

THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM &
ARUNACHAL PRADESH)

CHECKLIST

District *Kamrup (M)* PIL Case No, : *12020*

DB/SB/AB :

Category Code : *10/94*

Signature of D.A :

Date of Filing : *27/8/2020*

The WP (C)/Revision/Appeal/Application is defective for the following reasons:

1. Not properly addressed to the Court.
2. The petition is not typed legibly in double space on one side of paper with margin and paragraphs and pages are not numbered consecutively and correctly noted in the index.
3. The content of the petition and/or accompanying document (s) is/are not clear, sharp and legible.
4. True copy of the certified copy/original documents (s) is required as it is dim impression. The typed copy shall also be certified to be true copy by the Advocate/ Party in person.
5. (i) Address of the petitioner (s)/respondent (s) are not set out properly.
(ii) Representation of the petitioner (s)/respondent(s) are not set out properly.
6. The learned Advocate has not put his/her signature in the petition.
7. Particulars of date of Judgement/Order are not mentioned/mentioned wrongly.

8. The petition is barred by limitation.

9. Affidavit is not filed.

10. Vakalatnama properly executed by the party and accepted by the Advocate is not filed.

11. Vakalatnama is not attested by Jail authority.

12. Neither the proof of surrender filed nor any application for the exemption from surrendering has been filed.

13. The valuation of Appeal is not mentioned.

14. The requisite Court Fee is not paid.

15. The provision under which the Appeal has been filed is not mentioned.

16. Award money payment receipt certificate is not filed.

17. Notice not served on the Caveator.

18. Notice not served on the respondents.

19. Copies of petition insufficient.

20. Copy of written statement & plant in S.A. not filed.

21. Any other reason if any,

(a)

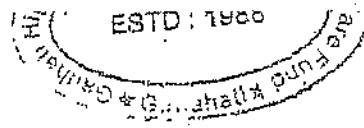
(b)

(c)

Case ready / Defective

SUPERINTENDENT
FILING SECTION

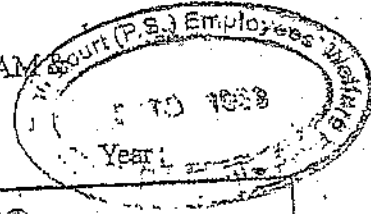
Signature of Stamp Reporter



THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM : ARUNACHAL PRADESH)

831212



No.

Category :

1(a)	Case No.	PIL/20 20					
1(b)	Related Case No.	/20					
1(c)	Related information							
1(d)	Jurisdictional Value		Rs. 52,30/-					
1(e)	Provisions of law under which the Case is filed							
1(f)	Date of Registration		DATE		MONTH		YEAR	
			2	7	0	8	20	20
2(a)	Case Category Code		1	0	1	9	4	
2(b)	Subject Category Code		*					
2(c)	Bench Code		*					

3. State Name : Assam State Code : Kamrup (M)

4. Petitioner(s) : All Assam Transgender Association

5. Respondent(s) : The Union of India

6. Petitioner's Advocate (s) : Ms. Swati Mishra Boruah
Ms. Naimita Mohi
Ms. Jitika Ahmed

7. Respondent's Advocate (s) : Asst. S. G.

8. Stage Code of the Case

9. Court No.

10. Cavant (if any) : Yes/No.

[Signature]
Signature with date: 27/8/2020

* Kindly use appropriate codes.

(GHCEWF)

2020

Case Type : CIVIL Criminal Caveat Filing No. _____
 Case No. _____
 Petitioner : PIL
 Name : All Assam Transgender Association Relation : Spouse Brother
 Gender : Male Female Other Father Sister
 Age : _____ years Dt. of Birth : _____ (DD/MM/YYYY) Mother Father-in-law
 Religion : Hindu Muslim Christian Sikh Buddhism other _____ Son Mother-in-law
 Caste : General SC ST(P) ST(H) OBC Daughter Other
 Address : Pandu Cabin (Near Railway BG office) No. of extra Petitioners : _____
 State : Assam Town _____ Taluka/Sub-Div. _____
 Police Station : Pandu Post Office: _____ Pin - 781012
 Mobile No.: _____ e-mail _____

Petitioner's Advocate : Code 1231/18 Name of Advocate Ms Swati Mishra Boreua Mobile No. _____
 Petitioner's Extra Advocate : Code 1380/18-11 Name of Advocate Ms Namita Modi Mobile No. _____
 Code 814/18 Name of Advocate Ms Jitendra Ahmed Mobile No. _____

Respondent : DLU Union of India
 Gender : Male Female Other
 Age : _____ years Dt. of Birth : _____ (DD/MM/YYYY) No. of extra Respondents : _____
 Religion : Hindu Muslim Christian Sikh Buddhism other _____
 Caste : General SC ST(P) ST(H) OBC
 Address : _____
 State : _____ Town _____ Taluka/Sub-Div. _____
 Police Station : _____ Post Office: _____ Pin - _____
 Mobile No.: _____ e-mail _____

Respondent's Advocate : Code _____ Name of Advocate _____ Mobile No. _____
 Respondent's Extra Advts : Code _____ Name of Advocate ASH-S.G. Mobile No. _____
 Code _____ Name of Advocate _____ Mobile No. _____
 Code _____ Name of Advocate _____ Mobile No. _____

