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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 2ND DAY OF JUNE 2025 / 12TH JYAISHTA, 1947

WP(C) NO. 23763 OF 2023

PETITIONER/S:

1 ZAHHAD,
AGED 23 YEARS
C/O. ASHITHA,11/412B NEAR HEALTH CENTRE, KUNDAYITHODE, CHERUVANNUR, KOZHIKODE, KERALA, PIN - 673005

2 ZIYA PAVAL,
AGED 22 YEARS
ZIYA PAVAL,, C/O DEEPA RANI, 1234 SIVAS FLAT, EAST HILL APARTMENT WEST HILL, KOZHIKODE, KERALA, PIN - 673005

3 ZABIYA ZAHHAD,
MINOR AGED 5 MONTHS, DATE OF BIRTH- 08/02/2023,
REPRESENTED BY ZAHHAD (BIOLOGICAL MOTHER), C/O ASHITHA,11/412B NEAR HEALTH CENTRE, KUNDAYITHODE, CHERUVANNUR, KOZHIKODE, KERALA, PIN - 673005

BY ADVS.
PADMA LAKSHMI
PRASHANT PADMANABHAN(K/1685/1999)
MEENAKSHI K.B.(K/003181/2024)
MARIYAMMA A.K.(K/104/1990)
IPSITA OJAL(K/001006/2018)
POOJA UNNIKRISHNAN(K/2789/2022)

RESPONDENT/S:

1 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001

2 CHIEF REGISTRAR,
BIRTH AND DEATH REGISTRATION DEPARTMENT, SWARAJ BHAVAN, THIRUVANANTHAPURAM, PIN - 695003

3 PRINCIPLE DIRECTOR,
5 TH FLOOR, SWARAJ BHAVAN, LOCAL SELF DEPARTMENT NANDANKODE, THIRUVANAMTHAPURAM, PIN - 695003

4 DIRECTOR OF SOCIAL JUSTICE DEPARTMENT,
VIKAS BHAVAN, 5 TH FLOOR, THIRUVANANTHAPURAM, PIN - 695033

5 SECRETARY,
KOZHIKODE CORPORATION, CORPORATION OFFICE, CALICUT BEACH, KOZHIKODE, KERALA STATE, PIN - 673032

6 KOZHIKODE CORPORATION,
REPRESENTED BY SECRETARY , CORPORATION OFFICE CALICUT BEACH KOZHIKODE, KERALA STATE, PIN - 673032

BY ADV SHRI.V.KRISHNA MENON, SC, KOZHIKODE MUNICIPAL CORPORATION FOR R5 AND R6.
SRI. V. MANU, SPL. GOVT.PLEADER R1 TO R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21.05.2025 THE COURT ON 02.06.2025 DELIVERED THE FOLLOWING:

JUDGMENT

In this case, an interesting, rare and exceptional issue has come up, that relates to the rights of transgender persons touching upon the necessity to safeguard their interests, when it comes to the question of the identity of their children who are born as normal persons. The essential issue to be dealt with in this writ petition pertains to the furnishing of the details of parents and their identities in terms of their gender, while issuing a birth certificate to a child born to the transgender parents.

2. The brief facts which are necessary to decide the issue are as follows: The 1st petitioner was born as a female and as per the Secondary School Leaving Certificate, the gender of the 1st petitioner was noted as female. Later the 1st petitioner recognised herself as a male, as an inclination to be a male developed in her mind. Based on such desire, she had taken a decision to lead a life of a male and accordingly, she changed the name by adopting a male name. The transgender identity card issued by the District Magistrate as contemplated under the provisions of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as

'Transgender Persons Act') was also obtained in the form of Ext.P1.

3. The 2nd petitioner was born as a male and in the Secondary School Leaving Certificate his gender was shown as male. Later, he identified himself as a female just the way the 1st petitioner felt, and accordingly he decided to live as a female. Therefore, he adopted the name of a female. He also obtained a transgender identity card from the competent authority under the Transgender Persons Act. Exhibits P1 and P2 are the transgender identity cards of the 1st and 2nd petitioners, respectively. Both of them have obtained Aadhar cards in their favour, wherein, the gender of the parties is shown as male and female respectively. Exhibits P4 and P6 are the Aadhar cards of the petitioners 1 and 2, whereas Exhibits P3 and P5 are the Secondary School Leaving Certificates showing their gender at the time of their birth.

