
(2010) 05 DEL CK 0045

In the Delhi High Court

Case No : Writ Petition (C) 8981-83 of 2006 and C.M. Appls. 6621, 11863 and 12489/06, 2800 of 2007, 4207/08 and 14335/09

Balbir Verma and Others

APPELLANT

Vs

Council of Architecture and Others

RESPONDENT

Date of Decision : 26-05-2010

Acts Referred:

Architects (Professional Conduct) Regulations, 1989 — Regulation 2(1)
Architects Act, 1972 — Section 30(2)

Citation : (2011) 7 RCR(Civil) 1071 : (2010) 4 SLR 490

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

Bench : Single Bench

Advocate : Srikala Kumar, Guru Krishna Kumar and Subramaniam Prasad, for the Appellant; Hetu Arora and Amrita Sharma for R-1, S.P. Arora, for R-2, Atul Nanda and Gaurav Gupta for R-3/UOI, Sanjoy Ghose and Anuj Aggarwal for R-4, for the Respondent

Judgement

S. Muralidhar, J.—The three Petitioners are Architects. The present writ petition was filed by them challenging the decision dated 30th November 2005 taken at the 46th meeting of the Respondent No. 1 Council of Architecture ("Council") that the petitioners were guilty of professional misconduct under Regulation 2(1) (x) of the Architects (Professional Conduct) Regulations 1989. The petitioners challenge the communication dated 24th January 2006 addressed by the Respondent No. 1 to the complainant, Respondent No. 6 herein informing him of the above decision dated 30th November 2005 of the council and a notice dated 24th April 2006 issued to each of them asking them to appear before the Council at its next meeting on 27th May 2006. The further prayer was to prohibit the Council from proceeding with any hearing or enquiry against the petitioners u/s 30(2) of the Architects Act, 1972.

2. The order dated 26th May 2006 passed by this Court set outs succinctly the issues raised in the petition. The said order reads as under:

1. First Petitioner claims to be the immediate past President of Indian Institute of Architecture. Petitioner No. 2 claims to be a former Director of School of Planning and Architecture. Petitioner No. 3 claims to be a Professor at IIT, Kharagpur.

2. Origin of dispute which has resulted in the filing of the present petition is the conflict of jurisdiction between All India Council of Technical Education (AICTE), a body constituted under a Central Act by the Union Parliament called AICTE Act, 1987 and the (Council of Architecture constituted under the) Architects Act, 1972.

3. Whereas Respondent No. 1 and those who are in charge of its affairs plead that primacy has to be that of the Architects Act, 1972 and the bodies constituted thereunder in relation to institutes imparting education leading to a degree in architecture, AICTE asserts a right to the contrary.

4. A writ petition came to be filed in the Madras High Court in which an ex parte injunction was passed on 15.12.2003. As per Respondent No. 1 effect of the said injunction was that in matters relating to the running of affairs of technical institutes imparting education in architecture leading to award of degrees in architecture, it was respondent No. 1 alone which had jurisdiction to deal with educational norms and standards. Petitioners associated themselves with AICTE and marched under a banner of a body called All India Board of Architecture and Town Planning Education in which members of AICTE were associated.

5. Dispute pertaining to an institute granted recognition by AICTE and running a degree course in architecture, institute being affiliated with Guru Gobind Singh Indraprastha University required consideration in the context of a decision taken by AICTE to reduce the number of seats in the academic year 2004-2005.

6. Petitioners were constituted as members of the said body having members from Institute of Architecture and AICTE. They made certain recommendations pertaining to the said Institute i.e. Vastu Kala Academy.

7. As per the Petitioners, Respondent No. 4 was elected as the President of respondent No. 1 at the last election held. Petitioners claim that Respondent No. 4 is acting mala fide against them.

8. After putting Petitioners to notice and receiving reply, Respondent No. 1 has prima facie found Petitioners guilty of misconduct and has held the prima facie action needs to be taken against the Petitioners under Regulation 2(1)(x) of the Architects (Professional Conduct) Regulations, 1989.

9. Shri Arun Jaitly, learned Senior counsel appearing for Respondent No. 1 states that additionally Sub-Clause (viii) and (ix) of Regulation 2(1) are also attracted.

10. The 3 Sub-Clauses of Sub-regulation 1 of Regulation 2 read as under:

(viii) maintain a high standard of integrity.

(ix) promote the advancement of Architecture, standards of Architectural

education, research, training and practice.

(x) conduct himself in a manner which is not derogatory to his professional character, nor likely to lessen the confidence of the public in the profession, nor bring Architects into disrepute.

