us see how.

29. Prior to issuance, a transgender person born into an SC/ST/SEBC family was entitled to reservation benefits by virtue of birth in that category, which in many cases, may be more advantageous than placement within the OBC category. However, by bringing all transgender persons within Entry No. 92 of the OBC category, the notification effectively subsumes and extinguishes their pre-existing reservation entitlements, without even affording them an option to choose. This results in a manifestly anomalous and adverse consequence, whereby individuals lose more beneficial protections previously available to them belonging to SC or ST or SEBC category, as the case may be.

30. Arguendo, let us assume that transgender persons are given an option to choose between (i) their pre-existing, birth-based SC/ ST/SEBC reservation benefits and (ii) the post-notification classification under the OBC category. Even in such a scenario, the impugned notification confers no tangible additional benefit upon them. It merely compels a choice between two regimes without enhancing their substantive entitlements. The circular, therefore, creates a clear dichotomy and results in an anomalous situation.

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31. We are constrained to observe and hold that the impugned circular is a mere facade and an eyewash. As it seems to be an exercise in form without substance. It confers no real reservation whatsoever; it simply parrots what already stands declared by the Supreme Court in NALSA, namely, the recognition of transgender persons within the fold of socially and educationally backward classes. Such reiteration, devoid of any concrete affirmative action, is merely illusory and falls short of the reservation mandated by the Supreme Court.

32. The State of Rajasthan was under a clear constitutional obligation to translate the mandate of the Supreme Court into tangible policy by carving out a distinct and effective reservation framework for transgender persons. That obligation has been conspicuously abdicated. The impugned circular, far from advancing rights, reduces a binding constitutional directive to an empty ritual.

33. At the same time, we find considerable merit in the objection raised by the respondents that the relief sought qua creation of horizontal reservation for transgender persons, squarely falls within the domain of policy formulation concerning reservation structuring. Such matters lie beyond the permissible scope of judicial intervention under Article 226 of the Constitution.

34. In these peculiar circumstances, a calibrated and evidence-based approach is imperative. Particularly, in light of the admission by the State in its affidavit that the impugned circular

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has effectively resulted in no tangible benefits to the TGs. We are of the considered view that the State Government ought to:

(a) undertake a comprehensive and in-depth study through a Committee comprising senior functionaries preferably headed by the Principal Secretary, Department of Social Welfare and Empowerment, along with eminent social activists and representatives of the transgender community, to assess the extent of compounded marginalization suffered by transgender persons belonging to SC/ST/SEBC/OBC/Open categories vis-a-vis others;

and

(b) formulate and recommend appropriate measures or a workable framework to ameliorate this aggravated disadvantage, with a view to enabling such individuals to achieve substantive equality in access to public employment and educational opportunities.

35. Upon submission of the Committee's recommendations, the State Government shall take an informed and appropriate policy decision for providing reservation as per the statutory mandate contained under Section 8 of the Act read with NALSA judgment (supra).

36. Pending such decision, and to address the immediate inequity, we are of the view that it is necessary to issue an interim direction. We feel that transgender persons belonging to SC/ST/SEBC/OBC/open categories ought to be granted an additional weightage of marks in matters of selection and

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appointment to posts under the State Government, its instrumentalities, public sector undertakings, and State-funded or aided institutions, as well as in admissions to educational institutions.

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CONCLUSION

37. Accordingly, the petition is disposed of with the following directions:

(a) The State Government shall constitute a Committee, as indicated above, to conduct a detailed inquiry and recommend measures to address the aggravated marginalization of transgender persons from all backgrounds, be it any category. The Government shall thereafter take an appropriate policy decision based on such recommendations.

(b) Until such policy decision is taken, transgender persons belonging shall henceforth be granted 3% additional weightage in the maximum prescribed marks for purposes of selection and appointment on the posts and admission to educational institutions under the State Government, its instrumentalities, public sector undertakings, and State-funded or aided institutions.

