

(2015) 10 CAL CK 0036

In the Calcutta High Court

Case No : M.A.T. No. 15 of 2015 and C.A.N. No. 644 of 2015

Council of Architecture and Others

APPELLANT

Vs

Mala Mukherjee and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Architects Act, 1972 — Section 10, 14, 15, 17, 2(b)

Citation : AIR 2015 Cal 360

Hon'ble Judges : Manjula Chellur, C.J. and Joymalya Bagchi, J.

Bench : Division Bench

Advocate : Naveen R. Nath, Sayantan Bose, R. Dutta and Partha Pratim Naskar, for the Appellant; Prabal Mukherjee, Suhrid Sur, Nilanjan Hazra, Pushan Kar, Ashok Prasad and Indrajit Dasgupta, for the Respondent

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—The question which falls for decision in this appeal is whether the appellant Council of Architecture (hereinafter referred to as "COA") was entitled to decline registration of the petitioner as an architect under the Architects Act, 1972 (hereinafter referred to as the "Act of 1972") in view of its decision taken in its 60th meeting to conduct an "Architecture Competency Test" followed by a viva voce test for candidates who were enrolled by Indian Institute of Architects (hereinafter referred to as "IIA") after 1st July, 2002 and had secured associate membership of the said institution. Respondent-petitioner had enrolled herself with IIA as a student in 2004 and had successfully passed the examination conducted by IIA in 2011 and had thereafter become an associate member of the said institution. Such membership to IIA being a "recognized qualification" in Architecture under the Act of 1972, the petitioner applied to COA for registration under Section 17 of the said Act on 31st December, 2002. On February 11, 2013, COA informed the petitioner that it had recommended withdrawal of recognition of IIA to the Central Government and decision thereon was awaited. Finally on December 12, 2013, the respondent-petitioner was

informed that by virtue of its 60th meeting COA had decided to conduct an "architecture competency test" and viva voce test for registration of candidates who were enrolled with HA after 1st July, 2002 and had thereafter secured associate membership of the said institution. Challenging the aforesaid decision of COA, the respondent-petitioner moved the instant writ petition.

2. Learned single Judge by the impugned judgment and order allowed the writ petition, inter alia, holding that COA had no statutory sanction to conduct competency test and hold viva voce test for the purpose of registration of the respondent-petitioner inasmuch as she possessed a recognized qualification under the Act and was, therefore, entitled to such registration in terms of Section 17 thereof. This decision has been appealed before us.

3. Mr. Nath, learned counsel appearing for COA strenuously argued that COA was a statutory body vested with the duty of maintaining the standards of architectural education and professional standards under the Act of 1972. Accordingly, COA had powers to conduct competency and viva voce test in order to prescribe minimum standards of architectural education in the country. The course conducted by the IIA. was below par and did not satisfy the minimum standards of education as prescribed in Minimum Standards of Architectural Education Regulations, 1993 (hereinafter referred to as the "Regulations") and accordingly, COA had recommended for cancellation of the qualification awarded by HA to be cancelled as a "recognized qualification" for registration under the Act of 1972. Such recommendation was hanging fire before the Central Government for a long time. Under such circumstances, they maintain minimum standard of architectural education, COA with concurrence of IIA had taken the impugned decision to hold the competency and viva voce test as aforesaid. Such decision, therefore, cannot be said to be in violation of the provision of Act of 1972 or contrary to public interest. On the other hand, COA, being vested with the duty to maintain minimum standards of architectural education must be held to possess incidental powers of prescribing competency test in exercise of Section 21 of the Act of 1972. He further argued that power under Section 21 of the Act of 1972 overrode the right of registration of a candidate under Section 17 of the Act. He also argued that such power is independent to the powers of COA to make regulations as envisaged under Section 45 of the said Act.

