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HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 8th July, 2010

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Judgment Pronounced on: 10th August, 2010

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LPA 289/2010

DR. VIKRAM SINGH

..... Appellant

Through: Mr. Harish Malhotra, Sr. Adv. with
Mr. Tanuj Khurana, Adv.

versus

SAHITYA AKADEMI & OTHERS

..... Respondents

Through: Mr. S. Nanda Kumar with Mr. Satish Kumar,
Adv. for Respondent No.1.
Mr. Sidhartha Das, Adv. for R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

In this appeal preferred under Clause 10 of the Letters Patent, the appellant has called in question the penetrability and sustainability of the order dated 18th March, 2010 passed by the learned Single Judge in WP(C) No.7073/2008.

2. The facts which have been undraped are that the Sahitya Akademi (National Academy of Letters), hereinafter referred to as the 'Akademi', the 1st respondent herein, by letter dated 7th May, 2007, wrote to the Secretary of the Education Department of Uttar Pradesh asking for a panel of maximum three names to be recommended by the State Government in terms of Article

10(iv) of the Constitution of the Akademi for representing the State of Uttar Pradesh as a member of the General Council. As set forth in the writ petition, the Principal Secretary of the Language Department of the Government of Uttar Pradesh responded by communication dated 25th July, 2007 nominating the petitioner and the said communication was followed by another letter dated 1st October, 2007 from the Principal Secretary of the Language Department, Government of the Uttar Pradesh wherein it was mentioned that the Hindi Sansthan of the Government of Uttar Pradesh was under the Language Department and working under the control of the Chief Minister and, hence, the letter written by the Akademi to the Education Department had been referred to the Language Department for necessary action. It was also stated in the letter that if the Department of Education had sent any nomination, the same be treated as cancelled. Despite the aforesaid communication, the Akademi took a decision not to nominate the petitioner as a member of the General Council and on the contrary, nominated the 4th respondent herein.

3. Before the learned Single Judge, it was the stand of the Akademi that the Education Department of the Government of the Uttar Pradesh had sent a panel of three names to the Akademi by letter dated 26th July, 2007 and the said authority was competent to send the names and on the basis of the said recommendation, the selection was made. The outgoing Council considered the recommendation sent by the Language as well as the Education Department and opined that when the Akademi had made a communication to the Education Department and it had sent three names of eminent writers, the

same deserved to be considered and, accordingly, the 4th respondent was nominated as a member of the General Council. The allegations of mala fide and favoritism were disputed. It was the stand of the Akademi that as the institution was embodied by the Ministry of Education, the Akademi had sent a letter to the Education Department and a response was received and the said practice was followed in respect of other States. It was urged that the decision of the outgoing Council was fair and did not smack of any arbitrariness. It was further urged that the petitioner was making all sorts of endeavour and pressurising the Akademi to nominate him as a member which was not behoveful on his part.

4. A rejoinder affidavit was filed contending, inter-alia, that it was obligatory on the part of the Akademi to accept the clarificatory letter issued by the Language Department and further the allegation made that the petitioner was putting pressure was sans substance.

5. The learned Single Judge took note of the reply given by the Akademi under the Right to Information Act, 2005 on 11th March, 2005, the communications made by the two departments, namely, the Education Department and the Language Department of the Government of Uttar Pradesh to the conduct of the petitioner and came to hold that it was open to the Sahitya Akademi to appoint an eminent person; that there is no vested right in any person to be nominated as a member of the General Council of the Sahitya Akademi; that there is some internal tussle between the Language Department and the Education Department of the Government of Uttar Pradesh; that the State Government was expected to send three names from

which one was to be chosen and in the instant case, the Education Department had sent three names out of which the 4th respondent was chosen; that the information given by the Akademi to the writ petitioner while asking for was justified; and that the outgoing General Council had correctly taken a decision which did not warrant any interference.

6. We have heard Mr. Harish Malhotra, learned senior counsel along with Mr. Tanuj Khurana, learned counsel for the appellant, Mr. S. Nanda Kumar, learned counsel for the respondent No.1, and Mr. Sidhartha Das, learned counsel for the respondent No.3.