11. Learned Counsel for the Petitioners urges that misconduct comprise intentional and positive acts and not mere wrong decisions, if at all. Jurisdictionally, counsel for the petitioner urges that no infraction of any rule or regulation has been committed by the petitioners and that association with AICTE has not led to lowering the dignity of Respondent No. 1 much less lessening the confidence of the public in the profession.

12. Per contra, argument of the learned Senior counsels who appear for the respondents on advance copy being served is that action of the Petitioners have denigrated respondent No. 1 for the reason effect thereof is that Respondent No. 1 is denuded of its powers.

13. Issue which arises for consideration in the present writ petition would be whether on the facts and circumstances misconduct has been committed by the Petitioners under the 3 clauses of Sub-Regulation 1 of Regulation 2 of the 1989 Regulations.

14. Prima facie, case has been made out for issuance of a show cause notice for the reason though misconduct is a word of wide amplitude and may be incapable of a precise definition, but accepted norms of misconduct are improper wrongful behaviour, wilfully doing forbidden acts or transgressing established and defined rules of action. Mere negligence and unintentional failure are outside the bounds of an actionable misconduct.

15. Issue notice to show cause as to why rule nisi be not issued.

Counsel as above accept notice for Respondents 1, 2 and 5. On filing of process fee, remaining respondents be served returnable for 14.7.2006.

CM 6621/2006

1. Notice. Counsel as above accept notice for Respondents 1, 2 and 5.

2. Pending final hearing of the writ petition it is directed that any decision taken by respondent No. 1 pursuant to the meeting to be held on 26th and 27th May, 2006 or at any deferred date would not be given effect without leave of the court.

3. Dasti under Signatures of the Court Master.

3. Thereafter, at the hearing on 4th April 2007 learned Senior counsel appearing for the Council stated that it would be willing to reconsider the entire matter in case the Petitioners made a representation to it. Learned Senior counsel appearing for the Petitioners expressed no difficulty in making a representation. It was directed by this Court that the representation would be made by the petitioners within one week and would be considered by the Council within six

weeks thereafter. This effectively meant that the earlier decision dated 30th November 2005 of the Council did not survive and the allegations/charges against the petitioners would be examined afresh. A representation was thereafter made by the Petitioners 1 and 3 to the Council on 9th April 2007. As far as Petitioner No. 2 was concerned, he is stated to have been so frustrated with the events that he wrote a letter to the Council on 6th January 2006 surrendering his certificate of registration thus severing his ties with Respondent No. 1.

4. On 15th November 2007 this Court made the following order:

It is submitted by learned Counsel for the Respondent No. 1 that pursuant to the directions made by this Court on 2nd (sic 4th) April 2007 the Respondent No. 1 has constituted a two member committee which has considered the representation of the Petitioners and undertaken a review of the earlier order. It is stated that the recommendations of the two member committee have been placed before the Executive Committee which has considered the same and that the matter is required to be considered by the Full Council which is meeting on 21st December 2007. He prays for a short adjournment to ascertain the position and take instructions on the recommendations of the Executive Committee to enable this Court to appropriately post the matter.

At his request, list on 28th November 2007.

5. At the next hearing on 28th November 2007, this Court was informed that the two-member Committee had recommended that all disciplinary proceedings against the petitioner(s) be withdrawn. It was further submitted that the recommendations of the two-member committee had been placed before and approved by the Executive Committee of Respondent No. 1 as well. It was next being placed before the Full Council which held its meeting on 21st December 2007.

6. Thereafter, by a letter dated 13th February 2008 the Petitioners were communicated a decision dated 21st December 2007 of the Council whereby while recalling the earlier decision of the Council suspending the registration of the three Petitioners for ten years, the Council "reprimanded" them "for their deliberate actions", and "warned" them "not to repeat these actions in future." On 18th March 2008 this Court directed that there would be a stay of the effect and operation of the order dated 21st December 2007.

7. In the order dated 11th August 2009 this Court observed that in case the Petitioners wanted to challenge the order dated 21st December 2007 they would take appropriate steps. The interim order was directed to continue.

8. Thereafter, the Petitioners filed CM Application No. 14334 of 2009 challenging the Council's order dated 21st December 2007. That application was allowed and the writ petition was amended. Thereafter counter affidavits were filed by the Respondents to the amended writ petition as well.

9. This Court has heard the submissions of Ms. Srikala Kumar, learned Counsel for the Petitioners, Ms. Hetu Arora, learned Counsel for the Council, Mr. S.P. Arora for Respondent No. 2 AICTE, Mr. Atul Nanda with Mr. Gaurav Gupta, learned Counsel on behalf of Union of India Respondent No. 3 and Mr. Sanjoy Ghose, learned Counsel appearing for the Respondent No. 4.

