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Dated: 31.8.2012

To,

1. State of Rajasthan through Chief Secretary,
Secretariat, Jaipur.
2. Principal Secretary, Department of Personnel,
Government of Rajasthan, Secretariat, Jaipur.

LEGAL NOTICE FOR DEMAND OF JUSTICE

I, on being authorized and on behalf of my client Samta Andolan Samiti through its State President Shri Parashar Narain Sharma, hereinafter referred as my client, do hereby serve upon you this notice as under:

1. That my client is a registered non-Governmental Society. The objectives of the Society are to make an endeavor to protect the fundamental rights of the citizens of India, to protect the right of equality of all citizens in the matter of direct recruitment and promotion and also to fight against the caste based reservation provided by the Government in violation of the Constitutional provisions. Society has its members across the government departments and sections of the society.

In representative capacity they are serving the present notice.

2. That my client preferred a DBCW 8104/2008 titled Bajrang Lal Sharma & ors. v. State of Rajasthan and ors., before Hon'ble Rajasthan High Court and the said writ petition was allowed by the Hon'ble Court vide their judgment dated 5.2.2010, the operative portion is reproduced hereunder:

"In view of our findings on both the questions, the writ petitions No.8104/2008, 6241/2008 and 7775/2009 are allowed and Notifications dated 28.12.2002 and 25.4.2008 are declared ultra vires to the provisions of Articles 14 and 16 of the Constitution, and the same are hereby quashed and set aside. All consequential orders or actions taken by respondent-State including seniority list of Super Time Scale as well as Selection Scale of the Rajasthan Administrative Service officers, on the basis of above notifications are also quashed and set aside."

3. That the Hon'ble Rajasthan High Court vide their order dated 5.2.2010 not only quashed the notification dated 25.4.2008 and 28.12.2002 but at the same breath also quashed all consequential orders or actions taken by the Respondent State Government. It is relevant to mention herein that notification(s) dated 25.4.2008 & 28.12.2002 were notifications which brought omnibus amendments into almost 110 services. Since, above referred notifications and their consequential orders/seniorities were quashed by the Hon'ble Rajasthan High Court, so Government cannot proceed to do any sort of promotions unless they revise their seniority list(s) according to the observation laid

down by the High Court and Supreme Court in Bajrang Lal's matter.

4. That State of Rajasthan had preferred the Special Leave Petition (Civil) 7716/2010 before the Apex court and the Hon'ble Supreme Court vide their judgment dated 7.12.2010 had dismissed the SLP filed by the State of Rajasthan along with other connected SLP(s). The relevant operating portion is as under:

"45. In effect, what has been decided in M.Nagraj's case (supra) is part recognition of views expressed in Virpal Singh Chauhan's case....."

46. The position after the decision in M.Nagraj's case (supra) is that reservation of posts in promotion is dependant on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required. The view of the High Court is based on the decision in M.Nagraj's case (supra) as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Schedule Castes and Scheduled Tribes communities in public services. The Rajasthan High Court has rightly quashed the notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Castes and Scheduled Tribes communities and the same does not call for any interference. Accordingly, the claim of Petitioners Suraj Bhan Meena and Sriram Choradia in Special Leave Petition (Civil) No. 6385 of 2010 will be subject to the conditions laid down in M.Nagraj's case (supra) and is disposed of accordingly. Consequently, Special Leave Petition © Nos. 7716, 7717 and 7838 of 2010, filed by the State of Rajasthan, are also dismissed....."

5. That Government did not comply with the judgment dated 5.2.2010 by providing the accrued and vested right of the General Category employees to regain

over their junior SC/ST employees. In order to render the judgment ineffective and in contemptuous manner the Government issued the notification dated 11.9.2011, which has been hold contemptuous by the Hon'ble High Court in their judgment dated 23.2.2012.

6. That a DB Civil Contempt Petition No. 941/2010 titled Samta Andolan Samiti v. Shri Sallauddin Ahmed and ors. was preferred before the Hon'ble High Court for non-compliance to judgment dated 5.2.2010 and continuous contemptuous orders/notifications issued by the Government. The Government gave an undertaking before the Hon'ble High Court on 3.11.2011, which is finding place at para no. 18 in the judgment dated 23.2.2012.

"18. The matters were listed on 18.10.2011 and on the request of learned Advocate General, time was granted to State Government to examine the propriety of retrospective amendment, which has been made. The matters were again listed on 03.11.2011 and again time was given to respondents to undertake the exercise, which was pointed out on 18.10.2011 by learned Advocate General. It was also undertaken by the respondents that the rule, which has been amended, will not be given effect to in the matter with respect to Rajasthan Administrative Services. However, this Court ordered with respect to subject matter in question that till next date, unless and until the exercise is undertaken and this Court is appraised, no order be issued."

7. That the Hon'ble High Court in its order dated 23.2.2012 had hold the Government responsible for willfully committing intentional contempt of judgment dated 5.2.2010. The relevant portion of the order dated 23.2.2012 is reproduced hereunder for ready reference:

"65. As already discussed above, sufficient time was available with the respondents to comply with the order passed by this Court in February, 2010. Almost two years have elapsed since passing of the order by this Court and more than 14 months have elapsed after dismissal of special leave petition filed by the State before the Hon'ble Supreme Court. During contempt proceedings, time was sought to report the compliance, which was granted on 11.05.2011. Three weeks further time was sought, which was granted to report the compliance on 28.07.2011. Learned Advocate General prayed for further time to examine the matter, which was also granted on 18.10.2011. Again an opportunity was granted on 03.11.2011. Further on 16.12.2011, the Advocate General sought time for compliance, which was also granted. In these circumstances, we are of the considered view that this is a fit case, wherein no further time be granted to the respondents in the matter.

