

(2009) 03 MAD CK 0115

In the Madras High Court

Case No : Writ Appeal No. 1030 of 2007

Ar. Vijay Garg and Ar. Alok Ranjan

APPELLANT

Vs

Ar. P. Satheeshkumar and Others

RESPONDENT

Date of Decision : 09-03-2009

Acts Referred:

Architects Act, 1972 — Section 3, 3(3), 5, 5(2), 6(2)
Council of Architecture Rules, 1973 — Rule 2, 3, 4, 5, 6

Citation : AIR 2009 Mad 135 : (2010) 8 RCR(Civil) 2641

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : P.R. Raman, for the Appellant; A. Thiagarajan, for R.1 in WA. 1030/2007, R. Thiagarajan, S.C. for R.1 in WA. 1031/2007, M. Lakshmipathi, R. Ramakrishnan, ACGSC for R. 2, T.S. Gopalan, S.C. for R. 3, T.S. Sivagnanam and M.S. Govindarajan, for R. 4, for the Respondent

Final Decision : Allowed

Judgement

Elipe Dharma Rao, J.—For the sake of convenience and easy reference, the parties are referred to as per their ranking in the writ petitions.

2. Both these matters pertain to the election to fill up five vacancies of Member posts to the third respondent/Council of Architecture. The writ petitioners have filed the writ petitions before the learned single Judge, praying to issue a Writ of Mandamus to the Union of India, represented by its Secretary to Government, Ministry of Human Resources and Development to appoint Returning Officer to conduct the election to fill up the five vacancies in the second respondent Council u/s 3(3)(a) of the Architects Act, 1972 among the Members of the Indian Institute of Architects, Chennai.

3. In their writ petitions, the writ petitioners have contended that they are the Architects registered with the Council of Architecture, New Delhi and they are also the members of the Indian Institute of Architects. Pursuant to the notice issued by the respondents 4 and 5/who are the appellants herein, the writ

petitioners have filed their nominations for the posts of Members and since they were rejected by the 6th respondent/the Scrutineer appointed for the purpose, they have filed the writ petitions. The writ petitioners would impart motives to the respondents 4 and 5 therein, who are the appellants herein and also to the 6th respondent/the Scrutineer. As the learned single Judge has allowed the said writ petitions, the respondents 4 and 5 therein have come forward to file these writ appeals.

4. We have heard Mr. P.R. Raman, learned counsel for the appellants in both the appeals; Mr. A. Thiagarajan, learned counsel for the first respondent in W.A. No. 1030 of 2007; Mr. R. Thiagarajan, learned senior counsel for the first respondent in W.A. No. 1031 of 2007; Mr. R. Ramakrishnan, learned counsel for the second respondent in both the appeals; Mr. T.S. Gopalan, learned Senior Counsel for the third respondent in both the appeals and Mr. M.S. Govindarajan learned counsel for the fourth respondent in both the appeals.

5. While on the part of the writ petitioners, it had been strenuously argued that until and unless a Returning Officer is appointed by the Government of India, no free and fair elections would be conducted, on the part of the Government of India it has been contended that the question of appointing the Returning Officer for the elections u/s 3(3)(a) of the Architects Act, 1972 will not arise since the Architects Act and the Council of Architecture Rules mandate appointment of Returning Officer only for the election u/s 3(3)(c) of the Act. The appellants would also submit that there is no need to appoint any Returning Officer by the Government of India and the writ petitions have been filed by the petitioners under misconception of law and facts and would pray to set aside the order passed by the learned single Judge.

6. Upon hearing all the parties, the question that arises for consideration in these appeals is "whether the Government of India could be directed to nominate a Returning Officer for the election of five architects as per Section 3(3)(a) of the Architects Act, 1972".

7. For better appreciation of the case, we shall now extract Section 3 of the Architects Act, 1972, which reads as follows:

3(1) The Central Government shall, by notification in the Official Gazette, constitute, with effect from such date as may be specified in the notification, a Council to be known as the Council of Architecture, which shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property; both movable and immovable, and to contract, and may by that name sue or be sued.

