

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P NO.1397/2015

I.A NO. _____/2015

BETWEEN

Karnataka Sexual Minorities Forum

PETITIONERS

AND

State of Karnataka and Ors.

RESPONDENTS

AND

Ms. Akkai Padmashali

D/o Smt. Indira J.S. and Sri. N. Jayaram

Aged 32 years

Residing at No. 1, 4th Cross,

Maramma Temple Street

Krishnainpalya. NGEF Layout

Bangalore-560038

IMPLEADING APPLICANT

**APPLICATION UNDER ORDER 1, RULE 10 (2) & SECTION 151 OF THE CODE OF
CIVIL PROCEDURE 1908; READ WITH ARTICLES 226 OF THE CONSTITUTION OF
INDIA FOR IMPLEADMENT OF THE APPLICANT AS AN INTERVENOR / PARTY**

The Counsel for the impleading Applicant submits as follows:

1. The present petition has been filed challenging Section 36A of the Karnataka Police Act, 1963 as being *ultra vires* Articles 14, 15, 19, 20 and 21 of the Constitution of India. The Applicant seeks permission of this Honourable High Court to be impleaded in the petition as an Intervenor and seeks to assist the Court for the reasons set out below.
2. The Applicant is a Transsexual - Gender Minority Activist who is the Founding member of Ondede, a human rights organisation based in Karnataka that works

for the rights of women, children and sexual minorities along with creating a platform for different social movements to come together. She is the first transgender activist to be conferred with the prestigious Kannada Rajyotsava Award in 2015 by the State Government in recognition of her services. The Applicant, for the past eleven years, has been working to educate the sexual minority community members about their rights and has also worked on issues concerning Right to Health and the right to access health services. She has been working on issues of gender and gender based violence with the community of gender and sexual minorities, media, civil society organisations, police, judiciary and the legislature, to bring awareness and change for the community.

(A copy of the article titled, "The one with many "Firsts"" in the Bangalore Mirror, dated 1st November 2015 is annexed herein and is marked as **ANNEXURE - A**)

(A copy of the news coverage from Deccan Chronicle, dated 2nd November 2015 is annexed herein and is marked as **ANNEXURE - B**)

(A copy of the Article titled, "Will Dedicate my Award to Civil Movement: Akkai" in the Indian Express dated 1st November 2015 is annexed hereina nd is marked as **ANNEXURE - C**)

(A copy of the online article titled, " At 12 she wanted to Die. Today she is inspiring Hundreds to fight for Transgender Rights and Justice", on www.betterindia.com, dated 14th April 2015 is annexed herein and is marked as **ANNEXURE - D**)

3. The Applicant's organisation Ondede in 2014 even brought out a report on the Human Rights Violations Against Transgenders in Karnataka. This report highlights violence by the police that sexual minorities face on a daily basis and specifically talks about section 36A of the Karnataka Police Act, 1963 and recommends its deletion. It highlights various first person accounts of gender-based violence and concludes with certain recommendations to improve the present situation of transgenders in the state.

(A copy of the Report on the Human Rights Violations against Transgenders in Karnataka 2014 compiled by Prerana Kodur and Gowthaman Ranganathan, published by Ondede, is annexed herein and marked as **ANNEXURE – E**)

4. It is submitted that the work done by the Applicant herein has been recognised not only by the State government but also at the central government and national level. The Applicant, in recognition of her work and services was invited by the President of India to attend the swearing in ceremony of the Hon'ble Chief Justice Shri Altamas Kabir, Supreme Court of India in 2012 and was also invited to attend the swearing in ceremony of the Hon'ble Chief Justice Smt Manjula Chellur of the Kerala High Court. In October 2014, the Applicant was invited by The International Bar Association to attend the Annual Conference, Tokyo on LGBT issues. The Applicant was also part of many consultations at the national level that made recommendations on rape laws to the Justice Verma Committee constituted for the Nirbhaya Gang rape case. The Applicant, in 2013, headed the project "Out Of Shadows" as a part of Radio Active CR 90.4 MHz, a community radio station that is licensed to Jain University. It was a project that aimed at strengthening advocacy activities for Gender, Sexual Minorities & Sex Workers.
5. The Applicant both individually and through her organisation Ondede has taken many measures to bring the issues surrounding Section 36A, Karnataka Police Act, 1963 to the notice of higher authorities, especially the police violence caused to the transgender community due to this section. As a part of the Campaign for Sexual Minorities and Sex Workers Rights, Karnataka ("CSMR"), the Applicant had also interacted with Mr. Suresh Kumar, former Minister of Law, Justice, Human Rights and Parliamentary Affairs of Karnataka, to discuss this serious development and related issues pertaining to gender minorities in the state to advocate the deletion of this section.

6. Based on the Applicant's extensive work and experience in this issue dealing with the rights of the transgender and sexual minority community, the Applicant seeks permission of this Hon'ble High Court to be impleaded in the petition as an Intervenor / Party to assist the Hon'ble Court by bringing to its notice facts and information that have not been brought on record.
7. It is submitted that transgenders and sexual minorities such as the Jogappas, Hijras, Kothis, Male-to-Female and Female-to-Male Transgenders, Intersex people, Lesbians, Gays and Bisexuals face an immense amount of stigma and discrimination in society. Due to this stigma they are faced with prejudice and violence from all sections of society, particularly the police. The Applicant in her own individual capacity has faced violence from the police and has worked with the transgender community to fight against police violence.
8. The presence of Section 36A in the Karnataka Police Act, 1963, is a serious form of violence on the transgender and sexual minorities, as it criminalizes them without any legal basis. Due to the specific reference in Section 36A that a register of the names and places of all eunuchs can be maintained by the police to "prevent or suppress or control undesirable activities" so as to maintain a register of eunuchs, "who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences". This presupposes that "eunuchs" are committing offences as stated above and that a separate register for maintaining their whereabouts should be maintained. This criminalizes them, and labels them as law offenders, which is legally baseless, arbitrary and amounts to discrimination and a violation of their rights to equality, liberty, life and dignity guaranteed under the constitution.
9. It is submitted that when Section 36A was inserted into the Karnataka Police Act vide the Karnataka Repealing and Amending (Regional Laws) Bill 2009, the said amendment was never discussed or debated in the State Legislature and was passed without any debate.