4. The 1st and 2nd petitioners started to live together and during this period, the 1st petitioner (trans-man) became pregnant and delivered a baby boy on 08.02.2023 at the Medical College Hospital, Kozhikode. The 3rd petitioner is the child born to the petitioners and the child is not a transgender child. Upon the birth of the child, the hospital authorities reported the birth to the 5th respondent, the

Secretary to Kozhikode Corporation, and the details of the petitioners and the birth of the 3rd petitioner were incorporated in the Register maintained by the 5th respondent under the provisions of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as 'the Act 1969') and the rules framed thereunder. In the details furnished, the 1st petitioner was shown as the mother of the 3rd petitioner and the 2nd petitioner was shown as the father. Exhibit P7 is the birth certificate of the 3rd petitioner, issued by Kozhikode Corporation on 17.02.2023, which contains the details as referred to above.

5. The grievance highlighted by the petitioners is follows: Now the 1st petitioner, who is described as the mother of the 3rd petitioner in Ext.P7, is leading the life of a male, with an identity of a male and the 2nd petitioner, who is described as the father of the 3rd petitioner, is leading a life of a female, with an identity of a female, as revealed from the records mentioned above. Their status as transgenders were also mentioned in the said certificate. Therefore, the apprehension of the petitioners is that, the gender identities as described in Ext.P7 birth certificate, being contrary to the gender status in life adopted by the parties, are likely to create serious

problems and prejudices in the life of the 3rd petitioner, when it comes to the question of education, employment or other profession etc.

6. Therefore, the petitioners have approached the Kozhikode Corporation to issue a fresh certificate of birth of the 3rd petitioner by describing the petitioners 1 and 2 as the parents of the 3rd petitioner, instead of mentioning the 1st petitioner as the father and the 2nd petitioner as the mother of the 3rd petitioner, and without mentioning their gender. The 5th respondent refused to entertain the said request by pointing out that, as per the provisions contained in the Registration of Births and Deaths Act, 1969 and also the Kerala Registration of Births and Deaths Rules, 1999, the 5th respondent can issue a certificate only in a prescribed format viz., Form 5, which contains a column for mother and father where the details are to be supplied. According to them, there are no other statutory provisions that enable them to issue a birth certificate otherwise than contemplated under the Rules. Therefore, the request made by the petitioners was not entertained, and it was in these circumstances, the petitioners have approached this Court seeking the following reliefs:

"i) Declare that form 1 birth report form of the Registration of Births & Deaths Act, 1999 and Rule 5 of the Kerala Registration of Births and Deaths Rules, 1999 be read down so as to include all voluntary changes to name and gender identity in one's birth certificate;
ii) Declare that form 3 birth report form of the Registration of Births & Deaths Act, 1999 and Rule 5 of the Kerala Registration of Births and Deaths Rules, 1999 be read down so as to include all voluntary changes to name and gender identity in one's birth certificate;
iii) Declare that form 5 birth report form of the Registration of Births & Deaths Act, 1999 and Rule 8 of the Kerala Registration of Births and Deaths Rules, 1999 be read down so as to include all voluntary changes to name and gender identity in one's birth certificate
iv) Declare that form 7 birth report form of the Registration of Births & Deaths Act, 1999 and Rule 12 of the Kerala Registration of Births and Deaths Rules, 1999 be read down so as to include all voluntary changes to name and gender identity in one's birth certificate."

7. Counter affidavits were submitted by respondents 5 and 6, and a statement and an additional statement were filed by respondents 2 and 3. In the statement submitted by the respondents 2 and 3, they denied the right of the petitioners to seek the reliefs in the writ petition, as the same are not supported by any statutory provision. Besides, it was also pointed out that, as far as the issue is concerned, the same relates to the birth certificate of the 3rd petitioner, who is not a transgender person and therefore the provisions of the Transgender Persons Act cannot be made applicable. As far as the 5th and 6th respondents are concerned, it was contended that they cannot issue a birth certificate in any form other than mentioned in the Kerala Registration of Births and Deaths Rules,1999 particularly in Form No.5. In such circumstances, the

respondents have sought for dismissal of the writ petition.