(2) The Head Office of the Council shall be at Delhi or at such other place as the Central Government may, by notification in the Official Gazette, specify.

(3) The Council shall consist of the following members, namely:

(a) five architects possessing recognised qualifications elected by the Indian

Institute of Architects from among its members;

(b) two persons nominated by the All India Council for Technical Education established by the Resolution of the Government of India in the late Ministry of Education No. F.16-10/44-E.III, dated the 30th November, 1945;

(c) five persons elected from among themselves by heads of architectural institutions in India imparting full time instruction for recognised qualifications;

(d) the Chief Architects in the Ministries of the Central Government to which the Government business relating to defence and railways has been allocated and the head of the Architectural Organisation in the Central Public Works Department, ex officio;

(e) one person nominated by the Central Government;

(f) an architect from each State nominated by the Government of that State;

(g) two persons nominated by the Institution of Engineers (India) from among its members; and

(h) one person nominated by the Institution of Surveyors of India from among its members.

Therefore, while election of five architects to the Council are to be elected by the Indian Institute of Architects from among its members as per Section 3(3)(a), the five persons to the Council be elected from among themselves by heads of architectural institutions in India imparting full time instruction for recognised qualifications, as per Section 3(3)(c). Both these Sub-clauses (a) and (c) have been crafted for two different specific purposes and the cases on hand pertain to the election of five posts of Members to the Council as has been contemplated u/s 3(3)(a) above.

8. u/s 5 of the Act, the mode of elections has been contemplated and for easy reference, we extract the same hereunder:

5(1) Elections under this Chapter shall be conducted in such manner as may be prescribed by rules.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government by notification in the Official Gazette in this behalf, and the decision of the Tribunal shall be final:

Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election.

(3) The expenses of the Tribunal shall be borne by the Council.

9. From the reading of this Section 5, it is clear that the elections shall be

conducted in the manner prescribed by rules and if there is any dispute regarding such election, the same shall be referred by the Council to a Tribunal appointed by the Central Government and the decision of the Tribunal shall be final.

10. Council of Architecture Rules 1973 provides for the manner in which the elections shall be conducted. Rule 2(d) of the Council of Architecture Rules, 1973 defines the term "Returning Officer" as "any officer appointed as such by the Central Government for the purpose of these Rules". Rules 3 and 4 contemplate the procedure to be followed for the election to the Council under Clause (a) of Sub-section (3) of Section 3, which is the subject on hand. Rules 3 and 4 of the Council of Architecture read thus:

3. Representatives of the Indian Institute of Architect -

(1) The President shall, not later than sixty days before the date of occurrence of vacancy by the expiry of the term of office of a member, send intimation thereof to Central Government who shall, not later than forty five days before the date of occurrence of the vacancy, forward a notice by registered post to the Secretary of the Indian Institute of Architects requesting him to hold an election by a date not later than the date specified in the notice.

(2) In the case of a vacancy under Sub-section (2) or Sub-section (3) of Section 6 or any other vacancy, the President shall notify the Central Government as soon as possible the occurrence of such vacancy and the Central Government shall thereupon forward a notice by registered post to the Secretary of the Indian Institute of Architects requesting him to hold an election to fill that vacancy by a date not later than the date specified in the notice.

(3) For the purpose of the first election under Clause (a) of Sub-section (3) of Section 3, it shall be sufficient if the Central Government forward a notice by registered post to the Secretary of the Indian Institute of Architects requesting him to hold the election by a date not later than the date specified in the notice.

4. Intimation of name of elected person to Central Government -

The name of the elected person shall be intimated by the Secretary of the Indian Institute of Architects to the Central Government who shall take steps to publish the name of the elected person in the Official Gazette.