Petitioner's Extra information
 Passport No.: _____ PAN: _____
 Country : INDIA Nationality : INDIAN
 Occupation : Advocacy
 State : Assam Fax No. : _____
 Town : _____ Mobile No. : _____
 Taluka : _____ Differently Abled :
 Alternate address : _____
 District : _____ Ward : _____
 Village : _____

Respondent's Extra information
 Passport No.: _____ PAN: _____
 Country : _____ Nationality : _____
 Occupation : _____
 State : _____ Fax No. : _____
 Town : _____ Mobile No. : _____
 Taluka : _____ Differently Abled :
 Alternate address : _____
 District : _____ Ward : _____
 Village : _____

Acts : _____
 Sections : Uf Article 226 Category Code : 10194

DISTRICT : KAMRUP(METRO)

IN THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PIL NO. _____ /2020

CATEGORY CODE : 10194.

CATEGORY CASE : PUBLIC INTEREST LITIGATION.

IN THE MATTER OF :

ALL ASSAM TRANSGENDER ASSOCIATION

..... Petitioner(s)

-Versus-

UNION OF INDIA

..... Respondent(s)

PAPER-BOOK

(FOR INDEX, LISTING OF DATES, SYNOPSIS, & PETITION KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER : SWATI BIDHAN BARUAH (TG)

DISTRICT : KAMRUP(METRO)

IN THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

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ALL ASSAM TRANSGENDER ASSOCIATION

..... **Petitioner(s)**

-Versus-

UNION OF INDIA

..... **Respondent(s)**

SYNOPSIS

This is a Public Interest Litigation seeking issuance of directions to the Centre for taking immediate and effective steps, pertaining to the Appointment of the National Council for Transgender in consistence with Section 16 of Transgender Persons (Protection of Rights) Act'2019.

The Hon'ble Supreme Court in the Judgment dated 15.04.2014 in the case of *National Legal Services Authority – Vs – Union of India & Others reported in (2014) 5 SCC 438* had issued clear directions to the Centre and State Governments in regard to welfare of Transgender persons. And accordingly, the Ministry of Social Justice and Empowerment, Government of India enacted a law namely Transgender Persons (Protection of Rights) Act'2019, which is presently facing its constitutional validity before the Hon'ble Supreme Court.

In the meanwhile, the Ministry of Social Justice and Empowerment, Government of India, in continuation of the Transgender Persons (Protection of Rights) Act'2019, has formed an National Council for Transgender, and has arbitrarily

appointed some Trans and non expertise Trans without any standard procedure of appointment and their inclusion is completely *malafide* and does not benefit the transgender community in any way. Thus the Impugned Notification is completely illegal and arbitrary and in violation of the provisions of Article 14 of the constitution as it does not include representatives from the transgender community and experts from NGOs working on transgender rights, and hence deserves to be quashed.

In the circumstances I being the authorized representative of All Assam Transgender Association, on behalf of the Transgender Community of the State, is approaching this Hon'ble Court by way of this Public Interest Litigation seeking appropriate reliefs.

Filed by
Smt. Bibhan Baruah
Advocate

DISTRICT : KAMRUP(METRO)

IN THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

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LISTING OF DATES

DATES	PARTICULARS
01.06.2012	The registration Details of Dostana Safar, Bihar on the website searchdonation.com ANNEXURE-IV
15.04.2014	Hon'ble Supreme Court passed judgement in the case of <i>National Legal Services Authority - Vs - Union of India & Others, reported in (2004) 5 SCC 438</i> and had issued directions to the Centre and State Governments for taking appropriate steps for the betterment of the transgender community.
2017	A Copy of the Manual for Procurement of Consultancy & Other Services 2017 issued by the Ministry of Finance Department of Expenditure ANNEXURE-VI
08.12.2018	Copy of the Media Reports pertaining to the reporting on Shri Aryan Pasha. ANNEXURE - III
08.09.2019	Copy of the Media Reports pertaining to the reporting on Shri Aryan Pasha. ANNEXURE - II
05.12.2019	The <i>Transgender Persons (Protection of Rights) Act 2019 ("2019 Act")</i> was enacted.

