

(2011) 05 DEL CK 0156

In the Delhi High Court

Case No : Writ Petition (C) 4662 of 2007 and CM No's. 8176, 17643 of 2007 and 795 of 2008

All India Council for Technical Education

APPELLANT

Vs

Council of Architecture and Another

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10, 2, 3(4)
Architects Act, 1972 — Section 3(1)AA, 3(3), 35

Citation : (2011) 181 DLT 68 : (2011) 124 DRJ 183 : (2011) 5 RCR(Civil) 783

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Jatan Singh and Ashish Kumar Srivastava, for the Appellant; Naveen R. Nath, Amrita Sharma, Darpan K.M. for R-1, Ravinder Agarwal and Girish Pande for UOI, for the Respondent

Judgement

S. Muralidhar, J.—A short but interesting question of law concerning the interpretation of Section 3(3)(b) of the Architects Act, 1972 ("AA") arises for consideration in this writ petition.

2. The Petitioner, All India Council for Technical Education ("AICTE"), is a statutory body constituted by the All India Council for Technical Education Act, 1987 ("the AICTE Act 1987"). Prior to the AICTE Act 1987, the AICTE was established by a Resolution of the Government of India by a Notification dated 30th November 1945. The Council of Architecture ("COA"), Respondent No. 1 herein, is constituted u/s 3(1)AA. Section 3(3)(b)AA provides that the COA will, inter alia, include two persons nominated by the AICTE. At the time of the enactment of the AA, the AICTE Act 1987 had not been enacted. Although after the enactment of the AICTE Act the AICTE became a statutory body, no corresponding amendment was made to Section 3(3)(b)AA. Nevertheless, up to the year 2006 the COA was accepting the nominations of two members made by the AICTE. The Petitioner AICTE has set out in para 7.2 of the writ petition the names of the nominated persons of the AICTE on the COA from the years

1990-1993 and 2003-06. It is pointed out that in terms of Section 35 of the Council of Architecture Rules, 1973 ("COA Rules") one of three members of Disciplinary Committee of the COA has to be from amongst the two members nominated by the AICTE.

3. On 11th October 2006 the AICTE wrote to the COA nominating two members on the COA. In response to the said letter on 20th December 2006 the COA informed the AICTE that the nominations made by it were not in accordance with the provisions of the AA and were legally invalid. It was stated that the nominations of the two members by the AICTE were not acceptable to the COA. The Ministry of Human Resource Development ("HRD"), Government of India, Department of Higher Education supported the stand of the AICTE and on 14th June 2007 wrote to the COA stating that its Executive Committee did not have any authority to reject the nominations. Therefore, the COA was called upon to invite two members nominated by the AICTE for the forthcoming meeting of the COA to be held on 29th June 2007. When this invitation was not forthcoming, the AICTE on 27th June 2007 filed the present writ petition in which inter alia it sought the quashing of the decision dated 20th December 2006 of the COA and a direction to the COA not to hold a meeting on 29th June 2007 without participation of the two members nominated by the AICTE. A mandamus was also sought to the COA to accept the nominations made by the AICTE by its letter dated 11th October 2006.

4. On 27th June 2007 while directing notice to issue in this petition this Court passed the following interim order:

In the meantime, considering the facts and circumstances of the present case and the fact that the meeting of the Respondent No. 1 is fixed for 29th June 2007, at Mussoorie, the two nominated members/representatives of the Petitioner as specified in its letter dated 11th October 2006 are permitted to participate in the aforesaid meeting. Needless to state that the said participation by the representatives of the Petitioner shall be without prejudice to the rights and contentions of Respondent No. 1 as contained in its letter dated 20th December 2006.

5. As regards the meeting to be held on 21st December 2007 at Port Blair, an application, CM No. 17643 of 2007, was filed in which the following order was passed on 18th December 2007:

By this application, the Petitioner has assailed an order/direction of Respondent No. 1 issued by letter dated 20th December 2006 whereby it has been directed that nomination of two members of the Council of Respondent No. 1 made by the Petitioner is not in accordance with the provisions of the Architects Act, 1972. This issue is pending consideration in the main writ petition. Based on this order, the Respondent No. 1 denied the nomination of two persons made by the Petitioner on the Council of Respondent No. 1. These members were, therefore, not invited to the meeting of Respondent No. 1 which was proposed to be held on

29th June 2007. Consequently, interim directions were sought in respect of the participation of these members nominated by the Petitioner in such meeting. By an order passed on 27th June 2007, this Court had permitted the two nominated members/representatives of the Petitioner as specified in its letter dated 11th October 2006 to participate in the meeting of the Council of Respondent No. 1 in June 2007.

This application has been filed pointing out that next meeting of the Council of Architecture is proposed to be held on 21st December 2007 at Port Blair (Andaman Nicobar), and that no notice of meeting has been received by the members nominated by the Petitioner.

A prayer has been made in this application that pending consideration of the issue in the writ petition, the Respondent No. 1 is bound to permit the nominees of the Petitioner to participate in the proposed meeting.

Having heard learned Counsel for the parties and having perused the earlier orders passed by this Court, I deem it in the interest of justice to direct that the two nominated members/representatives of the Petitioner, as specified in its letter dated 11th October 2006, shall be permitted to participate in the meeting of the Council of Respondent No. 1 proposed to be held on 21st December 2007 at Port Blair.