However, in the interest of justice, we grant them last opportunity of three days to purge themselves with the contempt and comply with the order passed by this Court in its letter and spirit, failing which they are directed to remain present in person before this Court on 27.02.2012 to make their submissions in respect of award of punishment to them for committing willful contempt of order dated 05.02.2010 passed by this Court."

8. That contemnors in Contempt Petition (supra) had preferred a Civil Appeal No. 2504-2505/2012 before the Hon'ble Supreme Court and the said appeal was listed before this Hon'ble court on 27.2.2012 and this Hon'ble Court was please to pass the following order:

".....In the meantime, the undertaking which had been given on behalf of the State before the High Court and has been recorded in paragraph 18 of the impugned judgment, shall continue....."

9. That the above mentioned civil appeals no. 2504-2505/2012 were allowed by the Hon'ble Supreme Court with the following directions:

"45. We, accordingly, allow the appeals and set aside the aforesaid judgment, but with the further direction that the State and its authorities act in terms of the Report of the Bhatnagar Committee, in accordance with the decision rendered in M. Nagraj's case and in Suraj Bhan Meena's case (supra), within two months from the date of communication of this judgment and order."

10. That the Hon'ble Supreme Court was clear in recognizing that Notification dated 11.9.2011 is not compliance to the judgment dated 5.2.2010, as despite of it being on record two months time has been given for compliance, meaning thereby that the State is required to adhere to M.Nagraj's principle and make compliance in two months after undertaking the complete exercise of all 110 services, as Bhatnagar Committee till date has conducted study of only 19 services, that too on the basis of the irrelevant data. It is well known fact that Bhatnagar Committee is not in accordance with M. Nagraj, it also nullify the directions of M. Nagraj in all practical aspects, till such exercise is completed and Bhatnagar Committee give report in accordance with M. Nagraj, the State cannot implement the notification dated 11.9.2011. The notification dated 11.9.2011 can still not be implemented because of the undertaking furnished by the Government before the Hon'ble High Court, which is still in currency.

11. That the Government has no right to issue Notification dated 11.9.2011, as on the same subject the State has enacted the Reservation Act, 2008. The notification is against the judgment of

Indira Sawhney, M. Nagaraj, Suraj Bhan Meena, U.P Power, S.V Joshi judgments.

12. That My Client had preferred a D.B. Civil Writ Petition No.13491/2009 titled Captain Gurvinder Singh and ors. v. State of Rajasthan and ors. and said writ petition was heard and decided by this Hon'ble Court on 22.12.2010 along with other connected matters. The Hon'ble High Court after taking note of all the submissions and rival contentions decided the writ petition in following terms:

"As agreed, let the matter be referred to the Rajasthan State Backward Classes Commission and the State Government shall place before the Commission the quantifiable data of numerous factors which is necessary in light of the Apex Court decisions in the case of M.Nagaraj (supra) and Ashoka Kumar Thakur (supra). As collection of quantifiable data is going to consume sufficient time, let this exercise be completed within a period of one year. The petitioners shall also be given opportunity amongst others in accordance with law to present their case before the Commission. It is reiterated that stay shall continue till the matter is decided afresh and even if the State decides to enhance reservation beyond the percentage which was existing prior to coming into force the Act of 2008, the State shall not give effect to the said enhanced percentage of reservation for a period of two months thereafter. As agreed, we leave all the questions raised in the petitions to be examined by the State at first instance in light of amended provisions of Articles 15 and 16 of the Constitution and decisions of Apex Court in Indra Sawhney (supra), M.Nagaraj (supra), Ashoka Kumar Thakur (supra), Suraj Bhan Meena (supra) and S.V.Joshi (supra).

The writ petitions thus stand disposed of in terms of the aforesaid observations and directions."

13. That in accordance with the judgment dated 22.12.2010 the Rajasthan State Backward Commission is required to examine the total reservation policy of the State of Rajasthan on the basis of quantifiable data, in the light of judgment of Hon'ble Supreme Court in M.Nagaraj and Ashok Kumar Thakur. The reference to the Rajasthan State

Backward Commission made by the Hon'ble Rajasthan High Court encompasses the issue of giving reservation in promotion along with consequential seniority in favour of SC/ST employees.

14. That on the basis of the Bhatnagar Committee Report dated 19.8.2011 Notification dated 11.9.2011 has been issued. The Notification dated 11.9.2011 has provided reservation in promotion along with consequential seniority to the SC/ST. It has also defined the term 'adequate' to be 16% for SC and 12% for ST. It is relevant to mention herein that the issue which was required to be examined by the Rajasthan State Backward Commission has been illegally examined by the Bhatnagar Committee and the decision which was supposed to be undertaken on the basis of the Rajasthan State Backward Commission, was taken on the basis of the Bhatnagar Committee Report. In view of this also the notification dated 11.9.2011 is not only contemptuous to the judgment dated 22.12.2010 but illegal also.

Under these circumstances, I hereby call upon your good office to kindly comply with the judgment dated 5.2.2010 in terms of the complete study as required by the Hon'ble Supreme Court in M. Nagraj's judgment for all services with quantifiable data. It is also requested till such exercise is not completed the notification dated 11.9.2011 shall not be implemented. Needful would be done within a period of 7 days

otherwise I shall be constrained to initiate legal proceedings against you before the Hon'ble Court. Copy of this notice shall be kept safely for future proceedings.

SHOBHIT TIWARI

ADVOCATE