8. I have heard Sri. Prasant Padmanabhan, assisted by Smt.Padma Lakshmi, the learned counsels for the petitioners, Sri. V.Manu, the learned Spl.Govt.Pleader, for the respondents 1 to 4 and Sri. V. Krishna Menon, the learned Standing Counsel for the respondents 5 and 6.

9. The crucial question that arises for consideration is whether is it possible for the 5th respondent to issue birth certificate to the 3rd petitioner by simply describing the petitioners 1 and 2 as the parents of the 3rd petitioner, instead of showing them as mother and father respectively. Before examining the aforesaid question, it is necessary to go through the various statutory provisions and the evolution of law regarding the rights of transgender persons.

10. When it comes to the question of the registration of birth, it is governed by the provisions of the Registration of Births and Deaths Act, 1969 and also the rules framed thereunder viz. The Kerala Registration of Births and Deaths Rules, 1999. As per the provisions of the Registration of Births and Deaths Act, 1969 (in short 'the Act, 1969'), it has been made mandatory to furnish the information regarding the deaths and births within a specified time

before the authority concerned. Section 8 of the Act provides as follows:

> *"8. Persons required to register births and deaths.—(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16,—*
>
> *(a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e) the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;*
>
> *(b) in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the medical officer in charge or any person authorised by him in this behalf;*
>
> *(c) in respect of births and deaths in a jail, the jailor in charge;*
>
> *(d) in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;*
>
> *(e) in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere:*
>
> *Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;*
>
> *(f) in any other place, such person as may be prescribed.*
>
> *(2) Notwithstanding anything contained in sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred*

to in clause (a) of sub-section (1) instead of the persons specified in that clause."

Section 12 of the said Act provides that:

> *"12. Extracts of registration entries to be given to informant.—The Registrar shall, as soon as the registration of a birth or death has been completed, give, free of charge, to the person who gives information under section 8 or section 9 and extract of the prescribed particulars under his hand from the register relating to such birth or death."*

Section 15 of the Act deals with the correction or cancellation of entry in the register of births and deaths, if it is shown that an entry therein is erroneous in form or substance, or has been fraudulently or improperly made. Section 16 of the Act provides for the obligation of the Registrars to maintain the register of births and deaths in the prescribed form.

11. The Kerala Registration of Births and Deaths Rules, 1999 was enacted by the State Government, which provides for various forms in which the documents, registers, certificates relating to the deaths and births are to be maintained. Rule 5 provides that the information shall be furnished in form Nos.1,2 and 3 for the registration of a birth and death, and still birth respectively. Rule 8(1) reads as follows:

> *"**Extracts of registration entries to be given under section 12**.—(1) The extracts of particulars from the register relating to births or deaths to be given to an*

informant under section 12 shall be in Form No. 5 or Form No. 6, as the case may be."

Form 5 is the birth certificate which is extracted below:

കേരള സർക്കാർ
GOVERNMENT OF KERALA
പഞ്ചായത്ത്/നഗരകാര്യ വകുപ്പ്
DEPARTMENT OF PANCHAYATS/URBAN AFFAIRS
സർട്ടിഫിക്കറ്റ് നൽകുന്ന തദ്ദേശ സ്ഥാപനത്തിന്റെ പേര് .....
Name of local body issuing certificate.....
ജനന സർട്ടിഫിക്കറ്റ്
Birth Certificate

(1969-ലെ ജനന-മരണ രജിസ്ട്രേഷൻ ആക്ടിലെ 12/17 വകുപ്പും 1999-ലെ കേരള ജനനമരണ രജിസ്ട്രേഷൻ ചട്ടങ്ങളിലെ 8/13-ാം ചട്ടവും അനുസരിച്ച് നൽകുന്നത്.)

(Issued under Section 12/17 of the Registration of Births and Deaths Acts, 1969 and Rule 8/13 of the Kerala Registration of Births and Deaths Rules, 1999.)

താഴെ പറയുന്ന വിവരങ്ങൾ കേരള സംസ്ഥാനത്തിലെ ..... ജില്ലയിലെ .....താലൂക്കിലെ ..... . ലെ (തദ്ദേശ സ്ഥാപനം) അസ്സൽ ജനന രജിസ്റ്ററിൽ നിന്ന് എടുത്തിട്ടുള്ളവയാണെന്ന് സാക്ഷ്യപ്പെടുത്തുന്നു.