11.12.2019	Public Interest Litigation challenging the validity of the Transgender Persons (Protection of Rights) Act 2019 ("2019 Act") was filed before the Hon'ble Supreme Court of India.
14.12.2019	Public Interest Litigation challenging the validity of the Transgender Persons (Protection of Rights) Act 2019 ("2019 Act") was filed before the Hon'ble Supreme Court of India.
17.02.2020	Public Interest Litigation challenging the validity of the Transgender Persons (Protection of Rights) Act 2019 ("2019 Act") was filed before the Hon'ble Supreme Court of India.
21.08.2020	Union of India has issued Gazette Notification bearing No.CG-DL-E-21082020-221294 , regarding appointment of some Trans Persons and non expertise Trans Persons in National Council for Transgender, in consistence with the Section 16 of Transgender Persons (Protection of Rights) Act 2019 .
	ANNEXURE - I
21.08.2020	Laxmi Narayan Tripathi got appointed as a representative of North Region for National Council for Transgender.
21.08.2020	Gopi Shankar Madhurai got appointed as a representative of South Region for National Council for Transgender.
21.08.2020	Ms Meera Parida got appointed as a representative of East Region for National Council for Transgender.
21.08.2020	Zainab Javid Patel got appointed as a representative of West Region for National Council for Transgender.
21.08.2020	Shri Kak Chingtabam Shyamchand Sharma got appointed as a representative of North East Region for National Council for Transgender.
21.08.2020	Shri Aryan Pasha got appointed as an experts to represents non governmental organisations or associations for National Council for Transgender.
21.08.2020	Ms Reshma Prasad got appointed as an experts to represents non governmental organisations or associations for National Council for Transgender.
21.08.2020	Shri Patel Chandubhai Ganeshdas got appointed as an experts to represents non governmental organisations or associations for National Council for Transgender., and a copy of the Web page of the Organisation associated with Shri Patel Chandubhai Ganeshdas.
	ANNEXURE - V

Filed by
Smiti Bidhan Dasgupta
Advocate

DISTRICT : KAMRUP(METRO)

IN THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PIL NO. _____ /2020

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..... Respondent(s)

I N D E X

SL NO	PARTICULARS	PAGE NO'S
1.	Body of the PIL	1 to 18
2.	Affidavit/Verification	19 - 20
3.	<u>ANNEXURE – I</u> (copy of the Gazette Notification bearing No. CG-DL-E-21082020-221294 dated 21.08.2020 issued by the Respondent)	21 - 24
4.	<u>ANNEXURE – II</u> (copy of the Media Reports dated 08.09.2019, pertaining to the reporting on Shri Aryan Pasha)	25 - 26
5.	<u>ANNEXURE – III</u> (copy of the Media Reports, dated 08.12.2018, Pertaining to the reporting on Shri Aryan Pasha)	27 - 30

6.	ANNEXURE – IV (Copy of the internet web page of Dostana Safar on the website <i>SearchDonation.com</i>)	31 - 32
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Filed by
Suresh Bishan Baruah
Advocate

DISTRICT : KAMRUP(METRO)

IN THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

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IN THE MATTER OF :

ALL ASSAM TRANSGENDER ASSOCIATION

..... Petitioner(s)

-Versus-

UNION OF INDIA

..... Respondent(s)

ADVOCATE PARTICULARS

SL NO	DETAILS
1.	Swati Bidhan Baruah (TG) E No. 1231/2018.
2.	Ifthikar Ahmed. E No. 814/2019.
3.	Namita Modi. E. No. 1880/10-11

Filed by :-

Swati Bidhan Baruah
Advocate.

DISTRICT : KAMRUP(METRO)

IN THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

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IN THE MATTER OF :

ALL ASSAM TRANSGENDER ASSOCIATION

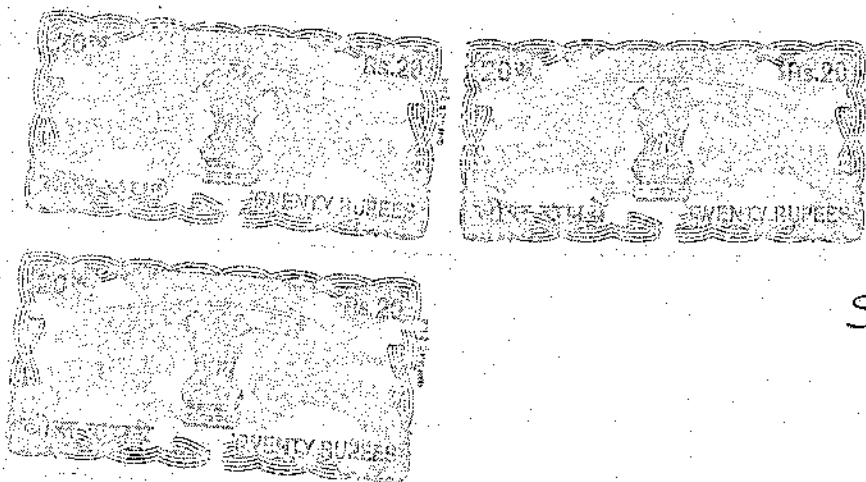
..... Petitioner(s)

-Versus-

UNION OF INDIA

..... Respondent(s)

COURT-FEES



Filed by :-
Smiti Bidhan Baruah
Advocate

DISTRICT : KAMRUP(METRO)

IN THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PIL NO. _____ /2020

CATEGORY CODE : 10194.

CATEGORY CASE : PUBLIC INTEREST LITIGATION.

*Filed by the Petitioner
through Shri Bidhan Barua
Advocate*

To,

The Hon'ble Mr. Justice **MR. AJAI LAMBA , B.A (Hons) (Eng), LL.B**, the Chief Justice of the Hon'ble Gauhati High Court and other companion Justices of the said Hon'ble Court.

IN THE MATTER OF :

A Public Interest Litigation under Article 226 of the Constitution of India read with GAUHATI HIGH COURT (Public Interest Litigation) Rules, 2011, for issuance of a writ in the nature of Mandamus and/or Certiorari and/or any other appropriate writ, orders or directions.

