

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7672 of 2018

Kundan Kumar daughter of Sri Ram Padarath Malakar, resident of village Dahchanni Pokhar, Gulzarbagh, Rajgir, P.S. Rajgir, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Health Department, Government of Bihar, Patna.
3. The Director-in-Chief, Health Services, Health Department, Government of Bihar, Patna.
4. The Civil Surgeon, Nalanda.
5. The Superintendent, Patna Medical College and Hospital, Patna.
6. The Principal Secretary, Education Department, Government of Bihar, Patna.
7. The Bihar School Examination Board, Patna through its Secretary.
8. The Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanat Kumar Mishra, Advocate
	:	Mr. Anand Tiwari, Advocate
For the State	:	Mr. Ramadhar Singh, GP-25
For the BSEB	:	Mr. Satyabir Bharti, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

6 11-12-2025 Heard Mr. Sanat Kumar Mishra, learned counsel for the petitioner duly assisted by Mr. Anand Tiwari and Mr. Satyabir Bharti, learned Senior Counsel representing the Bihar School Examination Board (henceforth for short ‘the Board’) as also Mr. Ramadhar Singh, GP-25 representing the State.

2. The present petition has been preferred for the grant of following relief(s):

“for issuance of a writ of Mandamus for directing and commanding the respondents to constitute a competent medical board for examining the petitioner and declare her to be female and then further issuance of a writ of



Mandamus for directing the respondent no.6 to 8 to declare/record the gender of the petitioner to be female in the concerned educational certificates/records and further for issuance of any other writ(s)/ direction(s) / order(s) as your lordships may deem fit in the facts and circumstances stated hereinafter.”

3. The petitioner earlier came in this world as a male boy namely, Kundan Kumar having his date of birth in the year 1995. Subsequently, it is the case of the petitioner that he developed the characteristics of female, which came to his notice in the year 2013. A visit to the private hospital at Ranchi led him to believe that he is actually a female. This followed the subsequent development leading to the present writ petition.

4. A Medical Board was also constituted which records one Kundan Kumari appeared and the characteristics of female was/were found. The age was given between 28-30 years.

5. Learned counsel for the petitioner submits that he is the same Kundan Kumar who appeared in the Board Examination and as he has developed female characteristics now he be declared as Kundan Kumari in view of the said medical examination.

6. Learned Counsel representing ‘the Board’ Mr. Satyabir Bharti on the other hand submits that though there are



documents/medical examination report, the question is whether the Kundan Kumar son of Ram Padarath Malakar is the same person who appeared before the Medical Board as Kundan Kumari or not.

7. The submission is that this cannot be decided under Article 226 of the Constitution of India, rather, a proper suit should be filed by the petitioner.

8. This Court has taken note of the fact that as per the 'Aadhar Card' which is part of the writ petition, his date of birth has been recorded 1995 as the year. However, in the year 2019, when the Medical Board examined him, his age was found to be between 28 to 30 years which takes his birth year to 1989-90. Thus, there is a huge gap of 6-8 years in the age of Kundan Kumar vis-a-vis Kundan Kumari.

9. Having gone through the facts of the case and the materials on record, in the opinion of the Court, the stand of 'the Board' is convincing. The declaration from male to female can be done only by a competent court after the examination of the witnesses and the documents on record. This will ultimately be beneficial to the petitioner.

10. This Court has full sympathy for the petitioner and if she has developed the female characteristics, is entitled to the relief but the same can be granted/declared only by a competent



Civil Court.

11. At this stage, learned counsel for the petitioner submits that he/she shall be filing a proper petition before the competent court in next four weeks.

12. If such petition is preferred, the same be taken up on priority basis and without unnecessary adjournments, be concluded preferably by 31st December, 2026. The Court concerned shall take note of the fact that the contention of the petitioner is that he has developed female characteristics since 2013. In that background, already, a decade has passed and it is high time that a decision comes on the point whether the petitioner is male or female.

13. If the petitioner has any economic problem, can approach the District Legal Services Authority, Nalanda and the Secretary of the said Authority shall see to it that if the petitioner approached it, legal assistance is immediately extended till the case is taken to its logical conclusion.

14. The writ petition is disposed of with the aforesaid observation.

(Rajiv Roy, J)

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