This is to certify that the following information has been taken from the original record of birth which is the register for (local areas local body)..... of Taluk ..... of District ..... of State Kerala.

പേര് /Name ..... ആൺ/പെൺ/Sex .....ജനന തിയതിDate of Birth..... ജനന സ്ഥലം/Place Of Birth.....

മാതാവിന്റെ പേര്/ Name of Mother,..... പിതാവിന്റെ പേര്/ Name of Father .....

കുട്ടിയുടെ ജനന സമയത്തു മാതാപിതാക്കളുടെ മേൽവിലാസം
മാതാപിതാക്കളുടെ സ്ഥിര മേൽവിലാസം

Address of the Parents at the time of birth of the child Permanent address of parents

....

രെജിസ്ട്രേഷൻ നമ്പർ *Registration No*..... രെജിസ്ട്രേഷൻ തീയതിDate of Registration.....

അഭിപ്രായകുറിപ്പു / Remarks (if any)

നൽകുന്ന തീയതി / Date of issue

നൽകുന്ന അധികാരിയുടെ ഒപ്പ്

/Signature of the issuing authority

നൽകുന്ന അധികാരിയുടെ മേൽവിലാസം/Address of the issuing authority

സീൽ/SEAL

“Ensure Registration of every birth and death"

"ഓരോ ജനനവും മരണവും രജിസ്റ്റർ ചെയ്യുവെന്ന് ഉറപ്പുവരുത്തുക." “

It is to be noted that Form 5 contains specific columns for the names of mother and father.

12. When it comes to the question of rights of transgender persons, the first aspect to be noticed, is the legal recognition before law, declared by the Hon'ble Supreme Court in **National Legal Services Authority v. Union of India and Others [(2014) 5 SCC 438]** wherein, after elaborately discussing the issue with specific reference to the Universal Declaration of Human Rights 1948, it was categorically held that Hijras/Transgender Persons are to be granted legal recognition and protection. The relevant observations in para 74,75, 76 and 77 read as follows:

> *74. Article 21, as already indicated, protects one's right of self-determination of the gender to which a person belongs. Determination of gender to which a person belongs is to be decided by the person concerned. In other words, gender identity is integral to the dignity of an individual and is at the core of "personal autonomy" and "self-determination". Hijras/Eunuchs, therefore, have to be considered as Third Gender, over and above*

binary genders under our Constitution and the laws.

75. Articles 14, 15, 16, 19 and 21, above discussion, would indicate, do not exclude Hijras/Transgenders from its ambit, but Indian law on the whole recognize the paradigm of binary genders of male and female, based on one's biological sex. As already indicated, we cannot accept the Corbett principle of "Biological Test", rather we prefer to follow the psyche of the person in determining sex and gender and prefer the "Psychological Test" instead of "Biological Test". Binary notion of gender reflects in the Indian Penal Code, for example, Section 8, 10, etc. and also in the laws related to marriage, adoption, divorce, inheritance, succession and other welfare legislations like NAREGA, 2005, etc. Non-recognition of the identity of Hijras/Transgenders in the various legislations denies them equal protection of law and they face wide-spread discrimination.

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.

77. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.

13. In the said judgment, in paragraph 129, the following directions were issued by the Hon'ble Supreme Court, which read as follows:

"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.

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.

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.

4. The Centre and State Governments are directed to operate separate HIV serosurveillance centres since hijras/transgenders face several sexual health issues.

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.

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.

7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

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.

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."

14. Later, the Central Government came up with an enactment viz. Transgender Persons (Protection of Rights) Act, 2019 (The Transgender Persons Act) to ensure protection and welfare of the transgenders. On going through the statutory scheme of Transgenders Act, it can be seen that section 3 contemplates for prohibition against discrimination of transgender persons . Section 4 provides the recognition of identity of transgender persons which reads as follows:

"4. Recognition of identity of transgender person.—

> (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act.
> (2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.**"**

Section 5 of the said Act deals with the application for the Certificate of Identity which has to be granted by the District Magistrate and the said provision reads as follows:

> ***"5. Application for certificate of identity.****—A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed: Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child."*

Section 6 deals with the manner in which the said certificate has to be issued by the District Magistrate.