4. Mr. Mukherjee, senior counsel supported the decision of the First Court. He argued that till date membership to IIA is a recognized qualification as defined under Section 2(d) read with Section 14 of the Act of 1972. Respondent-petitioner having obtained such recognized qualification had a vested right to be registered as an architect. Such right could not be taken away the retrospective operation of the impugned decision dated December 12, 2013. He further submitted that as the recommendation of COA had not yet been accepted by the Central Government and the "recognized qualification" had not been cancelled, COA cannot be permitted to de-recognize such qualification indirectly which it had failed to do directly by proposing to conduct competency/viva voce test for

the purpose of registration, as aforesaid. He submitted that 1983 Regulations did not empower COA to hold competency/viva voce test for registration as architect of candidates having recognized qualifications and, therefore, the impugned decision is ultra vires the aforesaid Act. He also submitted that the degree of COA has been recognized by the Department of Education, Ministry of Human Resource Development, Government of India vide its memo dated 5th August, 1992, and 30th March, 1998, to be at par with a Bachelor's degree of Architecture of a recognized Indian university for the purpose of employment to posts and services under the Government of India. He relied on the communications of Government of India with COA dated 6th April, 2011, and 31st January, 2014, wherein the Government had in unequivocal terms stated that till steps were taken under Section 20 of the Act architectural qualification issued by IIA cannot be said to be de-recognized by any authority. He accordingly prayed for dismissal of the appeal.

5. For a better appreciation of the contentions of the parties let us refer to various relevant provisions of the Act of 1972.

"2. In this Act, unless the context otherwise requires,

.....

(d) "recognized qualification" means any qualification in architecture for the time being included in the Schedule or notified under section 15 ;

(e) "register" means the register of architects maintained under section 23 ."

"14. (1) The qualifications included in the schedule or notified under section 15 shall be recognized qualifications for the purposes of this Act.

(2) Any authority in India which grants an architectural qualification not included in the schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the schedule against such architectural qualification declaring that it shall be a recognized qualification only when granted after a specified date.

Provided that until the first Council is constituted, the Central Government shall, before, issuing any notification as aforesaid, consult an expert committee consisting of three members to be appointed by the Central Government by notification in the Official Gazette.

15. (1) The Central Government may, after consultation with the Council, direct, by notification in the Official Gazette, that an architectural qualification granted by any university or other institution in any country outside India in respect of which a scheme of reciprocity for the recognition of architectural qualification is not in force, shall be a recognized qualification for the purposes of this Act or, shall be so only when granted after a specified date or before a specified date.

Provided that until the first Council is constituted the Central Government shall, before issuing any notification as aforesaid, consult the expert committee set up under the proviso to sub-section (2) of section 14 .

(2) The Council may enter into negotiations with the authority in any State or country outside India, which by the law of such State or country is entrusted with the maintenance of a register of architects, for settling of a scheme of reciprocity for the recognition of architectural qualifications, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette, direct that such architectural qualification as the Council has decided should be recognized, shall be deemed to be a recognized qualification for the purposes of this Act, and any such notification may also direct that such architectural qualification shall be so recognized only when granted after a specified date or before a specified date.

.....

17. Notwithstanding anything contained in any other law, but subject to the provisions of this Act, any recognized qualification shall be a sufficient qualification for enrolment in the register.

20. (1) When upon report by the Executive Committee it appears to the Council-

(a) that the courses of study and examination to be undergone in, or the proficiency required from the candidates at any examination held by, any college or institution, or

(b) that the staff, equipment, accommodation, training and other facilities for staff and training provided in such college or institution, do not conform to the standards prescribed by regulations, the council shall make a representation to that effect to the appropriate Government.

(2) After considering such representation the appropriate Government shall forward it along with such remarks as it may choose to make to the college or institution concerned, with an intimation of the period within which the college or institution, as the case may be, may submit its explanation to the appropriate Government.

(3) On receipt of the explanation or where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government, in respect of the college or institution referred to in clause (b) of sub-section (5), shall make its recommendations to the Central Government.

(4) The Central Government

(a) after making such further enquiry, if any, as it may think fit, in respect of the college or institution referred to in sub-section (3), or

(b) on receipt of the explanation from a college or institution referred to in clause (a) of sub-section (5), or where no explanation is submitted within the period

fixed, then on the expiry of that period, may, by notification in the Official Gazette, direct that an entry shall be made in the Schedule against the architectural qualification awarded by such college or institution, as the case may be, 1 declaring that it shall be a recognized qualification only when granted before a specified date and the Schedule shall be deemed to be amended accordingly.

(5) For the purposes of this section, "appropriate Government" means-

(a) in relation to any college or institution established by an Act of Parliament or managed, controlled or financed by the Central Government, the Central Government, and

(b) in any other case, the State Government.

21. The Council may prescribe the minimum standards of architectural education required for granting recognized qualifications by colleges or institutions in India.