-AND-

IN THE MATTER OF :

Enforcement of the Fundamental Rights granted under Article 14,15,16, 19(1)(a), and 21 of the Constitution of India as well as other Legal and Constitutional Rights in respect of the members of Transgender Community in the state of Assam whose cause the petitioners represents.

-AND-

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IN THE MATTER OF :

Prayer for a direction to the **Ministry of Social Justice and Empowerment/Government of India** to take immediate and effective steps to re-look into the recent Gazette Notification published under the ministry, in regards to the appointments of the members and experts of the Transgender Community by evolving necessary principles for their appointment to the National Council of Transgender constituted under Section 16 of the Transgender Persons (Protection of Rights) Act'2019.

-AND-

IN THE MATTER OF :

ALL ASSAM TRANSGENDER ASSOCIATION,
(represented by its General Secretary).
Address : Pandu Cabin (Near Railway BG Office),
P.O : Pandu, Guwahati 781012,
District :- Kamrup(Metro), Assam.

.....**Petitioner (s)**

-Versus-

1. UNION OF INDIA, *represented by the Joint Secretary (SD) to the Government of India, Ministry of Social Justice and Empowerment, New Delhi.*

.....**Respondent(s)**

The humble petition of the petitioner above named.

M/R

MOST RESPECTFULLY SHOWETH :

1. That the authorised signatory of the All Assam Transgender Association states that she has no personal interest in this Litigation and the petitioner is not guided by any self gain or for gain of any other person/institution or today and that there is no motive other than of public interest in filing this petition.
2. That the authorised signatory of the All Assam Transgender Association is a citizen of India and a permanent resident of Assam and she resides in the Kamrup (Metro) district at the address mentioned above. The petitioner is representing "All Assam Transgender Association", which has been founded by the renowned Transgender Lawyer named "Swati Bidhan Baruah", who herself is a member of the Transgender Community and has undergone Sex Reassignment Surgery (SRS). The founder takes keen active interest and betterment of Transgender Community. The founder of the All Assam Transgender Association is a member of International Association of LGBTQ+ Judges, Philadelphia-America. The founder is a India's First Trans Lawyer, and Northeast first Trans to be appointed in the capacity of Conciliator of National Lok Adalat, under District and Sessions Court, Kamrup(M). Needless to mentioned that the founder has herself guided and helped the Assam Government in formulating a progressive Trans Policy of Assam.
3. That the authorised signatory of the All Assam Transgender Association humbly further states that she has the means to pay the costs, if imposed any, by this Hon'ble High Court and thereby undertakes to pay the same, if imposed.
4. That by way of this petition, the authorised signatory is representing the All Assam Transgender Association, whose cause is for the betterment of the Transgender Community of Assam and India and thus seeking reliefs, which would benefit the entire Transgender Community of the Country and the state. Who are otherwise not in a position to approach this Hon'ble Court by filing individual petitions and peruse the same.
5. That the respondents herein would be responsible for implementing the orders that may be passed by this Hon'ble Court in this case. Accordingly, they have

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been arrayed as party-respondents and to the knowledge of the petitioner no other persons/bodies/institutions are likely to be affected by the reliefs/orders sought in this petition.

6. That the source of knowledge of the facts stated/alleged in this petition are derived from the founder's own experiences and research into the subject matter. The petitioner has also verified the facts by means of interactions with the members of the Transgender Community of the State and Country, living in a very pitiable conditions.
7. This Petition is filed in public interest by the Petitioner on behalf of all transgender persons in India and Assam, to protect their right to adequate and genuine representation in the National Council for Transgender Persons as per the Transgender Persons (Protection of Rights) Act, 2019. The Respondent has issued a ***Gazette Notification bearing No. CG-DL-E-21082020-221294 dated 21.08.2020***, constituting and brining into effect the National Council for Transgender Persons as provided for under Section 16 of the Transgender Persons (Protection of Rights) Act, 2019. The said Notification consists of five representatives from the transgender community and four experts from non-governmental organizations or associations. However, the transgender persons representing the North East region has not been established as an active participant of transgender rights movement in that region and has been provided the membership in the National Council for Transgender Persons on an arbitrary basis. Further, the requirement as per the Transgender Persons (Protection of Rights) Act, 2019 to nominate five experts to represent non-governmental organizations and associations has been violated as only four such experts have been selected. As most of the experts nominated under the above-mentioned Notification do not have any apparent association to transgender persons rights or do not have registered NGOs working towards transgender rights, their inclusion is completely *malafide* and does not benefit the transgender community in any way. Thus, aggrieved by the actions of the Respondent in not ensuring fair representation of the transgender community and for *malafide* and arbitrary inclusion of experts nominated to represent NGOs and associations in the National Council for Transgender Persons, the Petitioner has filed the Petition in public interest.