38. Before we part, we may like to mention that we are conscious that matters related to the structure of reservations, whether vertical or horizontal, are exclusively within the legislative and executive domains. Judicial intervention is limited to merely

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recommending the same and not frame or redesign such policies, let alone create a new reservation class.

38.1. Having said so, in this context, we have also gone through the Karnataka Civil Services (General Recruitment Amendment Rules, 2021), formulated by the Government of Karnataka to achieve the goal as soon as possible under the Transgender Act of 2019. For ready reference, relevant part thereof is reproduced below:

> *"3. Amendment of Rule 9:*
>
> *In sub-rule (1) of Rule 9 of the "said rules," after clause (1C), the following shall be inserted:*
>
> *(1D) While recruitment rules for specific services or posts may vary, all direct recruitment must reserve one percentage of vacancies for that method in each category of General Merit, Scheduled Castes, Scheduled Tribes, and Other Backward Classes. These vacancies should be filled from among transgender candidates. This provision is subject to any general instructions issued by the Government regarding the appointment process.*
>
> *To facilitate the recruitment of transgender individuals, every Appointing Authority must include a separate column for "Others" in the application for Group-A, B, C, or D posts. This column should also specify male and female genders. Additionally, the Recruitment Authority or Appointing Authority must ensure that transgender individuals are not discriminated against during the selection process for any category of post.*
>
> *If there are insufficient eligible transgender candidates (to the extent of one percent), unfilled vacancies should be filled by male or female candidates from the same category."*

We are of the view that the similar legislative exercise is what is/was envisaged in NALSA judgment(supra) for the law makers in the other States to replicate, mutatis-mutandis, as already done in Karnataka. We are also informed that even Tamil Nadu has taken positive steps towards granting horizontal reservations to transgenders in public employment and educational institutions. State of Rajasthan has merely enacted the Transgender

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UtthanKosh Guidelines, 2021 which are directory in nature and; brought all transgender persons within entry no.92 (OBC category), which neither serve any meaningful purpose nor meet the NALSA judgment mandate.

38.2. It is thus for the law makers i.e. legislature in Rajasthan to take note of all this and use Karnataka law as a model statute/Rules to take appropriate steps in that direction to frame their own law/policy, as mandated in NALSA and the Transgender Persons (Protection of Rights) Act, 2019 (Central Act 40 of 2019).

39. With these observations/directions, the petition stands disposed of. Any pending application, also stands disposed of.

(YOGENDRA KUMAR PUROHIT),J **(ARUN MONGA),J**

EPILOGUE[16]

(Per: Arun Monga, J)

1. While the judgment, as above, was being finalized, but just before its release, Parliament passed the Transgender Persons (Protection of Rights) Amendment Bill, 2026, (on the date of judgment it was yet to become An Act as it was pending assent of Hon'ble the President of India and to be enforced/promulgated). It is proposed therein that sub section (2), i.e. right to self-perceived gender identity, in section 4 of the Principal Act shall be omitted. Thus, the proposed Bill seeks to amend the 2019 Act by taking

16. Clarified/corrected vide order dated 02.04.2026 in D.B. Writ Misc. Application No. 168/2026.

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away the right to self-determination or self-proclamation of being a third gender.

2. At the time of authoring the judgment, ibid, this Court proceeded on the foundational premise articulated in NALSA judgment viz. that the right to self-identify one's gender is an intrinsic facet of dignity, autonomy, and personal liberty under Articles 14, 15, 16 and 21 of the Constitution, bottom-line being, selfhood is not a matter of concession, it is a matter of right.

3. Be that as it may, the directions in the main judgment have been passed as per the prevailing legal position on the date of the judgment and are meant to be complied with accordingly.

4. In this backdrop, the epilogue, therefore, is statement of facts in the process of changing legal landscape. The same is rather a caveat that it remains open, and indeed, still incumbent upon the State of Rajasthan to ensure that any policy framework evolved pursuant to the directions, in the judgment above, is within the contours of the existing law as on the date of the judgment i.e. 30.03.2026."