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10. It is submitted that Section 36A of the Karnataka Police Act also is extremely outdated and does not recognize the various gender identities that transgender persons have. It uses the term "eunuchs" whereas the transgender and sexual minority community comprises of Jogappas, Hijras, Kothis, Male-to-Female and Female-to-Male Transgenders, Intersex people, Lesbians, Gays and Bisexuals. The term "eunuchs" is not used, as it is discriminatory and does not reflect the various gender identities that people may possess.

11. The experiences of the transgender community facing violence at the hands of the police in India has been documented in many well-researched reports. The Ministry of Social Justice and Empowerment under its 2014 Report of the Expert Committee on the Issues Relating to Transgender Persons specifically refers to Section 36A of the Karnataka Police Act as a source of violence and discrimination. In 2003, the Peoples Union for Civil Liberties-Karnataka published a report titled, "Human Rights Violation against the Transgender Community" which is an in-depth study of hijras, kothis and sex-workers in Bangalore. In 2012, the United Nations published a report on the Legal Recognition of Gender Identity of Transgender People in India which analyses the current situation of the transgenders in India and the potential methods for the legal recognition of the gender status of hijras and other transgender people. In 2013-14, the India Exclusion Report contains a complete chapter on the violence faced by transgenders in India.

(A copy of the relevant Extracts of the Report of the Expert Committee on the Issues Relating to Transgender Persons 2014 prepared by the Ministry of Social Justice and Empowerment is annexed herein and is marked as **ANNEXURE – F**)

(A copy of the relevant extracts of Peoples Union for Civil Liberties-Karnataka report titled, "Human Rights Violation against the Transgender Community" of the year 2003 is annexed herein and is marked as **ANNEXURE – G**)

(A copy of the relevant extracts of the India Exclusion Report dated 2013-14 is annexed herein and marked as **ANNEXURE – H**)

12. It is submitted that the Respondent State Government has prepared a draft policy for Transgenders. The Applicant was a member of the sub-committee constituted for framing this Policy. This Policy states, among other matters, specifically that section 36A of the Karnataka Police Act, 1963 be repealed as it criminalizes hijras and other transgenders and sexual minorities in the State. In addition to the State Transgender Policy, even at the National level, the Rights of Transgender Persons Bill 2014 is being discussed. The draft Bill lists out, in specific, the setting up of National and State Commissions for Transgender, in line with the National and State Commissions for Women, for the purpose of inquiry or recommendations, relating to inconsistencies in the application of the law or violations of rights of transgender persons. It also deals with right to equality, life, free speech, community, integrity, family, along with rights against torture and abuse.

(A copy of the draft State Policy for Transgenders in Karnataka 2014 is annexed herein and is marked as **ANNEXURE - J**)

(A copy of the Rights of Transgender Persons Bill 2014 is annexed herein and is marked as **ANNEXURE - K**)

13. Further, the Hon'ble Supreme Court in the judgement of **National Legal Services Authority (NALSA) v. Union of India** [(2014) 5 SCC 438], held that: "*Gender identity is one of the most fundamental aspects of life which refers to a person's intrinsic sense of being male, female or transgender or transsexual person.*" It further held, "*Article 21 protects one's right of self-determination of 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 an above binary genders under our constitution and the laws.*" In conclusion the Supreme Court directed the Central and State governments to

take measures for ending discrimination against transgenders, provide social welfare schemes for their betterment and set up a committee to look into the problems faced by the transgender community. If the judgement of the Hon'ble Supreme Court is to be given effect to, then section 36A cannot be upheld and ought to be deleted as it takes away the right to life, dignity and equality of transgender persons and seeks to criminalize them.

(A copy of the judgement of the Supreme Court in National legal Services Authority vs. Union of India and Others, (2014) 5 SCC 438 is annexed herein and is marked as **ANNEXURE - L**)

14. It is, therefore, respectfully submitted that the Applicant be allowed to intervene in the present writ petition, inasmuch as she is actively involved in raising awareness and providing assistance to the transgender and other disabled and sexual minority communities. It is submitted that no harm, loss or injury would be caused to the Parties to the instant petition if the Applicant is permitted to come on record and place all relevant facts and material which are necessary for the proper adjudication of the issues raised in the present Writ Petition.

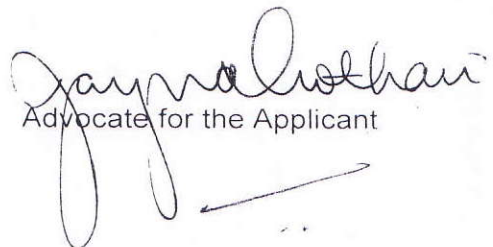
PRAYER

WHEREFORE, in light of the above facts and circumstances, it is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Allow the application for intervention/impleadment and allow the Applicant to be arrayed as Intervenor/Party Respondent to W. P. No. 1397/2014, and
- (b) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the instant case.

Place: Bangalore

Date: 10.12.2015


Advocate for the Applicant