

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

+ W.P.(C) 11681/2015, CM APPL. No. 31050/2015

AKHILESH VERMA & ANR. Petitioners
Through: Mr. Sujeet Kumar Mishra, Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr.
Vikram Jetly, CGSC, Ms. Rhea Verma, Mr. Vidur
Mohan and Ms. Banu Dixit, Advocates. Mr. C. P.
Katyal, Consultant, Ministry of Culture.

+ W.P.(C) 3106/2016, CM APPL. No. 28701/2016

MANISH PUSHKALE AND ORS. Petitioners
Through: Mr. Samerendra Kumar, Adv.

Versus

DR SUDHAKAR SHARMA AND ORS. Respondents
Through: Mr. Sanjay Jain, ASG with Mr. Rajesh
Gogna, CGSC and Mr. Satya Ranjan Swain, GP,
Ms. Gauri Gupta and Mr. Chandragupt Yadav,
Advocates for UOI. Mr. C. P. Katyal, Consultant,
Ministry of Culture.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

10.04.2017

1. The petitioners in both the writ petitions, who claim to be artists, sought a writ of *quo warranto* to set aside the appointment of Dr.Sudhakar Sharma (arrayed as respondent No.3 in W.P.(C) No.11681/2015 and as respondent No.1 in W.P.(C) No.3106/2016) as Secretary of Lalit Kala Akademi, New Delhi alleging that his appointment was in violation of the

provisions of Lalit Kala Akademi (Secretary, Lalit Kala Akademi) Recruitment Rules, 1999 (for short 'Recruitment Rules'). The Petitioners also challenged the order dated 15.10.2015 passed by the Government of India, Ministry of Culture whereby the order of suspension of Dr.Sudhakar Sharma was revoked and he was reinstated into service.

2. 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.

3. 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.

4. In exercise of the powers conferred by clause 11.1 of the Memorandum of Association and Rules and Regulations of the Lalit Kala Akademi, "Recruitment Rules, 1999" have been made to regulate the method of recruitment to the post of Secretary of the Lalit Kala Akademi. Rule 4 of the said Rules provides that the method of recruitment, age limit,

qualifications and other matters relating to the said post shall be as specified in columns (5) to (12) of the Schedule and bye-law (9) of Lalit Kala Akademi (Services) Byelaws. A perusal of the Schedule to the Recruitment Rules shows that the post of Secretary is a selection post and that the method of recruitment shall be by transfer on deputation, failing which by direct recruitment. In case of transfer on deputation, it is prescribed that the same shall be by deputation of persons in group 'A' service or equivalent in Central or State Government organizations including Museums, Galleries, etc. or University system or cultural organizations possessing essential qualifications and experience prescribed for direct recruitment. It was also made clear that period of deputation will ordinarily not exceed three years and in any case shall not exceed five years.

5. Coming to the present case, the facts borne out of the record are as under:

- (a) Dr. Sudhakar Sharma was holding the post of Keeper in National Gallery of Modern Art (for short 'NGMA'). He is a permanent Central Government Officer in the grade of Keeper at National Gallery of Modern Art.
- (b) By Office Memorandum dated 17.11.2000, Dr.Sudhakar Sharma was offered appointment to the post of Secretary, Lalit Kala Akademi on deputation basis.
- (c) Accordingly, he joined the post of Secretary of Akademi on deputation for a period of three years w.e.f. 03.04.2001.
- (d) While the period of deputation was to expire on 02.04.2004, it appears that a decision was taken by the Executive Board of the Akademi to absorb the services of Dr.Sudhakar Sharma in the

Akademi on permanent basis.

