

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6505 of 2023

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Reshma Prasad C/o Ram Pravesh Prasad, R/o Station Road, Devi Sthan, Goriya
Toli, Patna 800001.

... ... Petitioner/s

Versus

1. State of Bihar through its Chief Secretary.
2. Additional Chief Secretary, General Administrative Department, Main
Secretariat, Patna.
3. Additional Chief Secretary, Social Welfare Department, Government of Bihar,
Main Secretariat, Patna.
4. Ministry of Social Justice and Empowerment, Government of India, Shastri
Bhawan, New Delhi-110001.

... ... Respondent/s

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Constitution of India – Article 226 – PIL – Inclusion of transgender under the
category of caste is in violation of Constitution of India – Caste survey is to ensure
justice in development and to protect the interests of the marginalized and
downtrodden groups within the society – anyone from the community would be
entitled to make representation to the State seeking not to reckon the transgenders as
a caste – Writ petition disposed off with the observations.

(2014) 5 SCC 438-relied on

(Paras 1, 2 and 4)

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... .. Respondent/s

Appearance :

For the Petitioner/s : Ms. Sachina, Advocate
For the Respondent/s : Mr. P.K. Shahi (AG)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-08-2023

The rights of the transgender persons are sought to be asserted by way of this writ petition, with reference to the Caste Survey of 2022, as carried out by the State Government of Bihar. Caste & gender are asserted to be two separate identities of an individual and hence, the inclusion of transgender persons in Item No. 22 under the category of caste is violative of Article 14, 15, 16 and 21 of the Constitution of India, is the contention. This effectively dis-entitles the transgender persons from the



right to chose their gender identity, thus denying their right to self determination which results in gross arbitrariness and is inconsistent with the fundamental rights guaranteed under the Constitution of India. Reliance is also placed on the judgment of the Hon'ble Supreme Court in *National Legal Service Authority v. Union of India, (2014) 5 SCC 438*.

2. We see from Annexure-2 the list of castes, that at Item No. 22, transgenders are included as among the 214 named castes. Avowedly, the caste survey was initiated and continued by the State Government to ensure justice in development and to protect the interests of the marginalized and the downtrodden groups within the society. We have to immediately notice that the transgenders have been seeking for upliftment and equal rights, which could flow from the results of the survey, by framing of appropriate welfare schemes to help such marginalized groups.

3. True, transgender is not a caste identity and every individual, including those not conforming to the male/female gender classification, should be permitted self determination. The State of Bihar has filed a counter affidavit in which it has been categorically stated that there is a clarification issued by the Government *vide* Letter No. 7888 dated



25.04.2023, to the enumerators that the answer to question No. 5 related to gender has to be in three options of male, female or other. If any person opts to be included in 'other', then they are permitted to mention their real caste in the reply to question No. 8. The contention regarding distinct identities of caste and gender and the apprehension of self determination being effaced, is thus mitigated.

4. The petitioners counsel, however, vehemently prayed for expunging of 'transgenders' from the caste list. As of now, the prayer may not survive since the caste survey is completed. The petitioner or anyone from the community would be entitled to make representation to the State Government, seeking not to reckon the transgenders as a caste. However, this Court is of the opinion though there is a mistake committed insofar as the group of people, who are 'transgenders' are included under the caste enumeration; the separate identification of the community and an enquiry into their socio-economic and educational status as a group, could only lead to welfare measures and the community being targeted for upliftment after verification of such collective social, economical and educational status. The intention is not to give benefits on the basis of caste, but to identify communities with the caste as an



indicator of the larger group of individuals; who would require measures for their social, economic and educational upliftment, to ensure an equal status and decent living conditions, within the society.

5. We dispose of the writ petition with the above observations.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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