

\$~20

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

+ **W.P.(C) 627/2016**

K K CHAKRAVARTY

..... Petitioner

Through: **Mr.Nikhil Bhalla with Mr.Harsh Bawa
and Mr.S.K. Mishra, Advs.**

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: **Mr.Abhay Prakash Sahay, Adv. for UOI.
Mr.Sanjoy Ghose, ASC for GNCTD.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

25.01.2016

1. The Chairman of Lalit Kala Akademi filed this petition with a prayer to quash the order dated 01.04.2015 of the Ministry of Culture, Government of India appointing Sh.K.K.Mittal, Additional Secretary in the Ministry of Culture, Government of India as the Administrator of Lalit Kala Akademi and further to declare the notification dated 08.01.1999 issued by the Government of India, Ministry of Human Resource Development approving the amendments to the Memorandum of Association and Rules and Regulations of Lalit Kala Akademi as unconstitutional, ultra vires and void.
2. We have heard the learned counsel for the petitioner and perused the material available on record.

3. Lalit Kala Akademi was set up as an apex cultural body by the Government of India by the Parliamentary Resolution dated 07.10.1953 to encourage and promote visual arts such as paintings, graphics, sculpture and etc. and to promote thereby the cultural unity of the country. It was registered as a society under the Societies Registration Act, 1860 on 11.03.1957 and has full functional autonomy in the field of its activity even though the Government of India is the sole funding agency for the organization.

4. As per the terms incorporated in the Parliamentary Resolution, the officers of the Lalit Kala Akademi (hereinafter referred to as 'the Akademi') shall be the Chairman, Vice-Chairman, Treasurer and Secretary. The Akademi shall conduct its work through (a) General Council, (b) Executive Board, (c) The Finance Committee and (d) Any other standing committee or committees which the General Council or the Executive Board may set up for discharging any one or more of their functions. The Chairman shall be a member of the General Council as well as the Executive Board.

5. The Parliament enacted Lalit Kala Akademi (Taking Over of Management) Act, 1997 with an object to take over, for a limited period, the management of Lalit Kala Akademi in view of the serious difficulties that have arisen with regard to its management. In terms of Section 3 of the said Act on and from the commencement of the Act, i.e., 24.01.1997 for a period of 3 years, the management of the society stood vested in the Central Government. However, by order dated 31.03.1999 passed by the Department of Culture, Government of India in exercise of the powers conferred by Section 6(1) of the Lalit Kala Akademi (Taking Over of Management) Act, 1997, the Central

Government had relinquished the management of the Lalit Kala Akademi with effect from 29.04.1999.

6. While the management of the Akademi was under the control of the Administrator appointed by the Government of India under the Lalit Kala Akademi (Taking Over of Management) Act, 1997, the Administrator had recommended certain amendments to the Memorandum of Association and Rules and Regulations of the Akademi and the same were approved by the Government of India, Ministry of Human Resource Development by notification dated 08.01.1999. Clause 17(12)(i) of the Memorandum of Association of the Akademi as amended by notification dated 08.01.1999 which provides for takeover of management by the Central Government reads as under:-

“Clause 17(12)(i):- In the event of serious difficulties arising with regard to the management of the Akademi, if the Central Government is of the view, that it is necessary for the Government to take over the management of the Akademi in order to secure proper management and that any delay would be highly detrimental to the interests of the Akademi, the Government may, by order, take over the management of the Akademi for a period not exceeding three years and relinquish the management of the Society after three years or earlier, in the manner stated hereinafter.”

7. In exercise of the powers so conferred by Clause 17(12) of the Memorandum of Association of Lalit Kala Akademi, the Central Government, Ministry of Culture issued the impugned order dated 01.04.2015 appointing Sh.K.K.Mittal, IAS, Additional Secretary in the Ministry of Culture,

Government of India as the Administrator of the Akademi and directing that the powers of the Chairman, the General Council, Executive Board and the Standing Committees shall be vested in the Administrator w.e.f. 01.04.2015.