- (e) An objection was raised by the Government of India, Ministry of Tourism and Culture vide letter dated 20.11.2003 stating that absorption on permanent basis of Dr.Sudhakar Sharma could be done only with the specific approval of the Department of Culture provided that the Recruitment Rules permit the same.
- (f) By letter dated 03.02.2004, the National Gallery of Modern Art had also objected to the decision of the Akademi and requested the Department of Culture to look into the issue and take a judicious decision as per Rules in force. It was also pointed out that no request was received by them from the Akademi for continuation of the deputation of Dr.Sudhakar Sharma.
- (g) Ultimately by letter dated 26.08.2004, Government of India, Ministry of Culture informed the Akademi that its proposal for permanent absorption of Dr.Sudhakar Sharma in the post of Secretary cannot be considered. Further, in view of the acute shortage of officers, the services of Dr.Sudhakar Sharma were withdrawn and it was directed that he should be reported to his parent office, National Gallery of Modern Art, New Delhi immediately.
- (h) The letter dated 07.03.2005 addressed by National Gallery of Modern Art (NGMA) to the Ministry of Culture reflects that in spite of the decision of the Ministry of Culture withdrawing the services of Dr.Sudhakar Sharma, he continued on deputation as Secretary of Akademi and before the expiry of the 4th year deputation period, the Akademi made a request to the

Ministry of Culture for continuation of deputation of Dr.Sudhakar Sharma for one more year or for absorption in the post of Secretary. In the said letter dated 07.03.2005, NGMA had strongly opposed the continuation of Dr.Sudhakar Sharma on deputation as Secretary of Akademi and once again requested the Ministry of Culture to repatriate him to the parent post of Keeper in NGMA.

- (i) What action has been taken by the Ministry of Culture is not known but the material available on record shows that the Akademi issued an advertisement in January, 2005 inviting applications from eligible candidates for the post of Secretary, Lalit Kala Akademi. It was expressly stated in the said notice that the post is to be filled up by transfer on deputation, failing which, by direct recruitment and that period of deputation will ordinarily not exceed three years and in any case shall not exceed five years.
- (j) One of the candidates who applied for the post pursuant to the above-said advertisement, filed W.P.(C) No.4708/2005 aggrieved by the action of the Akademi in not calling her for the interview. The said writ petition was disposed of by this Court by order dated 16.03.2005 recording the statement of the counsel for the Akademi that the Petitioner therein would be called for the interview on 17.03.2005. It was also recorded in the said order that the request of Akademi for permanent absorption of Dr.Sudhakar Sharma as Secretary of Akademi had been turned down by the Ministry of Culture by letter dated

26.08.2004 and that though he was directed to report to his parent office forthwith, he still remained with Akademi.

- (k) However, by Office Memorandum dated 17.03.2005 of Akademi, Dr.Sudhakar Sharma was offered the appointment to the post of Secretary purportedly on the basis of the decision of the Selection Committee.
- (l) Dr.Sudhakar Sharma conveyed his acceptance on 18.03.2005 and he was issued appointment order appointing him as Secretary.
- (m) On 01.04.2005, Dr.Sudhakar Sharma wrote a letter to the Department of Culture tendering his technical resignation to the post of Keeper, NGMA w.e.f. 18.03.2005 and seeking permission to retain lien on his substantive post of Keeper till he acquires lien on the post of Secretary of Akademi as per Rules.
- (n) By order dated 12.10.2007 of Lalit Kala Akademi, it was declared that Dr.Sudhakar Sharma has successfully completed the period of probation and has been confirmed in the post of Secretary w.e.f. 22.08.2005.

6. It is contended by the Petitioners that since Rule 4 of the Recruitment Rules read with the clause (10) of the Schedule provides that the recruitment to the post of Secretary shall be by transfer on deputation, failing which, by direct recruitment, the appointment of Dr.Sudhakar Sharma by direct recruitment without exhausting the channel of transfer on deputation was illegal. It is pleaded that Dr. Pawan Sudhir and Prof. Charu Sharma Gupta were in fact empanelled under the category of 'transfer on deputation' and

there was no justifiable reason to resort to method of direct recruitment ignoring the two eligible candidates available for recruitment on deputation basis. Hence, it is contended that the selection and appointment of Dr.Sudhakar Sharma was illegal and contrary to the Recruitment Rules, 1999. Therefore, the Petitioners prayed for setting aside the appointment of Dr.Sudhakar Sharma by issuing a writ of *quo warranto*.