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44. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the manner in which elections under Chapter II shall be conducted, the terms and conditions of service of the member of the Tribunal appointed under sub-section (2) of section 5 and the procedure to be followed by the Tribunal;

(b) the procedure to be followed by the expert committee constituted under the proviso to sub-section (2) of section 14 in the transaction of its business and the powers and duties of the expert committee and the traveling and daily allowances payable to the members thereof;

(c) the particulars to be included in the register of architects under sub-section (3) of section 23 ;

(d) the form in which a certificate of registration is to be issued under sub-section (7) of Section 24 , sub-section (4) of section 26 and section 33 ;

(e) the fee to be paid under sections 24 , 25 , 26 , 27 , 28 , 32 and 33 ;

(f) the conditions on which name may be restored to the register under the proviso to sub-section (2) of section 27 ;

(g) the manner of endorsement under subsection (3) of section 27 ;

(h) the manner in which the Council shall hold an enquiry under section 30 ;

(i) the fee for supplying printed copies of the register under section 34 ;

(j) any other matter which is to be or may be provided by rules under this Act.

(3) Every rule made under this shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification to the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

45. (1) The Council may, with the approval of the Central Government, [by notification in the Official Gazette] make regulations not inconsistent with the provisions of this Act, or the rules made thereunder to carry out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for-

- (a) the management of the property of the Council;
- (b) the power and duties of the President and the Vice-President of the Council;
- (c) the summoning and holding of meetings of the Council and the Executive Committee or any other committee constituted under section 10 , the times and places at which such meetings shall be held, the conduct of business thereat and the number of persons necessary to constitute a quorum;
- (d) the functions of the Executive Committee or of any other committee constituted under section 10 ;
- (e) the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognized qualifications;
- (f) the appointment, powers and duties of inspector;
- (g) the standards of staff, equipment, accommodation, training and other facilities for architectural education;
- (h) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;
- (i) the standards of professional conduct and etiquette and code of ethics to be observed by architects;
- (j) any other matter which is to be or may be provided by regulations under this Act and in respect of which no rules have been made.

(3) Every regulation made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more

successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification to the regulation or both Houses agree that the regulation should not be made, the regulations shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

6. An assessment of the aforesaid statutory provisions make it clear that a qualification in architecture which is included in the schedule in terms of Section 14 or notified under Section 15 of the Act shall be sufficient qualification for enrolment in the register of architecture maintained by the COA in terms of Section 23 of the Act. Admittedly, till date associate membership of HA is a "recognized qualification" for registration under the Act. Under Section 45 of the Act of 1972 COA is entitled to frame regulations with the approval of Central Government by notification in the official gazette for the purpose of the Act including such purposes as set out in Clauses (g), (h) and (i) thereof.

7. Pursuant to such power, 1983 Regulations were framed. In the aforesaid Regulations there is no provision empowering the COA to insist on conducting a competency and viva voce test for persons who have recognized qualification for the purpose of registering them under the Act of 1972.

8. Under such statutory scheme, let us examine the impugned decision of COA to conduct such test for registration of persons who were enrolled by IIA after July, 2002 and have secured membership of the said institute. It has been argued that COA being vested with plenary powers to maintain and regulate standards of minimum standards of architectural education and professional excellence ought to be held to have incidental powers to prescribe competency test for the purpose of registration of candidates enrolled after July, 2002 and possessing qualification from IIA, particularly in view of the fact that recommendation for decognition of such qualification to the Central Government and the institute itself had consented to such course of action. No doubt COA is the regulating body envisaged under the Act to lay down the minimum standards of architectural education and/or prescribe standards of staff, equipment, training and other facilities in such education. It can also prescribe the manner of conduct of examinations and the conditions for admission to such examinations. In fact, in exercise of such regulatory powers COA has framed in 1983 Regulations which lay down detailed guidelines with regard to admission to architectural course, duration of such course, period of study, standards of staff, equipment, training and other facilities in such courses and standard of proficiency and conditions of admission to and the procedure of holding of professional examinations in such course. Complaining that the course conducted by IIA does not conform to such minimum standards, COA made a prayer for derecognizing the architectural qualification awarded by the said institute under Section 20 of the Act of 1972 to the Central Government. Such prayer has not been acceded to by the Central