(YOGENDRA KUMAR PUROHIT),J **(ARUN MONGA),J**

Order dated 02.04.2026 on application seeking clarification/directions with regard to the Epilogue in the Final Judgment

1. Having heard learned counsel and perused the application, we are not persuaded to accept the submission that the epilogue

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dated 30.03.2026 should not be read as part of the judgment of the same date or be not treated as part thereof for precedential purposes. Accordingly, no such orders are warranted in that regard.

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2. However, upon our re-reading of the epilogue, it appears that by mistake the following text was included therein, although it was neither intended nor necessary, viz:

> *"3. The subsequent amendment to the Transgender Persons (Protection of Rights) Act, 2019, however, marks a departure from that said constitutional baseline. It is now proposed that legal recognition of gender identity shall be conditioned upon certification, scrutiny, or other forms of administrative endorsement. What was recognized by the Supreme Court as an inviolable aspect of personhood now risks being reduced to a contingent, State-mediated entitlement.*
>
> *4. In this backdrop, the epilogue, therefore, is more of a caveat that it remains open, and indeed, still incumbent upon the State of Rajasthan to ensure that any policy framework evolved pursuant to the directions, in the judgment above, preserves, to the fullest extent possible, the principle of self-identification, within the contours of the amended law, of course. The State must be mindful that statutory developments cannot be implemented in a manner that dilutes constitutional guarantees. The comparative models, including those adopted by other States, may yet be structured in a manner that advances inclusion without subjecting identity to impermissible constraints.*
>
> *5. In the altered legal landscape, any policy framework devised by the State must be careful and it must strive to preserve, to the fullest extent possible, the constitutional guarantee by extending affirmative measures of reservation. Any framework, be it legislative or executive, the rule of law demands that such measures must withstand scrutiny not merely of legality, but of constitutional conscience. The State, as a constitutional actor, is expected to adopt an approach that harmonizes statutory compliance with constitutional congruity, ensuring that the rights of transgender persons are not rendered illusory by procedural constraints. The true measure lies in the tangible dismantling of systemic marginalization that transgender persons continue to endure.*"

3. We, therefore, order the deletion of aforesaid text.

4. Further, we are of the opinion that, after deleting the above text, the following text ought to be added in the epilogue:

> "Be that as it may, the aforesaid directions in the main judgment have been passed as per the prevailing legal

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position on the date of judgment and are meant to be complied with accordingly."

5. The corrected epilogue shall thus now be read as under:

"EPILOGUE

1. While the judgment, as above, was being finalized, but just before its release, Parliament passed the Transgender Persons (Protection of Rights) Amendment Bill, 2026, (on the date of judgment it was yet to become An Act as it was pending assent of Hon'ble the President of India and to be enforced/promulgated). It is proposed therein that sub section (2), i.e. right to self-perceived gender identity, in section 4 of the Principal Act shall be omitted. Thus, the proposed Bill seeks to amend the 2019 Act by taking away the right to self-determination or self-proclamation of being a third gender.
2. At the time of authoring the judgment, ibid, this Court proceeded on the foundational premise articulated in NALSA judgment viz. that the right to self-identify one's gender is an intrinsic facet of dignity, autonomy, and personal liberty under Articles 14, 15, 16 and 21 of the Constitution, bottom-line being, selfhood is not a matter of concession, it is a matter of right.
3. Be that as it may, the directions in the main judgment have been passed as per the prevailing legal position on the date of the judgment and are meant to be complied with accordingly.
4. In this backdrop, the epilogue, therefore, is statement of facts in the process of changing legal landscape. The same is rather a caveat that it remains open, and indeed, still incumbent upon the State of Rajasthan to ensure that any policy framework evolved pursuant to the directions, in the judgment above, is within the contours of the existing law as on the date of the judgment i.e. 30.03.2026."

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6. So far as the order/judgment dated 30.03.2026 is concerned, the same be off-loaded from the official website of the High Court and hard copy of the same be kept in 'D' part of the record and corrected order be uploaded.

7. The application is thus disposed of.

(YOGENDRA KUMAR PUROHIT),J **(ARUN MONGA),J**

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