That's all what has been mandated under the Rules regarding the election to the Council u/s 3(3)(a). From the reading of the above Rules 3 and 4, it is clear that the role of the Central Government is very limited insofar as the election u/s 3(3)(a) is concerned and the responsibility to conduct the election u/s 3(3)(a) has been fixed on the President of the Council of Architecture and the Secretary of the Indian Institute of Architects shall intimate the name of the elected person to the Central Government, whereupon the Central Government shall publish the name of the elected person in the Official Gazette. Whereas from Rule 5 onwards, the procedure for the election to the Council u/s 3(3)(c) has been

mandated, whereunder Rule 6 reads thus:

6. Returning Officer -- The Returning Officer shall call upon all the head of architectural institutions in India to elect such number of members as are referred to in Clause (c) of Sub-section (3) of Section 3 and in the case of first election, five members shall be elected.

11. On a conjoint reading of Sections 3(3)(a) and 3(3)(c), it is clear that while the responsibility of holding election u/s 3(3)(c) of the Architects Act is on the Council of Architecture with the assistance of the Returning Officer appointed by the Government of India, the responsibility of holding the elections u/s 3(3)(a) of the Act is solely on the Indian Institute of Architects. Even in the counter affidavit filed by the first respondents, who are the writ petitioners, they have stated that on all earlier occasions, it is the IIA which is conducting the elections u/s 3(3)(a). The term 'Returning Officer' mentioned in Rule 6 of the Council of Architecture Rules, pertain only to the election of five persons from among themselves by heads of architectural institutions in India imparting full time instruction for recognized qualifications, as has been defined u/s 3(3)(c) and it is not for the election mentioned in Section 3(3)(a). Had the Legislature thought that there is every need of appointing the 'Returning Officer' by the Government of India even for the elections u/s 3(3)(a), Rule 6 would have been more wider covering even the election u/s 3(3)(a) of the Act. But, it is not so and the Legislature is specific regarding the appointment of Returning Officer only with regard to the election contemplated u/s 3(3)(c). Therefore, what has not been contemplated under the Act and the Rules cannot be threshed on the Government of India, by issuing such a Writ of Mandamus. While for the election u/s 3(3)(c), an obligation is created on the Central Government to appoint a Returning Officer, no such obligation is created on the Central Government insofar as the election u/s 3(3)(a).

12. For issuing the Writ of Mandamus, the legal obligation on the part of the respondent, the demand on the part of the petitioner and the refusal or non-consideration of such demand by the respondent must be there. In the case on hand, no such legal obligation is created on the Government of India to appoint the Returning Officer.

13. There is no doubt that there is force in the arguments advanced on the part of the writ petitioners that there is every possibility of abuse of the whole process of election by the concerned, since there were incidents wherein the person who conducted the elections himself has adjudged himself as the winner. What is to be done in such cases has also been contemplated u/s 5(2) of the Act, providing remedy for such aggrieved persons, to approach the Tribunals constituted for this purpose by the Central Government.

14. But, a judgment of the learned single Judge of the Bombay High Court delivered in Appeal from Order No. 607 of 2004, dated 1.10.2004 Billimoria Jehan Bux Tehmuras and 2 Ors. v. The Indian Institute of Architects and Anr. was

pressed into service on the part of the writ petitioners, wherein the learned single Judge of the Bombay High Court has observed that because of the long legal procedure before the Tribunals in such election disputes, the time of office of such illegally elected body was completing its tenure and walking away coolly and therefore the Central Government must take the responsibility of appointing the Returning Officer and conduct the elections in all cases. We are unable to accept the said view taken on the part of the learned single Judge of the Bombay High Court, for the simple reason that no such obligation has been created on the part of the Central Government insofar as the election u/s 3(3)(a) of the Act is concerned and the redressal mechanism for the election disputes has also been very well contemplated under the Act itself.

15. For all the above discussions, holding that the very filing of the writ petitions has no basis and that the learned single Judge has erred in allowing the writ petitions, since being contrary to the provisions of the Act and the Rules, both these writ appeals stand allowed, setting aside the common order passed by the learned single Judge. No costs.