Government till date. On the other hand, the Central Government unequivocally by its letters dated 6th April, 2012 and 31st January, 2014, intimated COA that till the aforesaid qualification was not derecognized by the Government, the said qualification cannot be said to be derecognized by any other authority. It is, therefore, the clear understanding of the Central Government that the membership of IIA would continue to remain a recognized qualification for the purpose of the Act till the decision is taken by it under Section 20 of the Act. In this backdrop, to hold that COA has incidental powers to decide that the aforesaid qualification awaited by HA is not sufficient qualification under Section 17 of the Act for registration as an architect would amount to overriding the express statutory scheme of the Act as provided under Section 14 read with Sections 17 and 25 of the Act. There is no controversy with the proposition that a statutory authority vested with statutory powers would be deemed to possess such ancillary and incidental powers so as to enable it to exercise such statutory powers but such incidental powers cannot be interpreted to supplant or alter the statutory scheme altogether or usurp powers vested in other authorities by the statute itself. None of the authorities cited by Mr. Nath can or, in fact, does support such a proposition of law.

9. It has been forcefully argued that right to registration is not absolute and is subject to other provisions of the Act. Reference has been made to Section 21 in that regard. Section 21 empowers COA to prescribe minimum standards of architectural education required for granting recognized qualification by colleges or institutions in India. It has been argued that the decision to hold competency test/viva voce test for registration of candidates who were enrolled in HA from 2002 and had obtained architectural qualification and associate membership of the said institute is a regulatory step taken in exercise of power under the aforesaid provision of law and cannot be said to be illegal. It has also been argued that such regulatory measure is independent of the regulations framed under Section 45 of the Act of 1972. A closer scrutiny of the aforesaid provision would show that it is an enabling power authorizing COA to prescribe minimum standards of architectural education for grant of a recognized qualification by colleges or institutions in India.

10. The scope and ambit of such power is to prescribe minimum standards for grant of a "recognized qualification" under Section 2(b) read with Section 14 of the Act of 1972 and not for registration of a candidate under Section 17 of the Act of 1972. In other words, COA may in exercise of such power to prescribe minimum standards of architectural education for grant of a "recognized qualification" but cannot with reference to such provision put a clog on registration by insisting on a competence and viva voce test for candidates who have already attained such qualification. A candidate who has obtained a "recognized qualification" has a vested right to registration subject to the provisions of the Act. The expression "subject to the provisions of the Act" in Section 17 refers to Section 15 of the Act which, inter alia, prescribes payment of requisite fees and other criteria laid down there for registration and not to the

enabling power under Section 21 of the Act which empowers GOA to prescribe matters relating to grant of qualification and not to create restriction on registration of candidate who is already in possession of such a qualification. Vested right of a candidate to claim registration upon his possessing requisite qualification under the Act cannot be whittled down by a regulatory prescription under Section 21 of the Act which operates in a different field. Moreover, right to registration under Section 17 of the Act is of a candidate possessing "recognized qualification" under the Act and not that of the institute granting such qualification. Hence, consent of HA to the impugned decision cannot operate as an acquiescence or waiver of the said vested right to registration of the candidate under Section 17 of the Act in the facts of the instant case. Admittedly, holding of a competency test/viva voce test for candidates having recognized qualification has not been prescribed prior to the respondent-writ petitioner obtaining her qualification and acquire a vested right to registration under Section 17 of the Act. Such vested right could not be taken away by a subsequent decision to hold competence/viva voce test in purported exercise of power under Section 21 of the Act which provides for prescribing minimum standards for grant of a degree and not for registration of a candidate already in possession of a "recognized qualification" under the Act.

11. That apart, Section 21 cannot be read in isolation. It must be read in conjunction with the regulation making powers under Section 45 of the Act which provide that COA may frame regulations with the approval of the Central Government for carrying out the purposes of the Act including matters pertaining to standards of architectural education. Even if it is accepted for argument's sake that the enabling provision under Section 21 of the Act empowers COA to issue administrative directions for prescribing the minimum standards of education for granting degrees in architecture, such executive powers can support and not supplant the scheme laid down by the provisions of the Act or the regulations framed with the approval of the Central Government under the Act. Exercise of executive powers under Section 21 of the Act to prescribe a competence/viva voce test in respect of candidates enrolled in IIA after 2002 and possessing "recognized qualification" therefrom virtually amounts to derecognizing such qualification by negating its efficacy in obtaining registration on the strength of such qualification. Efficacy of a recognized degree, particularly a professional one, is the conferment of the right on the holder to get himself registered as a professional under the relevant statute and to practice such a profession *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) . To put a restriction on such right to registration amounts to negation of its efficacy and deeds to virtual derecognition of such qualification.