8. That it is submitted that in 2014 for the first time, the Hon'ble Supreme Court in ***National Legal Services Authority versus. Union of India***, which came to be cited as **(2014) 5 SCC 438**, recognized that transgender and intersex persons are equal citizens with full protection of all fundamental rights. Most importantly the Supreme Court held that the right to gender identity is inherent in one's right to life, autonomy and dignity. And thereby the division bench of Hon'ble Supreme Court, before their lordships Justice. Radhakrishnan and Justice. Sikri held that transgender persons have the right to self-identify their gender as male, female or transgender irrespective of medical sex reassignment and have the right to expression of their chosen gender identity.

9. That it is submitted that following the NALSA judgment, in 2019 The Transgender Persons (Protection of Rights) Act 2019 ("2019 Act") was enacted on 05.12.2019. Among other things the 2019 Act aims to provide transgender persons an identity card and the right to change their other legal documents to their chosen name and gender based on the identity card. The 2019 Act however has many provisions that are completely in violation of what the Hon'ble Supreme Court has held in ***National Legal Services Authority vs. Union of India***, including the right to self-determine one's gender identity as male, female or transgender irrespective of medical reassignment. The 2019 Act in many of the provisions goes against these principles. The constitutionality of the 2019 Act and several sections of the 2019 Act has been challenged in the Supreme Court in several writ petitions being **Writ Petition Civil No. 51/2020 dated 11/12/2019**, **Writ Petition Civil No. 281/2020 dated 14/12/2019** and **Writ Petition Civil 406/2020 dated 17/02/2020**. Notice has also been issued to the Respondent herein in respect of these challenges by the Hon'ble Supreme Court.

10. That Despite being aware of the fact that the 2019 Act has been challenged, the Respondent herein is making hectic arrangements to implement the 2019 Act during the present time when the country is going through a pandemic with the corona virus.

11. That Section 16 (1) of the Transgender Persons Act 2019 provides that the Central Government shall by notification constitute a National Council for Transgender Persons. The National Council has among its functions, to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons; to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons; to review and coordinate the activities of all the departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons and to redress the grievances of transgender persons. Hence it is a very important body, and it is important that the selection of the members of the National Council is done carefully as it will have an impact on the rights of the transgender community.

Section 16 states as follows :-

16. (1) The Central Government shall by notification constitute a National Council for Transgender Persons to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The National Council shall consist of —

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, ex officio;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, ex officio;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, ex officio;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing and Urban Affairs, Minority Affairs, Human Resources Development, Rural Development, Labor and Employment and Departments of Legal Affairs, Pensions and Pensioners Welfare and National Institute for Transforming India Aayog, not below the rank of Joint Secretaries to the Government of India, Members, ex officio;

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- (e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries to the Government of India, Members, ex officio;*
 - (f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, ex officio;*
 - (g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;*
 - (h) five experts, to represent non-governmental organizations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members; and*
 - (i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member Secretary, ex officio.*
- (3) A Member of National Council, other than ex officio member, shall hold office for a term of three years from the date of his nomination.*

12. That Section 16 (2)(g) of the 2019 Act requires that there are "five representatives of transgender community, by rotation, from the State Governments and Union Territories, one each from North, South, East, West and North-East region, to be nominated by the Central Government, members". Section 16 (2) (h) states that : "five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members".

13. That Recently the Respondent Union of India has issued Gazette Notification bearing No. CG-DL-E-21082020-221294 dated 21.08.2020 constituting the National Council for Transgender Persons. In this Notification, the appointment of members both under Section 16 (2) (g) and 16 (2) (h) have been done arbitrarily and are the subject of challenge in this petition.

A copy of the Notification bearing No. **CG-DL-E-21082020-221294** dated 21.08.2020 issued by the Respondent is annexed herewith and the same is marked as **ANNEXURE – I**.

14. The said Notification under section 16 (2) (g) has appointed the following members as representatives of the transgender community from North, South, East, West and North East regions and they are the following:

"2. Five Representatives of transgender community, one each from the North, South, East, West and North-East regions:

- 1. Shri Laxmi Narayan Tripathi- North Region**
- 2. Shri Gopi Shankar Madurai- South Region**
- 3. Ms. Meera Parida-East Region**
- 4. Ms. Zainab Javid Patel-West Region**
- 5. Shri Kak Chingtabam Shyamcand Sharma- North East Region. "**

15. From amongst the above members named as being representatives from the transgender community, the inclusion of "**Shri Kak Chingtabam Shyamcand Sharma**" as a representative of the transgender Community from North-East region is completely arbitrary and illegal. The said person is not known at all by the members of the transgender community in the North-East region. It is not known as to what work he has done in the transgender community and he cannot be held to be a representative of the transgender community for the entire North-east region, which is a very important region for the welfare of transgender persons as there is a big population of the trans community in the North East.

16. The impugned Notification in Serial. No. 3 has appointed only 4 experts under section 16 (2) (h) instead of five experts, to represent non-governmental organisation or associations working for the welfare of transgender persons and they are as follows:

2. Five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons.

- 1. Shri Aryan Pasha.**
- 2. Shri Vihaan Peethambar.**
- 3. Ms. Reshma Prasad.**
- 4. Shri Patel Chandubhai Ganeshdas.**

17. That It is submitted that even these 4 representatives are not experts who are representing NGOs or associations that work on transgender rights. The Respondent has neither provided any background information and work history of the transgender representatives nor have they released the names of the registered NGOs associated with the expert members nominated for the National Council for Transgender Persons.