15. In this case, the petitioners 1 and 2 were issued with identity cards by the authorities concerned under sections 5 and 6 of the Act, which are Exhibits P1 and P2. Section 8 deals with the obligation of the appropriate Government to secure a full and effective participation of transgender persons and their inclusion in the Society. Chapter V consisting of sections 9 to 12 deal with the obligations of the establishments and other persons, to ensure non discrimination and to provide equal opportunities to them along with any other individuals in the society. Chapter VI, consisting of sections 13 to 15 contemplates the provision mandating the educational

institutions and healthcare facilities to ensure their prompt services to the transgender persons. The authorities are also created as per various provisions to ensure the welfare of the transgender persons. The offences and penalties are also under Chapter VIII which reads as follows:

> ***"18. Offences and penalties.—Whoever,—***
> *(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;*
> *(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;*
> *(c) forces or causes a transgender person to leave household, village or other place of residence; and*
> *(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine."*

The issue in this case is to addressed, in the light of factual circumstances and also the legal provisions, referred to above.

16. As far as the respondents in this writ petition are concerned, the main objection highlighted by them against the reliefs sought by the petitioners is that, as per statutory provisions prevailing now, as contained in the Registration of Births and Deaths Act, 1969 and the Rules framed thereunder, there is no provision for

issuing a birth certificate without specifically naming the mother and father separately. On the other hand, the specific contentions put forward by the learned counsel for the petitioners is by placing reliance upon various difficulties, confusions and prejudices that are likely to occur in the event of the 1st petitioner being described as a mother and the 2nd petitioner as the father in the birth certificate, whereas they are now leading the lives of a male and female respectively.

17. As regards the apprehension voiced by the learned counsel for the petitioners, this Court finds that the same cannot be simply brushed aside. The parental status in terms of gender mentioned in the certificate is completely contrary to the way of life now being pursued by the petitioners, which is diametrically opposite to the concepts of gender and the unit of family, as understood under normal circumstances. The confusions and prejudices as apprehended by the petitioners, are likely to occur in all probability. Even though the 3rd petitioner, who is the beneficiary of a certificate, is not a transgender person, his identity is intrinsically connected with the petitioners 1 and 2 who are transgender persons. In this regard, a specific contention was raised by the learned Government Pleader to the effect that,

since the 3rd petitioner is not a transgender person, he cannot take recourse to the provisions of the Transgender Persons Act. However, as observed above, since his identity is inseparable with that of the 1st and 2nd petitioners who are the transgender couples, the protection given under the said Act cannot be ignored and, therefore, the same will have some relevance while deciding the issue.

18. Therefore, the aforesaid aspect leads to a question whether is it possible for this Court to interpret and implement the provisions of the Act, 1969 and the Rules framed thereunder, to give necessary instructions and directions to the authorities concerned to issue a certificate of birth as sought by the petitioners, in deviation from the statutory forms. For deciding the said question, it is necessary to refer to the legal principles laid down by the Hon'ble Supreme Court with regard to the evolution of law on the question of the requirement of interpreting the existing statutory provisions by giving new meaning to them in tune with the change in time and also the change in the life style of the members of the Society in due course.

19. While considering this question, it is relevant to note the observations made by the Hon'ble Supreme Court in **Deepika Singh**

v. Central Administrative Tribunal and Others [(2023)13 SCC 681]. In the said case, the Hon'ble Supreme Court was considering the question relating to the denial of maternity leave to the appellant therein. In the said case, two of the surviving children of her spouse born in his previous marriage, were included in the service records of the said appellant, for statutory benefits deriving from her employment. Therefore, when she sought maternity leave for her own child, it was denied on the reason that, as she had already included the two children born to her spouse in his earlier wedlock, in the service records, as her children, her own child had to be treated as the third child, to which maternity benefits were not available. In the said decision, the Hon'ble Supreme Court specifically referred to the observations made by the Apex Court in **Badshah v. Urmila Badshah Godse and another [(2014)1 SCC 188]**, wherein it was observed in para 13.3 that,

"…….. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society". In **Badshah's** case (supra), the Hon'ble Supreme Court examined the necessity to adopt

different approaches in "social justice adjudication" which is also known as "social context adjudication" as against "adversarial approach" in certain circumstances. The concept of "social context judging" was described by quoting the keynote address of Prof. Madhava Menon (Keynote address on "Legal Education in Social Context" delivered at National Law University, Jodhpur on 12th October, 2005) wherein the following observations were made:

> *"It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."*

20. After referring to the aforesaid concept, in **Badshah's case** (supra) it was observed as follows:

> *"The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as*

> *change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law."*

21. Thus, in **Deepika Singh's case (supra),** after accepting the aforesaid observations that, the law of a society is a living organism, the Hon'ble Supreme Court proceeded to determine the concept of family and the necessity to have a different definition to the said expression in terms of the changing times and concepts. Paragraph 26 of the decision in **Deepika Singhs'** case (supra) reads as follows:

> *"The predominant understanding of the concept of a "family" both in the law and in society is that it consists of a single, unchanging unit with a mother and a father (who remain constant over time) and their children. This assumption ignores both, the many circumstances which may lead to a change in one's familial structure, and the fact that many families do not conform to this expectation to begin with. Familial relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the "mother" and the "father") of children may change with remarriage, adoption, or fostering. *<u>These manifestations of love and of families may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not</u>*

> *be relied upon to disadvantage families which are different from traditional ones. The same undoubtedly holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination."*
> *(*highlighted for emphasis)*

22. **ABC v. State (NCT of Delhi) [2015(3) KLT 708(SC)** was a decision rendered by the Hon'ble Supreme Court in a case where a single parent came up seeking direction to the authorities concerned to issue a birth certificate showing the name of one parent alone in the birth certificate. After referring to various provisions of the Act, the statutory and social implications of the concept of a family, and taking note of the practical difficulties that might have arisen in that case, if the certificate is sought for was not issued, the following observations were made by the Hon'ble Supreme Court in paragraph 19:

> *"19. We are greatly perturbed by the fact that the Appellant has not obtained a Birth Certificate for her son who is nearly five years old. This is bound to create problems for the child in the future. In this regard, the Appellant has not sought any relief either before us or before any of the Courts below. It is a misplaced assumption in the law as it is presently perceived that the issuance of a Birth Certificate would be a logical corollary to the Appellant succeeding in her guardianship petition. It may be recalled that owing to curial fiat, it is no longer necessary to state the name of the father in applications seeking admission of children to school, as well as for obtaining a passport for a minor child. However, in both these cases, it may still remain necessary to furnish a Birth Certificate. The law is dynamic and is expected to diligently keep pace with time and the legal conundrums and enigmas it*

presents. There is no gainsaying that the identity of the mother is never in doubt. Accordingly, we direct that if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the Birth Certificate, unless there is a Court direction to the contrary. Trite though it is, yet we emphasise that it is the responsibility of the State to ensure that no citizen suffers any inconvenience or disadvantage merely because the parents fail or neglect to register the birth. Nay, it is the duty of the State to take requisite steps for recording every birth of every citizen. To remove any possible doubt, the direction pertaining to issuance of the Birth Certificate is intendedly not restricted to the circumstances or the parties before us."

23. In **Navtej Singh Johar and Ors. v. Union of India, (2018) 10 SCC 1**, the constitutional validity of section 377 of Indian Penal Code was challenged and thereby decriminalized consensual homosexual acts between the individuals, wherein paragraph 86 of the above decision holds as follows;

"86. The Court, as the final arbiter of the Constitution, has to keep in view the necessities of the needy and the weaker sections. The role of the Court assumes further importance when the class or community whose rights are in question are those who have been the object of humiliation, discrimination, separation and violence by not only the State and the society at large but also at the hands of their very own family members. The development of law cannot be a mute spectator to the struggle for the realisation and attainment of the rights of such members of the society."

24. Thus, from the above statutory provisions as well as judicial precedents referred to above, it is evident that, the law cannot remain static, but it has to evolve in accordance with the changes in

the Society and the life style of the members of Society. As mentioned in **Badshah's** case (supra), the law of a society is a living organism and therefore it has to take within its sweep, all the social changes that takes place by passage of time, so as to make the law suitable to the needs of the Society. When it comes to the question of the provisions contained in the Register of Births and Deaths, 1969, it was framed by keeping a binary concept of gender viz., male and female. At the time when it was enacted, apparently there was no concept of legal recognition being granted to a third gender, who is not a male or female. That evolution commenced much later, initially in the form of the decision rendered by Hon'ble Supreme Court in **National Legal Services Authority's case (supra**) and also the Transgender Persons Act which came into force on 10.01.2020. Going by the statutory scheme of Transgender Persons Act, it can be seen that, transgender persons were granted statutory recognition before law and they are entitled to an equal treatment in so far as the opportunities for employment, business, leading a life as a common man etc, are concerned. In **National Legal Services Authority's** case (supra), the Hon'ble Supreme Court categorically observed that, the transgender persons are entitled to equal