10. As already noticed by this Court in the first order dated 26th May 2006, the principal charge against the Petitioners was that they associated themselves with the AICTE and marched under a banner of a body called All India Board of Architecture and Town Planning Education in which members of AICTE were associated. There was a tussle going on between AICTE and the Council as regards the awarding of the degrees in architecture. The Council was asserting its primacy in terms of the Architects Act and that was being contested by the AICTE. There was also a dispute pertaining to the grant of recognition by AICTE to the Vastu Kala Academy which was offering a degree course in Architecture. The said institute was affiliated with Guru Gobind Singh Indraprastha University. A decision had been taken by AICTE to reduce the number of seats in the said course for the academic year 2004-05. The Petitioners were constituted as members of the said body having members from the Institute of Architecture as well as the AICTE. They made certain recommendations pertaining to the Vastu Kala Academy. According to the Council the petitioners were in breach of Regulation 2(1)(viii)(ix) and (x) of the Architects (Professional Conduct) Regulations 1989 which have already been reproduced hereinbefore.

11. Having considered the pleadings and the submissions of learned Counsel for the parties, this Court affirms the prima facie view that it had expressed at the stage of admission of the writ petition. The alleged acts attributed to the Petitioners do not satisfy the charge of misconduct as contemplated in the aforementioned provisions. There is a degree of professional autonomy and independence which every professional, including the members of the Respondent No. 1, enjoy and which cannot be taken away merely because they are required to be the members of the disciplinary body. Their right to render professional advice in their professional capacity to any individual, body or entity, including another institution with which the Respondent No. 1 may have difference of opinion on a legal issue, cannot be curtailed. The internal democratic working of an institution, particularly one of professionals, is essential for the healthy development of the profession and for laying down appropriate standards. Stifling dissent and intolerance to differing viewpoints does not augur well for a professional body interested in promoting best practices.

12. However, as far as the present proceedings are concerned, the above issues no longer required to be examined by this Court since on the representation made by Petitioners 1 and 3, a two-member Committee constituted by the Council has already accepted their explanation and held in their favour exonerating them of any misconduct. The two-member Committee on 29th June 2007 gave a report. Its findings and recommendations read as under:

Findings of the Committee are as under:

1. There is no material evidence to establish beyond doubt that the act of carrying out inspections by the Respondent Architects Shri Balbir Verma and Shri Biplab Sengupta as asked by AICTE has adversely affected or interfered with the functioning of COA in any manner. It is pertinent to note that Vastu Kala Academy was subsequently granted permission by the Council of Architecture to run the architecture course. The Third Respondent Shri E.F.N. Reibero on receiving the report from the Expert Committee comprising of Shri Balbir Verma and Shri Biplab Sengupta gave his recommendations to AICTE in the capacity of the Chairman of the All India Board of Architectural and Town Planning Education to review the decision earlier taken by the AICTE, which does not refer to any action involving Council of Architecture.
2. All the Respondents have acted on behalf of AICTE which is statutory body in the capacity of professional advisers only.
3. The allegation that Respondents have brought disrepute to the architects and have conducted themselves in a manner derogatory to the architects professional character also cannot be established from the documents made available to the Committee and personal hearing granted by the Committee to the Respondents.

Recommendations:

In the light of the above, the entire matter along with the fresh representations dated 9th April 2007 of the Respondents and the hearing of the Committee on 28th September 2007 has been reconsidered by the Committee and the Committee is of the opinion that the Respondents have only acted as professional advisors to AICTE and at no point of time showed any disrespect to the Council of Architecture or the Architects Act 1972 or the Regulations framed thereunder. The Committee also took note of the observations of Shri P.R. Das, Member, Disciplinary Committee in respect of Shri Biplab Sengupta regarding his conduct of casting aspersion against the disciplinary proceedings held earlier. When asked by the Committee for explanation, Shri Biplab Sengupta expressed his regrets before the Committee.

As it appears it is the over sensitivity of the Petitioner and the ambiguity caused due to the dispute as a result of AICTE's claim on architectural education, etc. led to mis-interpretation of the case as a whole. The Committee as such recommends that the Disciplinary proceedings against the Respondents may be withdrawn subject to the willingness of all the Respondents to withdraw the court cases filed by them in the Delhi High Court.

(emphasis supplied)

13. As already noticed the above findings of the Committee were placed before the Executive Committee which accepted it and thereafter placed the matter before the Full Council. The Full Council which met on 21st December 2007 deliberated on the report of the two-member committee. The portion of the

minutes of the Meeting of the Council relevant to the case on hand reads as under:

Before taking up this item President requested Shri Balbir Verma, a member of the Council, to withdraw from the meeting for this item to enable the Council to consider the matter, as he being one of the persons who are related to this item.