18. That It is submitted that Shri Aryan Pasha, nominated as an expert member in the Notification dated 21.08.2020, is a trans man living in Delhi was adjudged as the first transman to have secured a prize at Muscle - mania India, a bodybuilding event. He is the life-partner of the transgender activist Laxmi Narayan Tripathi who has been nominated as a member under Section 16 (2) (g) as a representative of the transgender community. This fact has been openly published in several news and media reports. The said Aryan Pasha is neither an expert nor is he part of any registered NGO or association working on transgender rights. He is a body builder, having an keen interest in competing bodybuilding championships and hence he cannot be appointed to such an important position as a member in the National Council as an expert from an NGO working on transgender rights.

A copy of the Media Reports dated 08.09.2019 reporting on Shri Aryan Pasha is annexed herein and the same is marked as **ANNEXURE – II**.

mk

A copy of the Media Reports dated 08.12.2018 reporting on Shri Aryan Pasha is annexed herein and is marked as **ANNEXURE – III**.

19. It is submitted that Sri. Vihaan Peethambar is a trans man who has been working on transgender rights issues, but there is no information if he is associated with any registered NGO or association. He is associated with a group called Queerala, but there is no any information, whether the same is registered or not.

20. That It is submitted that Ms. Reshma Prasad is a transgender persons from Bihar and is part of an NGO known as Dostana Safar. Hwoever, this NGO is not focused on transgender rights work. In fact, the details of the said NGO Dostana Safar that are available online as put up by the NGO itself states as follows :-

"Dostana Safar is a non-governmental organization established in 2012. The registration number of the organization is: 406 (01-06-2012). The organization is operational in Bihar, India. Dostana Safar works in the area of Aged and elderly, Animal Husbandry, Dairying & Fisheries, Animal Welfare, Art & Culture, Biotechnology, Children, Civic Issues, Dalit Welfare, Disability, Disaster Management, Education & Literacy, Environment and natural resource management, Food and Agriculture, Health & Nutrition, HIV/AIDS, Housing and shelter, Human Rights, Information & Communication Technology (ICT) , Labour & Employment, Land Resources, Legal Awareness & Aid, Micro Finance (SHGs), Micro Small & Medium Enterprises, Minority Issues, etc. The NGO works towards the promotion of sustainable development."

Hence this NGO was set up by the said Reshma Prasad to work on many other issues and not transgender welfare. Hence it cannot be said that she is an expert from an NGO that works on transgender rights.

However, she just got recently involved in some Trans related activities from a few years.

A copy of the internet web page of Dostana Safar on the website searchdonation.com is annexed herein and is marked as **ANNEXURE -IV.**

21. That It is submitted that Shri Patel Chandubhai Ganeshdas, nominated as an expert member in the Notification dated 21.08.2020, is from the Chuwal Gram Vikas Trust, Ahmedabad which has been established to work primarily in the field of health, HIV/AIDs awareness and prevention and environmental and forest rights. This organization has not done any work in the field of transgender rights in Gujarat or anywhere in the country and the said Shri Patel Chandubhai Ganeshdas cannot be said to be an expert from an NGO working on transgender rights.

A copy of the Web page of the Organisation associated with Shri Patel Chandubhai Ganeshdas is annexed herein and is marked as **ANNEXURE - V.**

22. Thus, being aggrieved by the action of the Respondents and having no other alternative and equally efficacious remedy, the Petitioner has filed this petition before this Hon'ble Court. The Petitioner has not filed any other petition on the same cause of action before this court or any other court. This petition is filed on the following, among other grounds :-

G R O U N D S

23. **THAT** the impugned Notification is completely illegal and arbitrary and in violation of the provisions of Article 14 of the constitution as it does not include representatives from the transgender community and experts from NGOs working on transgender rights, and hence deserves to be quashed.

24. **THAT** the impugned Notification nominates Shri Kak Chingtabam Shyamcand Sharma as a transgender representative from the North-East region without duly providing information as to the category to which the nominee belongs to or the work history of the nominee. Further, this nominee is not a recognized representative of the transgender community in the North-East region and has not been well-immersed in transgender rights issues and the entire transgender community in the North East region has no knowledge of who this person is at all. The Respondent failed to consider that there are several persons from the transgender community in the North East who have done exemplary work on transgender rights and has instead nominated the said Shri Kak Chingtabam Shyamcand Sharma who has not done any work in the field of transgender rights and cannot be appointed as a member as a representative of the transgender community from the North east region. Such nomination is completely arbitrary and without any reasonable basis and in violation of Article 14 of the constitution and hence deserves to be quashed.
25. **THAT** the Transgender Persons Act 2019 provides under Section 16 (2) (h) that five experts shall be nominated to represent non-governmental organisations and associations working for the welfare of transgender persons. However, the Respondent through Notification dated 21.08.2020 has nominated only four expert members and even on this ground the impugned Notification deserves to be quashed and set aside.
26. **THAT** the Expert members nominated by the Respondent to represent non-governmental organisations and associations are completely *malafide* as most of these individuals have no NGOs that they are associated with, or are part of NGOs that have not done any work on transgender rights and have no experience in the field of transgender rights.
27. **THAT** the Respondent has arbitrarily nominated Shri Aryan Pasha as one of the expert members through Notification dated 21.08.2020. The said nominee has not been involved in any work on transgender rights and is not an expert associated with any registered NGO or association. He has achieved recognition only for participating in a bodybuilding event and has received wide media coverage for being the partner of the prominent transgender