7. It is also alleged by the Petitioners that Dr.Sudhakar Sharma, while continuing as Secretary of Akademi, had indulged in misappropriation of funds and that in spite of the fact that the allegations were found to be true in the enquiry conducted by the Akademi, he is illegally being continued in the office of Secretary.

8. We have noticed the following undisputed facts on the basis of the documents placed on record:

- a) In pursuance of various complaints received against Dr.Sudhakar Sharma making allegations of mal-administration, a Disciplinary Committee was constituted by the Akademi to make an inquiry;
- b) On the basis of the recommendations of the Disciplinary Committee, Dr.Sudhakar Sharma was dismissed from service by the Akademi by order dated 02.12.2011 on the ground of misconduct and misappropriation of funds;
- c) However, the said order of dismissal was set aside by the Union of India by order dated 06.01.2012.
- d) Subsequently, by order dated 14.02.2013 of the Akademi, Dr.Sudhakar Sharma was placed under suspension pending inquiry and ultimately by order dated 05.05.2014, the appointment of Dr.Sudhakar Sharma was held to be *void ab initio*

by Akademi.

- e) Against the said order dated 05.05.2014, Dr.Sudhakar Sharma preferred an appeal and the same was allowed by the Central Government by order dated 10.12.2014 consequent to which he was reinstated into service.
- f) However, the Akademi by order dated 11.12.2014 revived the enquiry proceedings initiated earlier and continued him under suspension pending enquiry.
- g) The Government of India, Ministry of Culture passed an order on 01.04.2015 in exercise of the powers vested with it under Clause 17(12) of the Memorandum of Association of Lalit Kala Akademi thereby taking over the management and control of Lalit Kala Akademi and appointing K.K. Mittal, Additional Secretary, Ministry of Culture as an Administrator of the Akademi. While vesting the powers of the Chairman, the General Council, the Executive Board and the Standing Committees of the Akademi with the said Administrator, it was also made clear that the Administrator shall carry on the management of the Akademi for and on behalf of the Central Government in the Ministry of Culture subject to the directions of the Ministry of Culture.
- h) While so, the appeal preferred by Dr.Sudhakar Sharma against the order of Akademi placing him under suspension pending enquiry was disposed of by the Government of India, Ministry of Culture by order dated 15.10.2015 revoking the suspension with immediate effect, however allowing the enquiry proceedings to continue as per law.

9. The petitioners therefore prayed for setting aside the order of the Government of India dated 15.10.2015.

10. The Union of India filed the short affidavit dated 16.07.2016 bringing to the notice of this Court that a proposal/request has been received from the Akademi which is currently under the administrative control of an Administrator appointed by the Government of India, Ministry of Culture to refer the enquiry proceedings against Dr.Sudhakar Sharma to Chief Vigilance Commissioner and that the same is under consideration by the Ministry of Culture.

11. On 05.08.2016, the Petitioners filed a fresh application being CM No. 28701/2016 in W.P.(C) No. 3106/2016 bringing to the notice of this Court that the administrator appointed by the Government of India was relieved on 01.08.2016 and had been repatriated to his parent cadre. It is also pleaded that in the absence of the administrator, Dr.Sudhakar Sharma had been allowed to manage the affairs of the Akademi and by order dated 02.08.2016, he transferred two officials, namely, Sh.Bisham Mirami and Smt.Shashi Malhotra.

12. Having regard to the said specific plea of the Petitioners, by order dated 09.08.2016, we directed that the Union of India shall not allow Dr.Sudhakar Sharma to pass any administrative order till the next date of hearing.

13. The Union of India filed the status report dated 20.08.2016 stating that in compliance with the order of this Court, Dr.Sudhakar Sharma was asked not to take any policy/major administrative decision and that subsequently vide order dated 11.08.2016, Sh. P.L. Sahu, Joint Secretary, Ministry of Culture has been appointed as the administrator of the Lalit Kala

Academi on temporary basis. It is also stated that by separate proceedings dated 18.08.2016, all the policy/administrative decisions taken by Dr.Sudhakar Sharma on or after 02.08.2016 without the approval of the administrator were cancelled.