8. Aggrieved by the same, this petition came to be filed with the above mentioned prayers.

9. It is vehemently contended by the learned counsel for the petitioner that the notification dated 08.01.1999 is without jurisdiction and illegal since the Lalit Kala Akademi (Taking Over of Management) Act, 1997 was applicable only for a period of 3 years as provided under Section 3(1) of the said Act. It is also contended that the Administrator appointed under the said Act had no authority to recommend for amendment of the constitution of the Akademi and, therefore, the notification dated 08.01.1999 approving the amendments to the Memorandum of Association is illegal and nonest. Placing reliance upon Clause 17 of the unamended Memorandum of Association of the Akademi which provides for amendment of the constitution of the Akademi only on a request made by the General Council by majority of not less than 3/4th of the members present and voting, it is contended by the learned counsel that since no such exercise was preceded, the amendment dated 08.01.1999, is null and void.

10. So far as the order dated 01.04.2015 is concerned, it is contended that the said order has been issued without due application of mind and without any genuine reason only to malign the petitioner who has been consistently trying to streamline the activities of the Akademi. It is pleaded in the writ petition that the petitioner had initiated disciplinary proceedings against Dr.Sudharkar

Sharma, the Secretary of the Akademi and in terms of the provisions of CCS (CCA) Rules, 1965 he was placed under suspension pending inquiry on 08.05.2013. Thereafter, on the basis of the report of an internal inquiry, the petitioner by proceedings dated 05.05.2014 had cancelled the appointment of the Sh.Sudhakar Sharma as the Secretary with immediate effect. On 10.12.2014, an appeal was preferred before the Minister of State against the order of the petitioner dated 05.05.2014 upon which the said order was set aside on the ground of violation of the principles of natural justice and without authority of law. It is alleged that the said Secretary after resuming the service started tampering the files to wipe out the evidence against him and that he has been making attempts to register false and frivolous complaints against the petitioner and to prosecute him on one pretext or the other.

11. As already noticed above, the notification dated 08.01.1999 amending the Memorandum of Association of the Akademi was issued while the Akademi was under the management of the Central Government in terms of the provisions of the Lalit Kala Akademi (Taking Over of Management) Act, 1997. By virtue of Section 4 of the said Act, the Administrator appointed by the Central Government was empowered to carry on management of the Akademi and exercise all the powers and functions of the General Council, Executive Board and other committees of the Akademi. In exercise of the said powers the Administrator appointed by the Central Government had recommended the amendments to the Memorandum of Association and the same had been duly approved by the Government of India by notification dated 08.01.1999. Admittedly, the said amendments were carried out to the Memorandum of

Association of Akademi in terms of the provisions of the Lalit Kala Akademi (Taking Over of Management) Act, 1997 during the period the Akademi was under the management of the Central Government. Therefore, we do not find any substance in the contention of the petitioner that the amendments that were brought to the Memorandum of Association of Akademi vide notification dated 08.01.1999 were without jurisdiction since the same was not effected on a request by 3/4th majority of the General Council as provided under Clause 17 of the Memorandum of Association. Apparently, the said contention lacks legal basis.

12. That apart, Lalit Kala Akademi (Taking Over of Management) Act, 1997 has worked itself out in the year 1999 itself. We are, therefore, of the view that the amendment that was effected in terms of the provisions of the said Act while the Act was in force cannot be challenged at this point of time on any ground whatsoever.

13. It is also relevant to note that the petitioner was appointed as the Chairman of the Akademi on 11.02.2013 and the notification appointing the Additional Secretary of Government of India as the Administrator and vesting the powers of the Chairman in the Administrator came to be issued in exercise of the powers conferred under Clause 17(12) of the Memorandum of Association on 01.04.2015. It may be true that by virtue of the notification dated 01.04.2015, the powers of the Chairman are now vested in the Administrator, however, the petitioner has acceded to the situation and has never chosen to challenge the same for more than eight months. Even in the present petition, there is no plea as to how the notification dated 01.04.2015 has

affected the legal or fundamental rights of the petitioner. In fact, the only grievance of the petitioner appears to be against the reinstatement of Dr.Sudhakar Sharma, Secretary, Lalit Kala Akademi.

14. According to us, either the reinstatement of Dr.Sudhakar Sharma or his alleged illegal activities in the Akademi would not give rise to a cause of action to challenge the notification dated 01.04.2015 much less the notification dated 08.01.1999 by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

15. We, therefore, decline to entertain the petition. Accordingly, the same is dismissed.

Copy of order be given dasti under the signature of Court master.

CHIEF JUSTICE

JAYANT NATH, J

JANUARY 25, 2016/pmc