activist Laxmi Narayan Tripathi. However, the nominee does not have a registered organisation or association working towards transgender rights advocacy and policy implementation and hence cannot be nominated under section 16 (2) (h) of the 2019 Act to the National Council. Such nomination is completely arbitrary and without any reasonable basis and in violation of Article 14 of the constitution and hence deserves to be quashed.

28. **THAT** the Respondent has nominated Shri Patel Chandubhai Ganeshdas as one of the expert members through Notification dated 21.08.2020. Although the said nominee is associated with an NGO named Chuwal Gram Vikas Trust, this Trust works extensively in the field of health, HIV/AIDS prevention and environmental issues. The objective of the organisation is not at all on transgender rights and there is no evidence that he has been an expert working on transgender rights with the said organization, and hence he cannot be appointed under section 16 (2)(h) to the national Council. Such nomination is completely arbitrary and without any reasonable basis and in violation of Article 14 of the constitution and hence deserves to be quashed.

29. **THAT** the Respondent has not provided or notified the procedure for nomination and eligibility criteria for nomination to the National Council for Transgender Persons. Only if there is a transparent and open selection process for the selection of members both for section 16 (2) (g) and (h), can it ensure a fair method for selection of members who are genuinely working for transgender rights. There has been no selection process that has been put in place either by way of a Search Committee or any other method and the persons selected have been selected have no evidence of work done by them on transgender rights, with many of them being completely unknown to the transgender community, many not having been part of any registered NGO or association and hence such appointments deserve to be set aside. A fair and transparent procedure under Article 14 requires that there should be a selection procedure which lays down the eligibility, and consideration of the experience of persons and their expertise and the final selections can be made by a Selection Committee. Instead the present nomination is completely arbitrary as several members are not working on transgender rights at all and not associated with registered NGOs working on these issues and are not

experts in the field and the same is in violation of Article 14 of the constitution and hence deserves to be quashed.

30. **THAT** the Respondent has failed to provide background information and the work experience of transgender representatives nominated under the Notification dated 21.08.2020 and that the capacity of the members to adequately represent the concerns of members of the transgender community in that region and to provide valuable contribution within the Council is uncertain.

31. **THAT** the Respondent has failed to provide names of registered NGOs and associations connected to the expert members nominated under the Notification dated 21.08.2020 and that the several NGOs working extensively in the field of transgender rights have been overlooked. Many of these persons are not part of any registered NGOs and are not experts to be appointed to the National Council.

32. **THAT** in the matter of *Sanjay Tukaram Autade vs State of Maharashtra*, in *Writ Petition No. 3268 of 2016*, the Aurangabad bench of Hon'ble Bombay High Court held that Hon'ble Court can examine whether the decision making process of the executive in selecting experts for a given department is reasonable, rational and not arbitrary. It further held that the discretion given to the Government under the statute to select expert members is not an unregulated discretion and that it must be exercised in consonance with the object and purpose of the said statute.

Therefore, this Hon'ble High Court too has the power to examine the decision making process and to ensure that the objects and purpose of the Transgender Persons (Protection of Rights) Act' 2019 has been complied with by the respondent.

33. **THAT** the Hon'ble Supreme Court in the matter of *National Resources Allocation, In re -- special reference No. 01 of 2012*, which came to be cited as **(2012) 10 SCC 1**, held that :

mt

"State action has to be tested for constitutional infirmities qua Article 14 of the constitution. That the action has to be fair, reasonable, non discriminatory, transparent, non capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. Further, it held that state action should conform to the norms which are rational, informed with reason and guided by public interest and that lack of transparency in decision making process would render it arbitrary. It should conform to the norms which are rational, informed with reason and guided by public interest etc.,"

34. **THAT** the Manual for Procurement of Consultancy & Other Services 2017 issued by the Ministry of Finance Department of Expenditure must be considered in selection of NGOs and other individual experts as it ensures that all Departments undertake a transparent selection process. However, the Respondent has not provided any information as to the decision-making process and the nominated members under the Notification dated 21.08.2020 do not meet the qualification as mentioned in the guidelines. Therefore, there is not transparency in the selection process.

(a) The Guidelines at 7.2.2 (iii) for selection of individuals states:

"They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Procuring Entity. Candidates who are already employed with the Procuring Entity shall meet all relevant qualifications and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system and Government organisation."

