

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 1st October, 2012
% Judgment delivered on: 5th October, 2012

+ WP(C) 5441/2012

PRASANTA KALITA ... Appellant
Through Mr. Kush Sharma, Advocate

versus

UNION OF INDIA & ORS ... Respondents
Through Mr. Himanshu Bajaj, CGSC for
Union of India
Mr. L.R. Khatana, Adv. for
Respondent No.2

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

D. MURUGESAN, CJ

The writ petition, in the nature of public interest, challenges the constitution of the Search Committee consisting of three members to draw up a panel of three names in alphabetical order and submit the same to the President of India for appointment of one of the three names in the panel as the Chairman of the Academi.

2. The petitioner claims that he is an artist and has been working with Lalit Kala Academi, New Delhi for the last 10 years. He is a National Award holder with various other awards as well. The main grievance of the petitioner appears to be that nomination of Dr. (Smt.) Saryu V. Doshi as a member of the Search Committee is ultra vires the Constitution/

Memorandum of Association. According to the petitioner, in terms of Clause 5(i) of the Constitution/ Memorandum of Association, only a past Chairman could be nominated as one of the members of the Search Committee by the President of India. As Shri R.B. Bhaskaran, who was the past Chairman of the Akademi for the year 2002 to 2007, was available for nomination, the nomination of Dr. (Smt.) Saryu V. Doshi, who was only appointed as pro-term Chairman of the Akademi, is not in accordance with the above clause. His further grievance is that Dr. (Smt.) Saryu V. Doshi is not a recognized artist and she was nominated even without reference to the members of the Akademi and for that reason, there was no transparency.

3. Considering it expedient to establish a national organization to foster and coordinate activities in the sphere of creative visual arts and to promote thereby the cultural unity of the country, a National Akademi of Art to be called 'Lalit Kala Akademi' was established. The offices of the Akademi consist of one Chairman, Vice Chairman, Finance Advisor and Secretary. The Chairman is appointed in terms of Clause 5(i) of the Memorandum of Association which reads as follows:

“5 CHAIRMAN

(i) Six months prior to the date when the term of the Chairman is to come to an end or as soon as it otherwise becomes necessary to select a new Chairman, the General Council of Akademi shall nominate a member of the search committee which will consist of three members and submit the name to the President of India. The other two names shall be nominated by the President of India out of which one shall be a past Chairman of the Akademi, if available. The search committee shall draw up a panel of three names in alphabetical order and submit it to the President of India who shall appoint one of the three names in the panel as the Chairman of the Akademi. The names empanelled shall be of persons of high

integrity and moral character and widely respected with proven capability to run an organization smoothly. The conditions of service of the chairman shall be decided by the Government of India appropriate to the status accorded to him.

Note: Where it becomes necessary, the President of India may appoint a pro tem Chairman till the regular Chairman is appointed in accordance with the above procedure.”

4. Sh.Ashok Vajpayee, the then Chairman, held the office until 31.12.2011. As per Clause 5(i), six months prior to the date when the term of the chairman comes to an end or as soon as it otherwise becomes necessary to select a new Chairman, a Search Committee consisting of three members shall be constituted. Out of three members, one member of the Search Committee shall be nominated by the General Council of the Academi. The Academi, vide its resolution dated 08.09.2011, nominated Shri Amitava Bhowmick as its member. As far as his nomination is concerned, there is no controversy. The President nominated Prof. A. Ramachandran, Member, Board of Trustees, IGNC, for the remaining two members and again there is no controversy in his nomination. The other one member shall be nominated by the President of India who shall be a past Chairman of the Academi, if available. For consideration of such nomination, a complete list containing two names of past Chairmen, namely, Professor R.B. Bhaskaran and Dr. (Smt.) Saryu Doshi were placed. The President nominated Dr. (Smt.) Saryu Doshi from among the two names, namely, Prof. R.B. Bhaskaran and Dr. (Smt.) Saryu Doshi. The controversy in this writ petition is only with regard to the nomination of Dr. (Smt.) Saryu Doshi.