The President informed the members that the Council at its last meeting held on 29th June 2007 appointed a Two Member Committee consisting of Shri P.R. Dass and Shri N.B. Shelar for considering the representations received from (1) Shri Balbir Verma, New Delhi (2) Shri Biplab Sengupta Kharagpur and (3) Shri E.F.N. Riberio, New Delhi for reconsideration of the case against them by the Council. This Committee met on 7th September 2007 and 28th September 2007 and heard all the Respondent Architects and accordingly submitted its report which is annexed with the Agenda.

The Council deliberated in detail in the matter. The Council noticed that these architects have acted on an Inspection Committee of a different body (AICTE) for inspecting architectural institutions and also undertaking a work from the AICTE which was restrained by an interim order of Madras High Court. These Architects have also joined AICTE in suggesting amendments in Architects Act when the issue as to who will deal with Architectural Education was being contested in various courts. However, the Council also considered clarifications submitted by these architects before the Committee and the recommendations of the Committee as to tendering of apology by them. Therefore, the Council has taken a view to recall its earlier order of suspending the Registration of these Architects for 10 years. At the same time the Council has noticed that the Architects in question are senior professionals and cannot be said to be ignorant about the issues relating to the powers of the AICTE and the Council of Architecture, more so in view of the fact that Shri Biplab Sengupta and Shri EFN Riberio were at that point of time members of the Council apart from being architects.

Order:

Shri Balbir Verma, New Delhi, Shri Biplab Sengupta, Kharagpur and Shri E.F.N. Riberio, New Delhi are hereby reprimanded for their deliberate actions, and warned not to repeat these actions in future;

The decision of the Council suspending the registration of the above three Architects for a period of 10 years is recalled; and

The request of Shri E.F.N. Riberio made vide letter dated 6th January 2006 for surrender of his Certificate of Registration is accepted and his name is directed to be removed from the Registrar of Architects maintained by the Council.

(emphasis supplied)

14. A perusal of the above proceedings reveals that despite the two-member Committee set up by the Council totally exonerating the Petitioners of any

misconduct, the Council has "reprimanded" them. Thus even without disagreeing with the report of the two-member Committee, and recording a finding of guilt, the Council has proceeded to punish the petitioner with a "reprimand". The two-member Committee had exonerated the Petitioners and returned a finding that they could not be held guilty of any of the charges against them and had recommended that the disciplinary proceedings against them be withdrawn. The Council could not have, without expressly disagreeing with the Committee for reasons to be explained, gone ahead and reprimanded the Petitioners. On the other hand, this Court finds that the Council has not even referred to the findings of the Committee.

15. If the Council was concurring with an adverse report of the Committee, then perhaps it was not required to give elaborate reasons. However, where it was impliedly disagreeing with the Committee it was required to give reasons. In the extracted decision dated 21st December 2007 the Council does not expressly state that it disagrees with the findings and recommendations of the Committee. In fact it appears that the Council impliedly accepted the Committee's report and decided to recall its earlier orders suspending the registration of the Petitioners for ten years. That should have been the end of the matter. In the considered view of this Court, the decision of the Council to go ahead and reprimand the Petitioners was inconsistent with its decision to impliedly accept the Committee's report. The reprimand was not preceded by any express finding of guilt of the petitioners for professional misconduct. Consequently, imposing a penalty of "reprimand" was wholly without the authority of law.

16. Further, the Council appears to have justified its decision to "reprimand" by referring to matters which were not even the subject matter of the disciplinary proceedings and therefore not discussed by the two-member committee. For instance, the allegation that the petitioners joined the AICTE in suggesting amendments to the Architects Act was not a charge against the petitioners for which they were issued a show cause notice. Further, it is incomprehensible how the giving of suggestions by the petitioners, each of whom is an architect of several years' of experience, to amend the Architects Act can be construed as an act of misconduct or indiscipline. Given that the unambiguous recommendation of the two-member Committee was of withdrawing the disciplinary proceedings, this Court is unable to appreciate the basis on which the Council even impliedly ? reversed? this recommendation, if at all it did, without discussing the specific findings and recommendations of the Committee and then decided to reprimand the Petitioners.

17. Consequently, this Court finds that the decision taken by the Council on 21st December 2007 to reprimand the petitioners and "warn" them is unsustainable in law. To the above extent the impugned decision dated 21st December 2007 of the Council is hereby set aside. The earlier decision dated 30th November 2005 of the Council having merged with its subsequent decision of 21st December 2007 does not in any event survive.

18. The writ petition is allowed in the above terms, with costs of Rs. 10,000/- of which Rs. 5,000/- each will be paid by the Respondent No. 1 Council to Petitioner Nos. 1 and 3 within a period of four weeks from today. The pending applications are disposed of.