7. It is urged by the learned counsel for the appellant that the order passed by the learned Single Judge is absolutely vulnerable inasmuch as he has not addressed to the core issue that it is the Department of Language of the Uttar Pradesh Government which has the authority to send the names and not the Department of Education. It is canvassed by Mr. Malhotra, learned senior counsel appearing for the appellant, that the learned Single Judge has erroneously observed that no one has a vested right when such a contention was not put forth but it was urged that the process of selection has to be done in accordance with the acceptable procedure. It is propounded by him that there was deviation in the selection process and, hence, the nomination of the 4th respondent deserved to be quashed.

8. Mr. S. Nanda, learned counsel appearing for the respondent No.1, submitted that it is the Department of Education which is competent to send the names as correspondence was made by the Akademi with the said

department. It is his further submission that in the information given under the RTI Act, 2005, the stand of the Akademi was very clear and that would go a long way to show that the outgoing Council had decided to take into consideration the names sent by the Education Department. It is also put forth that the selection has been done in an appropriate manner and there is no error in the decision making process and, therefore, the same does not require to be dislodged in exercise of power under judicial review.

9. The respondent no.4 has supported the order passed by the learned Single Judge.

10. To appreciate the submissions raised at the bar, it is apposite to refer to the anatomy of the Constitution of the Sahitya Akademi. The Sahitya Akademi was established as a National Organisation to work actively for the development of Indian letters and to set high literary standards, to foster and coordinate literary activities in all Indian languages and to promote through them the cultural unity of the country. Article 3 of the Constitution deals with organization and function. Article 4 deals with officers of the Akademi. Article 10, which deals with the General Council, being relevant for our present purpose is reproduced below:-

“10. GENERAL COUNCIL

The General Council shall consist of the following:

(i) The President;

(ii) The Financial Adviser;

(iii) Five persons nominated by the Government of India of whom one each shall be a representative of the Department of Culture, the Ministry of Information and Broadcasting

and the National Book Trust and two shall be other nominees;

- (iv) One person from each of the States/Union Territories enumerated in the Constitution of India, as nominated by the outgoing General Council, from a panel of a maximum of three names recommended by the State/UT Akademies and where there are no State/UT Akademies or where there are more than one State/UT Akademi, by the State Government/UT administration.*

The nominees shall be eminent persons in the field of letters and not necessarily functionaries of the Government or the Union Territory administration.

- (v) One person to represent each of the languages enumerated in the Constitution of India and any other such language which may be recognized by the Akademi from time to time. The person shall be nominated by the outgoing General Council from a panel of a maximum of three names recommended by the respective recognized Literary Associations from amongst the list of such recognized Associations maintained by the Akademi which shall be final and conclusive in this regard.*

- (vi) One person to represent each of a maximum of 20 Universities having PG Department in Humanities. These 20 names shall be selected by the outgoing General Council from the recommendations received from any University having a PG Department in Humanities;*

No University shall be represented for two successive terms;

Each of the 20 persons selected shall be from a different University and each of the Universities so represented shall be from a different State and/or Union Territory;

- (vii) Not more than eight persons eminent in the field of letters to be selected in their individual capacity by the outgoing General Council;*
- (viii) One representative each of the Sangeet Natak Akademi, the Lalit Kala Akademi and the Indian Council for Cultural Relations as nominated by the respective organisation.*
- (ix) One representative of Indian Publishers as selected by the outgoing General Council on the basis of recommendations received from various Publishers' Associations of India;*

(x) One representative of the Raja Rammohun Roy Library Foundation as nominated by the Foundation;

(xi) No one shall be a member of the General Council for more than two terms with the proviso that the two terms shall not be consecutive, and that this rule shall apply to all the members nominated in all categories except ex-officio members and eminent writers under clause (vii) above.

The General Council shall continue for five calendar years and the expiration of the period of five calendar years shall operate as a dissolution of the General Council.”