5. The question is whether a pro-term Chairman would also be eligible for consideration to be nominated as one of the members of the Search Committee. It is the contention of the petitioner that only a past Chairman of the Academi, if available, shall alone be nominated. As Prof. R.B. Bhaskaran was available, he alone should have been nominated and Dr. (Smt.) Saryu Doshi, who was only appointed as a pro-term Chairman, could not have been nominated in terms of the above guidelines. Clause 5(i), of course, states that the other two names shall be nominated by the President of India out of which one shall be a past Chairman of the Academi, if available. However, “Note” to the said clause states that the President of India may appoint a pro term Chairman till the regular Chairman is appointed in accordance with the above procedure. The Memorandum of Association empowers the appointment of a pro-term Chairman who will be entitled to discharge, *inter alia*, all the functions of the Chairman in terms of Clause 5(iv). There appears to be also no clause restricting the powers of pro-term Chairman to discharge the functions of the Chairman. The term ‘past Chairman of the Academi’ employed in Clause 5(i) should be read together with the “Note” to the said clause and in such event, even a pro-term Chairman would be eligible to be nominated in the Search Committee. In as much as the grievance of the petitioner that Shri R.B. Bhaskaran alone could have been appointed, we cannot, in our opinion, read the bye-laws in such manner. The limited role of the Search Committee is only to draw up a panel of three names in the alphabetical order and submit the same to the President of India who shall appoint one of the three names in the panel as the Chairman of the Academi. Factually, a panel of two names has been placed before the President of India and the President has nominated one amongst them, namely, Dr. (Smt.) Saryu Doshi. It is not the case of

the petitioner that the name of Prof. R.B. Bhaskaran has not been included in the list for consideration by the President of India. Though his name was also considered, as the ultimate decision is left to the President of India, such a decision cannot be found fault with unless a nominee is not eligible to be nominated in the Search Committee. As we have found that even a pro-term Chairman of the Academi could be considered and nominated in the Search Committee in terms of clause 5(i) of the Memorandum of Association, the challenge to the nomination of Dr. (Smt.) Saryu V. Doshi must fail. Accordingly, we reject the said submission.

6. That apart, in view of the challenge, we called for the records relating to the constitution of the Search Committee and the decision of the President of India to select one of the empanelled names by the Search Committee as the Chairman of the Academi. The records show that as the term of the then Chairman of the Academi came to an end on 31.12.2011, special meeting of the General Council of the Academi was called to consider and nominate a member of the Search Committee in terms of clause 5(i) of the Memorandum of Association and Shri Amitava Bhowmick was nominated. The names of Prof. R.B. Bhaskaran and Dr. (Smt.) Saryu V. Doshi were suggested to the President of India for consideration by the Government on 24.09.2011. In fact the records disclose that names of some of the Vice Chairmen who had also acted or officiated as Chairman of the Academi and discharged the functions of the Chairman when the office of Chairman remained vacant for some time, were considered. However, their names were not forwarded for considering them as they were not appointed as pro-term Chairman or Chairman by the President of India in exercise of the power under clause 5(i). As per the records, there appears to be detailed consideration of

both the names and ultimately Dr. (Smt.) Saryu V. Doshi was nominated to be a member of Search Committee.

7. The further fact remains that pursuant to the constitution of the Search Committee, the said Committee drew a panel of the following three names:

- i. Smt. Tasneem Zakaria Mehta;
- ii. Shri Sadanand Menon; and
- iii. Shri Kalyan Kumar Chakravarthy.

The only job remains is the appointment of a Chairman by the President of India from out of the said three names. We hasten to add that the petitioner has not made any grievance over the three names empanelled by the Search Committee for the President of India to consider and appoint as his grievance is restricted only to the appointment of Dr. (Smt.) Saryu V. Doshi in the Search Committee.

8. The next contention is that a person who is nominated in the Selection Committee should satisfy clause 10(ix) of the Memorandum of Association. That clause is in respect of only persons to be elected by the constituencies to represent General Council and not to the post of Chairman. In the absence of any such requirement for being nominated to be a member of Search Committee under Clause 5(i), the petitioner cannot rely upon clause 5(ix) which relates to a different situation. Hence, the said contention must also be rejected and is accordingly rejected. Equally the submission of the counsel that members of the Academi were not taken into confidence by way of disclosing the names sponsored for nominated to Search Committee is also liable to be rejected

as there is no such requirement to be followed under clause 5(i) of the Memorandum of Association.

9. The petitioner has also challenged the vires of clause 5(i) of the Memorandum of Association. However, the petitioner has not made any pleadings to support the said challenge. In the absence of any pleadings, we are not inclined to entertain the submission by the learned counsel for the petitioner in this regard. As the submission is restricted to the nomination of Dr. (Smt.) Saryu V. Doshi, which we did not agree with the petitioner, the petition must necessarily fail.

10. For the reasons, we are not inclined to accept the case of the petitioner. Accordingly, the petition is dismissed.

CHIEF JUSTICE

**RAJIV SAHAI ENDLAW
(JUDGE)**

OCTOBER 05, 2012
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