IN THE HIGH COURT OF JUDICATURE AT MADRAS

SPECIAL ORIGINAL JURISDICTION

W.P. NO. 6604 Of 2015

**South India Music Companies Association**

Having its registered Office at

Flat No. 3A, 3rd Floor, Vishesha Home,

Ramanujam Street, T. Nagar,

 Chennai – 600017

Represented by its Secretary,

Mr. J. Swaminathan  **… Petitoner**

**v**

1. **Union of India,**

Represented by its Secretary,

Ministry of Human Resource Development,

Shastri Bhavan,

New Delhi – 1101001

1. **The Copyright Board,**

Represented by the Registrar of Copyrights,

4th Floor, Jeevan Deep Building,

Parliament Street,

New Delhi – 110001 **… Respondents**

**ADDITIONAL AFFIDAVIT OF MR. J. SWAMINATHAN**

**ON BEHALF OF THE PETITIONER**

I, Mr. J. Swaminathan, s/o K. Jayaraman, aged about 50 years, residing at 5/3, Nattuveerachchi Street, Mylapore, Chennai – 600004, do hereby solemnly affirm and sincerely state as follows:

1. I am the Secretary of the Petitioner Association and hence competent to swear to this Affidavit.
2. Mr. V. Prashanth Kiran filed an RTI application before the Central Public Information Officer (CPIO), Mr. G.R Raghavender, Deputy Secretary (BP & CR) & Registrar of Copyrights, Department of Higher Education, Ministry of Human Resource Development, B2/W3, Curzon Road Barracks, Kasturiba Gandhi Marg, New Delhi 110001 on 11.07.2015 seeking information about the selection and constitution of the Copyright Board for the period starting from July 2014 till the date the application was filed.

1. The Applicant had sought information with regards to the selection and constitution of the Copyright Board in the form of four questions which are elucidated as follows along with the reply given by the CPIO vide his letter dated 24.07.2015:
* **Query (A):** Has a selection committee been constituted to select the members of the Copyright Board after March 2014?

The CPIO in its reply stated that a Search-cum-selection-committee for making recommendations for appointment of members in the Copyright Board had been constituted on 11th of April, 2014.

* **Query (B):** If the answer to the question A.) is in affirmative, who are the members of the selection committee of the copyright board constituted therein? Under what provision of law has such committee been constituted?

The reply given by CPIO this query was shocking as the members consisted of three Secretaries of various departments (one of whom heads the Selection Committee as its Chairman), the Chairman of the Copyright Board and an IP Expert. Also it stated that the committee was constituted in consultation with Department of Personnel and Training (DoPT) in accordance with DoPT OM dated 30.07.2007. It is hereby emphasized that the Supreme Court in *Union of India v. R. Gandhi, President of Madras Bar Association* (2010) 11 SCC 1 (hereinafter “NCLT”) had clearly stated that the Selection Committee for members of a judicial body such as a Tribunal should consist of adequate number of judges, so as to act as a check against the Executive abuse in the process of appointments. In the case of NCLT, the Supreme Court held that the Selection Committee should consist of (i) Chief Justice of his nominee (with a casting vote) (ii) A senior judge of the Supreme Court or the Chief Justice of a High Court & three Secretary level Officers of the Central Government (including one from the Ministry of Company Affairs). To the contrary, the constitution of the present Selection Committee explicitly violates the law laid down by the Hon’ble Supreme Court as it has failed to abide by the NCLT guidelines in every context.

This was followed by this Hon’ble Court vide its order dated \_\_\_\_\_\_\_ in the case of the Intellectual Property Appellate Board (“IPAB”) in *Shamnad Basheer v Union of India* (W.P. No. \_\_\_\_\_\_ of \_\_\_\_\_\_). This Hon’ble Court in the present writ petition, by its order dated \_\_\_\_\_, clearly stated that the consultative process mentioned in the IPAB judgment must be followed in all appointments. As is evident from the above reply, this has not been done.

* **Query (C):** Have any applications been received by the said selection committee? If the answer to the same is in the affirmative, kindly provide the copies of the call for applications and the applications themselves?

The CPIO replied that several applications were received from willing candidates in response to the two advertisements which were floated by the Ministry of Human Resource Development after the constitution of the aforementioned Search-cum-selection Committee but denied the copy of the said application as it contained third party information.

* **Query (D):** What is the status of the present selection process of the Copyright Board Members?

With regards to the final query, the CPIO stated that five applications were received as on date in response to the advertisement published in Employment News dated 16-22 May, 2015, inviting applications for the said posts and further stated that the said applications were yet to be scrutinized by the Committee.

1. In spite of the risk of repetition, it is submitted that the present Search-cum-selection Committee which was constituted on 11.04.2014 for selecting the candidates for the post of the Members of the Copyright Board has *prima facie* failed to abide by the guidelines laid down by the NCLT Judgment, the IPAB judgment and the interim order dated \_\_\_\_\_\_\_\_\_. The DoPT in spite of being well aware of the existence of the law of land laid down by the Hon’ble Supreme Court has failed to abide by the same thereby constituting an inappropriate Search-cum-selection Committee. Also, the advertisement inviting applications for the said post also do not confirm to the guidelines laid down by the NCLT Judgment, the IPAB judgment and the interim order dated \_\_\_\_\_\_\_\_.
2. Furthermore, the SLP filed by the Union of India against the IPAB judgment was dismissed by the Supreme Court on \_\_\_\_\_\_\_\_. Therefore, the findings of this Hon’ble Court in the IPAB judgment have become final, and must be applied to strike down the impugned provisions relating to the Copyright Board as well.
3. For the reasons stated above, it is prayed that this Hon’ble Court may be pleased to allow the writ petition and pass such further orders as it thinks fit to ensure that the interim order given on 10.3.2015 is followed by the Respondents in making all further appointments to the Copyright Board.

Solemnly affirmed at Madras on this the

 Day of August 2015 and signed his

Name in my presence.

 Before ME

Advocate, Chennai.