protection under the provisions of Articles 14,15,16,19 and 21 of the Constitution of India as the said provisions are gender neutral and refer to human beings. However, while enacting the Act, 1969, for registration of births and deaths, apparently, the law makers never envisaged a situation that has come up in this case. The concepts such as, the transgenders leading a life together as a family as we normally understood, having their own children, getting the names of their children registered under the provisions of the Registration of Births and Deaths Act etc., were something the law makers probably not anticipated at the time of its enactment. Therefore, these are the changes that occurred in the Society, post enactment of Act, 1969, which has got the statutory recognition and also their gender based individual status, identity and rights were upheld by the Hon'ble Supreme Court as well. Despite the above, the corresponding changes in the Act, 1969 have not been made, so as to uphold the rights, protection and the identity of the transgender persons, which they are otherwise entitled to, based on the various Constitutional rights declared in their favour as per **National Legal Services Authority's case**. Therefore, this is a fit case in which, an approach emphasizing "social justice adjudication" or "social context

adjudication" as explained by the Honourable Supreme Court in **Badshah's** case (supra), has to be adopted, to carry out "social context judging" as described by Prof Madhava Menon, which was referred to by the Honourable Supreme Court in the above decision.

25. I have already held that, the apprehension voiced by the petitioners with regard to the confusions, difficulties and obligations and prejudices owing to the complexities involved in the description of gender in the birth certificate of the 3rd petitioner are genuine. Even though the statutory recognition has been granted to the transgender persons by the provisions referred to above, the Society as a whole is yet to accept the said reality and it is a time consuming affair. Therefore, the birth certificate in the form as prescribed in the rules viz., Form–5 would cause serious difficulties for the 3rd petitioner, in the life ahead. As observed in the decision referred to above, the law has to evolve, in tune with the new concepts of human life and changes in Society, and when the statutory provision on a particular point is not in tune with such societal changes, this Court has to intervene to redress the genuine grievances of the parties concerned.

26. As far as the issue involved in this case is concerned, it is confined to the question of issuance of a birth certificate which is strictly personal to the petitioners, particularly to the 3rd petitioner. It neither affects the rights of any third party nor does it affect any other institutions. Therefore, it is not proper to adopt a hyper technical stand that, because of the fact that the Form prescribed in the Rules does not contemplate a birth certificate containing the description of the 1st and 2nd petitioners as mere parents, a certificate as requested, need not be granted to them. If a certificate as sought by the petitioners, advances the welfare, interests and the rights of the petitioners or the class/category they fall in, particularly when their rights originate from the Articles of the Constitution of India, without offending any of the rights of the 3rd parties and without doing violence to any statutory provisions, this court need not hesitate to step in and to issue appropriate directions to issue a certificate to the petitioners. The view taken by this Court on this issue is fortified by the observations made by the Calcutta High Court in **Arpita Chowdhury v. Nabadwip Municipality and Anr.[WPA No.88 of 2023].** In the said decision, while dealing with the question as to whether the prayer of the petitioner to replace the

name of her erstwhile husband and to incorporate the name of the present husband as the father of her minor child was considered. While granting the reliefs sought therein, it was observed as follows: "*Law has to be dynamic and ought to evolve to tackle such issues. One cannot be hyper technical while dealing with personal issues with hardly any public law element involved.*

27. Thus, on carefully examining the statutory provisions as referred to above, in the light of the observations made by the Hon'ble Supreme Court in the decision referred to above, I find that the reliefs sought by the petitioners are to be granted. This is particularly because, as far as the manner in which the details of birth are to be recorded and the registers to be maintained under the provisions of the Registration of Births and Deaths Act, 1969 and the Rules framed thereunder are concerned, the purpose is only to ensure that proper records are maintained with regard to the details of the births and deaths. Since the said details are very important to a person to claim his status, identity and citizenship, it is a document which is sacrosanct and has to be maintained by following a strict procedure. The possibilities of erroneous entries coming in, have to be ruled out, and every measure for the same has to be taken.