11. On x-ray of Clause (iv) of the said Article, it is vivid that three names are to be recommended by the State Academies and where there are no State Akademi or more than one, by the State Government and the nominees are to be of eminent persons in the field of letters. Clause 7 of the aforesaid empowers the outgoing General Council to make the selection. On a perusal of the Constitution, nothing is perceptible as to which is the competent department of the State to be communicated. Nothing has been brought on record to show that the State Government has nominated or determined or given the responsibility to any department to send the recommendation. The Akademi has placed reliance on the power under which the Constitution has been prepared. The same reads as under:-

“As embodied in the Government of India, Ministry of Education Resolution No.F.6-4/51 G2(A) dated the 15th December, 1952 and as amended from time to time).”

Relying on the same, it is urged that it had sent a communication to the Department of Education and the Principal Secretary, Education Department, by letter dated 26th July, 2007, had sent three names, namely, (i)

Dr. Vishwanath Prasad Tiwari, (ii) Sh. Gopal Chaturvedi and (iii) Shri Kailash Bajpai, all senior Litterateurs. The General Council selected Dr. Vishwanath Prasad Tiwari, the 4th respondent herein. The fact that gains prominence is that as per the Constitution of the Akademi, the Education Department had sent three names whereas the Language Department had sent a singular name. It is worth noting that a query was made under the RTI Act. The answer to the queries is worthwhile to be reproduced and we do so:-

“Question 4: Have you received any letter from authorized department (Language), Government U.P. with reference to question number 2, if yes kindly furnish the copy of the said letter with action taken report by you with regard to nomination?

Answer: Yes, the Sahitya Akademi did receive a letter dated 1st October 2007 from the Language Department (Copy enclosed). The letter was duly considered by the Sahitya Akademi. The Akademi has noted that the person recommended for consideration of membership of the Language Department had been frequenting the Sahitya Akademi enquiring about the nomination and had met the Secretary. He was told that the Sahitya Akademi had also received a panel from the Education Department, to whom the Akademi had written, carrying names of three important writers and the matter would be considered at the appropriate time. The Akademi also noted that the letter dated 1st October 2007 written by the Language Department had been motivated with the clear intention of self-promotion. The Akademi was surprised to find as how the confidential letters of an important Government office were accessible to the person. Under the circumstances the Sahitya Akademi decided not to take into cognizance the letter received from the Language Department which was written under motivation and, therefore, the panel received from the Education Department was taken into consideration.”

12. On a plainest reading of the aforesaid, it is luminescent that considering the person whose name had been recommended to be nominated by the outgoing Council and the high status the body enjoys, it is really unfathomable how the appellant came to know about the communication made by the Department of Language and how could he presume that the

Language Department of the State of Uttar Pradesh is the only authorized department. It is understandable that one has the right to seek information under the Right to Information Act, and such a right is undeniable within the statutory parameters but it is difficult to comprehend and appreciate the proclivity of a litterateur, claiming eminence, to chase with such unnecessary anxiety, especially when the recommendation is for the nomination of a member of a highly respected body. It may be acceptable in the realm of common aspiration but it certainly does invite the frown of intellectual and academic propriety as a disciplined conduct in matters like this is a categorical imperative. No one should make any effort to guillotine to pave the path of ambition. Pursuit of an ambition is a known facet of human character but the means adopted, particularly in the sphere of education and academics, have to be within the realm of warranted propriety. The same cannot be given an indecent burial. In our considered opinion, the outgoing General Council has adopted the correct approach while nominating one of the recommended members from the panel of the Education Department, especially in the prevailing facts and circumstances.

13. Before parting with the case, we may make it clear that when nothing has been brought on record as regards the fact that which department has to be communicated by the Sahitya Akademi for nomination and the practice has been to communicate with the Education Department for sending the names and the same being in accord with the formation of the Sahitya Akademi, at present, we find no fault in the same. However, it will be advisable for the

Sahitya Akademi to formulate a procedure so that it will not give rise to any kind of cavil or ambiguity in future.

14. In view of our aforesaid analysis, the appeal, being sans substratum, stands dismissed without any order as to costs.

Sd/-

CHIEF JUSTICE

Sd/-

MANMOHAN, J

AUGUST 10, 2010
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