Such participation shall be without prejudice to the rights and contentions of both the parties and the outcome of the adjudication in the present writ petition.

This application is disposed of in the above terms.

Dasti to both the parties.

6. It is submitted by Mr. Jatan Singh, learned Counsel appearing for the AICTE that the stand taken by the COA was untenable in law. Referring to the definition of "technical education" u/s 2 (g) of the AICTE Act, 1987 Mr. Singh submitted that architecture was one of the disciplines included in technical education. The provisions of both the AA as well as the AICTE Act, 1987 recognize the need for inter-disciplinary participation in the Executive Committees of both the COA and the AICTE. For instance u/s 3(4)(m)(vi) of the AICTE Act one representative of the COA is nominated by the central government to be on the AICTE. It is further submitted that in practice the nominations made by the AICTE to the COA had been accepted by the COA till 2006. Relying on the decisions of the Supreme Court in *State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others*, *Jaya Gokul Educational Trust Vs. The Commissioner and Secretary to Government Higher Education Department, Thiruvananthapuram, Kerala State and Another*, and *Bharathidasan University and Another Vs. All India Council for Technical Education and Others*, it is submitted that the Supreme Court had upheld the validity of the AICTE Act. The very object of setting the AICTE was with a view to "the proper planning and coordinated development of the technical education system throughout the

country" and since architecture was part of technical education, right of the AICTE to nominate two persons to be on the COA by Section 3(3)(b)AA cannot be taken away on a technical ground.

7. Appearing for the COA Mr. Naveen Nath, learned Counsel submitted that it is not for the Court to supply an obvious omission in the statute, i.e. the AA. The legislative intent, if any, should be manifest in express words of the statute. Placing reliance on the decisions in AIR 2003 SC 2103 Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, and Union of India (UOI) and Others Vs. Priyankan Sharan and Another, it is emphasized that "while interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary." In other words, the legislative omissions cannot be supplied by judicial interpretative process.

8. The above submissions have been considered. Section 2(g) of the AICTE Act, 1987 defines "technical education" to mean programs of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programs or the areas as the central government may, in consultation with the council by notification in the Official Gazette declare. Section 10 of the AICTE Act 1987 states that it shall be the duty of the Council (AICTE) to "take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards". Further the AICTE has been entrusted with various functions for the purpose of discharging of its statutory functions under the AICTE Act, 1987. The AICTE Act, 1987 does not contain a savings clause in regard to the AICTE that was constituted under the Resolution dated 30th November 1945 and was functioning as such at the time the AICTE Act came into force. What is obvious is that there was no hiatus with the enactment. The AICTE continued but as a statutory body under the AICTE Act, 1987. The failure to amend the AA in 1972 to reflect the change in the character of the AICTE as a statutory body after the enactment of the AICTE Act 1987 is perhaps an omission. However, it is not possible to agree with learned Counsel for Respondent No. 1, that this omission is reflective of the legislative intent not to have any representation of the AICTE on the COA. If indeed that were the legislative intent, then Section 3(3)(b) ought not to have remained; Section 3(3)(b)AA would have been repealed.

9. In Raghunath Rai Bareja v. Punjab National Bank (supra), the Supreme Court explained that resort can be had to the legislative intent for the purpose of interpreting a provision of law when the language employed by the legislature is doubtful or ambiguous or leads to some absurdity. However, when the language is plain and explicit, and does not admit of any doubt, "the Court cannot by reference to an assumed legislative intent expand or alter the plain meaning of an expression employed by the legislature". The key factor is, therefore, the

legislative intent. Examining the scheme of the AA as a whole, and Section 3 in particular, the clear intent that is manifest is that the COA has to have a representation of the AICTE. This is apparent from the plain language of Section 3(3)(b)AA. The fact that on the date of enactment of the AA the AICTE was a body constituted by a notification and subsequently became a statutory body will not make any difference when the real purpose and intent of Section 3(3)(b)AA is understood. Further, there is only one AICTE before and after the enactment of the AICTE Act, 1987. There is no scope for confusion on that score. Even as a matter of practice, the COA correctly understood and till 2006 accepted the nominations of two members of the AICTE to the COA. The AICTE referred to in Section 3(3)(b)AA should be understood to refer to the AICTE as constituted by the AICTE Act.

10. The above conclusion of this Court is consistent with the law relating to supply of an obvious gap in the legislation where it is absolutely necessary and where the failure to so interpret the provision will result in an absurdity that would defeat the legislative intent. The rule is that "all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute". The second requirement is that "the literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature". (see *Unique Butyle Tube Industries (P) Limited v. U.P. Financial Corporation*). Accepting the plea that the AICTE mentioned in Section 3(3)(b)AA can only mean the AICTE constituted by the resolution dated 30th November 1945 and not AICTE constituted by the AICTE Act, 1987 would indeed lead to absurd results not intended by the legislature which enacted the AA. On both counts, therefore, the contention of the AICTE merits acceptance.

11. For the aforementioned reasons, the impugned communication dated 20th December 2006 from the COA to the AICTE is set aside. The COA will hereafter accept nominations made by the AICTE to the COA. The writ petition and the pending applications are disposed of in the above terms, however, with no order as to costs.