28. However, when it comes to the question of issuance of a certificate showing the petitioners 1 and 2, as the parents of the 3rd petitioner, without their status as a mother or father, I do not find that it would defeat any purposes behind the enactment of the Act. The reliefs sought by the petitioners is to issue a birth certificate confining the description of the status of the petitioners 1 and 2 as the parents of the 3rd petitioner. Significantly, they are not asking for modification of any of the entries made in the register maintained by the authorities concerned under the provisions of the Registration of Births and Deaths Act, 1969. As far as the birth certificate is concerned, it is governed by section 12 of the Act, 1969, which imposes an obligation on the Registrar, to furnish certain information extracted from the register relating to the birth or death. Conspicuously, Section 12 of the Act does not provide that all the information furnished before the Registrar and included in the Register should be included in the certificate. Rule 8 of the Kerala Registration of Births and Deaths Rules, 1999 reinforces the aforesaid concept, as it only provides that the "extracts" of the particulars from the Register relating to the births and deaths are to be given to the informant under section 12. Therefore, the irresistible

conclusion that can be drawn from the above is that, all the information available with the Registering authority, need not be furnished while issuing a certificate, as the expression used is 'extracts of the registration entries'. Of course it is true that, Rule 8 provides for a particular form viz. Form 5, through which a certificate has to be furnished and it includes the names of the mother and father. In this regard, I have already observed that, the Act, 1969 and the Rules, 1999 were framed without taking note of various kinds of the rights of the transgender persons as recognized by the Hon'ble Supreme Court in **National Legal Services Authority's case (supra)** and also the Transgenders Act, 2019. The concepts regarding the rights of transgender persons were not taken into account while prescribing the Forms contemplated under the Act and Rules as far as the birth certificate is concerned. Therefore, I find that necessary modifications can be made in appropriate cases where the interests of the transgender persons are involved.

29. As one of the reliefs, the petitioners have sought to read down the provisions in the Rules which provide the forms for furnishing the details of birth and also the issuance of the certificate. However, I am of the view that, reading down of the provisions is not

necessary, as the case at hand is a rare and exceptional case, and the facts and circumstances of such a case, cannot be a reason to interpret the validity of the statutory stipulations in the Act and Rules referred to above. In other words, this being an exceptional case, exceptional remedies are to be explored and exceptional reliefs are to be granted.

In such circumstances, this Writ Petition is disposed of directing the 5th respondent to issue birth certificate in Form 5, with a modification by removing the columns set apart for the names of Father and Mother and by incorporating the names of the petitioners 1 and 2 as the parents, without referring to the gender of the petitioners 1 and 2. The certificate, as referred to above, shall be issued to the petitioners within a period of two months from the date of receipt of a copy of this judgment. However, it is clarified that, no alteration in the details entered into the registers maintained in this regard needs to be made and the modification directed is confined to the issuance of the birth certificate alone.

Sd/-

ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF WP(C) 23763/2023

PETITIONERS' EXHIBITS

EXHIBIT P1	**A TRUE COPY OF FIRST PETITIONER'S TRANSGENDER IDENTITY CARD ISSUED BY THE DISTRICT MAGISTRATE, KOZHIKODE, ON 30/10/2021**
EXHIBIT P2	**TRUE COPY OF SECOND PETITIONER'S TRANSGENDER IDENTITY CARD ISSUED BY THE DISTRICT MAGISTRATE, KOZHIKODE, ON 05/01/2022**
EXHIBIT P3	**TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE NO.Q.333392**
EXHIBIT P4	**TRUE COPY OF THE AADHAR CARD NO 6423 2879 1836 OF THE FIRST PETITIONER**
EXHIBIT P5	**TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE NO.S.580935**
EXHIBIT P6	**TRUE COPY OF THE AADHAR CARD NO. 2080 5209 5643 OF THE SECOND PETITIONER**
EXHIBIT P7	**TRUE COPY OF BIRTH CERTIFICATE ISSUED BY THE KOZHIKODE CORPORATION DATED 17/02/2023**
EXHIBIT P8	**INTERNATIONAL CASE LAW**
EXHIBIT P9	**JUDGMENT OF THE HON'BLE SUPREME COURT OF UNITED STATES IN MARISA N.PAVAN ET AL V. NATHANIEL SMITH (582 U.S.2017), DATED 26 TH JUNE 2017**