(b) The Guidelines at 7.4.1 regarding selection of Non-governmental Organisations states:

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"The evaluation criteria of proposals should reflect the NGO-unique qualifications, such as the following:

- i) History of work with grassroots communities and evidence of satisfactory performance;*
- ii) Familiarity with participatory development approaches and low-cost technologies;*
- iii) Experienced staff conversant with the cultural and socioeconomic dimensions of beneficiaries;*
- iv) Committed leadership and adequate management;*
- v) Capacity to co-opt beneficiary participation."*

A Copy of the Manual for Procurement of Consultancy & Other Services 2017 issued by the Ministry of Finance Department of Expenditure is enclosed and the same is marked as **ANNEXURE – VI.**

35. The impugned Notification therefore must be stayed till the petition is heard and disposed finally. If the Notification is not stayed, and these members who have no knowledge or experience of working on transgender rights are allowed to continue to be on the National Council and exercise its functions, it will lead to a complete violation of the rights of the larger transgender community within the country and in the North East and hence the interim relief should be allowed.
36. That, the petitioner has sought justice from the respondent, but justice has been denied to her.
37. That the petitioner has no efficacious alternative remedy and the remedy sought for herein is adequate and complete.
38. That the petitioner has not preferred any other writ petition, suit or application before this Hon'ble Court or before any other Court or Tribunal in regard to the subject matter of this petition.
39. That this petition is filed *bonafide* and in the interest of Justice.

PRAYER

It is therefore, humbly prayed that this Hon'ble Court may be graciously pleased to admit this petition and issue a Rule on the respondent to show cause as to why a writ in the nature of Mandamus and/or Certiorari and/or any other appropriate writ, order or direction shall not be issued granting the following relief, viz ::

- a) Pass a writ in the nature of Certiorari or any other writ quashing ***Gazette Notification bearing No. CG-DL-E-21082020-221294*** dated 21.08.2020 issued by the ***Ministry of Social Justice and Empowerment, Government of India***, is annexed herein and is mar Notification bearing No. CG-DL-E-21082020-221294 dated 21.08.2020 produced herein as **ANNEXURE – I** ;
- b) Direct *Ministry of Social Justice and Empowerment, Government of India*, to re-evaluate the members nominated under section 16 (2) (g) and section 16 (2) (h) of the 2019 Act after putting in place a transparent process for the selection of members such as inviting submissions for the same and having a search committee to finalise the selection ;
- c) Direct *Ministry of Social Justice and Empowerment, Government of India*, to formulate a procedure for nomination and the notify the eligibility criteria for nomination within the National Council for Transgender Persons under section 16(2)(g) and 16 (2) (h) of the 2019 Act and select members pursuant to such procedure and eligibility;

ML

- d) Grant any other relief, which this Hon'ble Court deems fit under the Circumstances of the case in the interest of justice and equity.

INTERIM - PRAYER

Pending final disposal of the above writ petition, it is most respectfully prayed that this Hon'ble Court may be pleased to stay the *Gazette Notification bearing No. CG-DL-E-21082020-221294* dated 21.08.2020 issued by the *Ministry of Social Justice and Empowerment, Government of India*, is annexed herein and is marked as Notification bearing No. CG-DL-E-21082020-221294 dated 21.08.2020 produced herein as **ANNEXURE – I** in the interest of justice and equity.

**AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND
SHALL EVER PRAY**

Filed by :-
Advocate
Swati Bidhan Baruah

Settled by :-
Sr. Advocate
Jayna Kothari

AFFIDAVIT

I, **DEVA KANYA DOLEY**, aged about - 27 years, daughter of Shri Mahesh Doley, resident of Teteliya near Rishi Marvel Store, in the district of Kamrup (Metro), Assam, presently working as a General Secretary, of All Assam Transgender Association, Pandu, Guwahati - 781012, do hereby solemnly affirm and declare as under :

- 1) That, my designation is General Secretary, of All Assam Transgender Association, Pandu, Ghy - 12, District : Kamrup (Metro) Assam, and is competent to file this petition, and being well conversant with the facts and circumstances of the case, I am competent to swear this affidavit on its behalf.
- 2) That I have filed the present petition as a Public Interest Litigation.
- 3) That I have gone through the GAUHATI HIGH COURT (PUBLIC INTEREST LITIGATION) RULES, 2011 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
- 4) That I have no personal interest in the litigation and neither myself nor anybody in whom I am interested would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. This petition is not guided by self gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.
- 5) That I have done whatsoever inquiry/investigation which was in my power to do, to collect all data/materials which were available and which were relevant for this Hon'ble Court to entertain the present petition.
- 6) That I further confirm that I have not concealed anything in the present petition any data/material/information which may have enabled this Hon'ble Court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.

MA

7) That the statements made in this affidavit and in the accompanying Public Interest Litigation in paragraphs 1 to 12, 14 to 17, 19, 22 to 39 are true to my knowledge, those made in paragraphs 13, 18, 20 & 21 are true to my information being matter of records which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

On Oath –

"I swear that this my declaration is true, that it conceals nothing, and that no part of it is false, So Help me God."

And I sign this affidavit on this the 27th day of August, 2020 at Guwahati, Kamrup(M).

Identify by me,

Narayan Nair
Advocate's Clerk
Guwahati. 27/8/2020

Deva Kanya Doley

DEPONENT

General Secretary
All Assam Transgender Association
Pandu, Ghy-12

Subscribed and sworn to before me on this 27th day of August 2020 at Guwahati, Kamrup (M).

MM
27.8.2020