14. After hearing the learned counsel for both the parties, we have reserved the orders on 22.08.2016.

15. Thereafter, the Petitioner in W.P.(C) No.3106/2016 has brought to our notice certain subsequent events by filing CM No.42565/2016. It is pleaded in the said application that the newly appointed administrator Sh. P.L. Sahu who is Bengaluru based, did not join the office and in the meanwhile, the Respondent No.1 has again been attempting to interfere with the administration of the Academi.

16. It is alleged that the following orders have been passed by Dr.Sudhakar Sharma without following due process of law:

- (i) One Subodh Sharma has been appointed as PA to Administrator vide order dated 13.10.2016.
- (ii) One Vasudev Tripathi, Web Developer in the Akademi was removed from service without even issuing a prior notice.
- (iii) Dr. Rahas Kumar Mohanty working in the Akademi since June, 2013 as a consultant was terminated from service by order dated 08.11.2016 without assigning any reasons.

17. Having regard to the facts and circumstances noticed above, *prima facie* we are of the view that the appointment of Dr.Sudhakar Sharma by order dated 17.03.2005 on the basis of the decision of the Selection Committee is not in conformity with the provisions of Recruitment Rules, 1999. In fact, by order dated 05.05.2014, it was held by the Akademi itself

that the appointment of Dr.Sudhakar Sharma was void *ab initio*. However, the said order was set aside by the Central Government by order dated 10.12.2014 and he was reinstated into service.

18. It is relevant to note that the allegations of misconduct and misappropriation of funds against Dr.Sudhakar Sharma were also found to be established after due inquiry by Akademi and he was dismissed from service by the Akademi by order dated 02.12.2011. The said order was also set aside by the Union of India by order dated 06.01.2012.

19. However, the fact remains that the inquiry proceedings initiated against Dr.Sudhakar Sharma have been revived by Akademi by order dated 11.12.2014 and the same has also been reiterated by the Central Government by order dated 15.10.2015. Despite the same, it is un-understandable as to why the said inquiry which was initiated long back could not be concluded till date. No justifiable explanation could be shown by the Government of India for the delay except stating that the proposal is pending for referring the inquiry proceedings to Chief Vigilance Commissioner.

20. Though it is pleaded by the Government of India that an Administrator has been appointed for administrative control of the Akademi, it appears that the same is nothing but an eye-wash and in fact Dr.Sudhakar Sharma himself has been controlling the affairs of Akademi. Having gone through the documents that have been placed on record and in the light of the sequence of events noticed from the pleadings, it appears to us that all is not well with Lalit Kala Akademi, stated to be an apex cultural body set up by Government of India. The allegation in the writ petitions that the continuation of Dr.Sudhakar Sharma is not in the interest of the management of Akademi therefore cannot be simply brushed aside but needs deeper

consideration. Hence, we consider it appropriate to re-open the writ petitions and call upon the Respondents to file their response.

21. Union of India, Ministry of Culture as well as Lalit Kala Akademi shall file detailed counter affidavits explaining as to how the appointment of Dr.Sudhakar Sharma can be justified and further explaining the delay in concluding the disciplinary proceedings initiated against Dr.Sudhakar Sharma.

22. Notice be also issued to Dr.Sudhakar Sharma in both the writ petitions returnable in four weeks.

23. We direct that the Union of India, Ministry of Culture and Lalit Kala Akademi shall not allow Dr.Sudhakar Sharma to interfere with the administration of Lalit Kala Akademi in any manner whatsoever pending the inquiry against him. We also direct that a full-time Administrator shall be appointed within two weeks from today to take control of the administrative affairs of the Akademi.

24. Re-notify on 4th July, 2017.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

APRIL 10, 2017
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