12. Judged from this angle, impugned decision purportedly under Section 21 of the Act seeks counter to the instruction issued by the Central Government to COA not to derecognize the qualifications granted by IIA till decision is taken under Section 20 of the Act. Under the statutory scheme of the Act of 1972, Central Government has plenary powers to derecognize a qualification or to grant

approval to regulations framed by COA under Section 45 of the Act relating to standards of architectural education. Such statutory scheme cannot be circumvented by resorting to an executive instructions under Section 21 of the Act by negating the right of a holder of a recognized qualification to seek registration on its own strength in the face of clear mandate of the Central Government not to derecognize such degree till decision is taken thereon under Section 20 of the Act. Reference to *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, in this regard is misplaced. In the reported case, the Apex Court held that contradictory averments in the affidavit of parties are no ground to declare a law ultra vires. Validity of the law cannot be judged on the basis of self-defeating affidavits but on other relevant considerations. In the instant case, reliance is placed on instructions of the Central Government to COA not to derecognize qualifications granted by IIA pending consideration under Section 20 of the Act and not on any opinion of the Government as to the vires of the provisions of the law.

13. Accordingly, we hold that the impugned decision is ultra vires the provisions of the Act and the regulations framed thereunder. No doubt, the object of the Act is to uphold the standards of architectural education and professional excellence. However, such purpose is to be achieved within the four corners of the statute and not de hors the said provisions. When the clear meaning of the provisions to an executive subterfuge. It is trite law what cannot be done directly cannot be permitted to be done indirectly, [see : *Subhash Chandra and Another Vs. Delhi Subordinate Services Selection Board and Others*, and *Dayal Singh and Others Vs. Union of India (UOI) and Others*, .

14. In view of the clear intention of the Central Government not to derecognize qualifications of HA pending decision under section 20 of the Act, it would have been improbable if not impossible for COA to persuade the Government to give approval to any regulation framed to hold competency/viva voce test for registration of individuals possessing qualifications from HA since 2002 under section 45 of the Act. Such hindrance could not be circumvented by resorting to executive instruction purportedly issued under section 21 of the Act. It is axiomatic to be done in a particular way, it must be done that way or not at all. Other forms of performance are necessarily forbidden [See: *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) . In *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) the Apex Court held that the provisions of UGC Act, 1956 provided for maintenance of high standard and uniformity higher education and the same was enacted in exercise of legislative powers in Entry I, List 66 and overrides provisions of any State legislations to the contrary enacted in exercise of legislative powers in Entry II, List 32 and Entry III, List 66. It further held that Entry I, List 66 included norms for admission as it had impact on standard of education. Accordingly, the words "established or incorporated" in UGC Act, 1957 was read to mean "established and incorporated" and all universities set up by State legislations had to conform to Regulation 3.1 of U.G.C. Regulations. In the instant case, the words of the Act of 1972 are clear and unambiguous and their

literal interpretation does not create any ambiguity or absurdity calling for purposive interpretation as in the reported case. Moreover, U.G.C. Act 1956 clearly provided powers to frame regulations relating to incorporation of universities whereas no power to issue executive directions for restricting registration is evident for the Act of 1972. In *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) the Court held that the expression "determination of standards in higher education" in List I, Entry 66 would include power to establish "eligibility" and "qualification" for admission to medical institutions MCI being established under Medical Council of India, 1956 in exercise of legislative powers under Entry I, List 66 was empowered to lay down norms relating to admission and the same would override the competence of States to legislate in similar field covered by Entry HI, List 25. There is no dispute over such proposition of law. In *Nazir Ahmad vs. Emperor* AIR 1936 253 (Privy Council) . Bar Council of India refused registration of law graduate on the strength of statutory power conferred under Section 24(1)(d) of the Advocates Act read with Rule 1(1) of Part IV of Bar Council Rules. No such statutory basis is evidence from the provisions of the Act of 1972 empowering COA to impose restrictions in the matter of registration of individuals having "recognized qualifications". Section 21 operates in the field of standards of education in granting degrees and not in the arena of post facto restriction upon registration of individuals who have already been granted such qualifications. Even in the field of prescribing standards of architectural education, such executive powers of COA under Section 21 can only supplement and not circumvent or supplant the statute and the regulations framed thereunder with the approval of the Central Government. Impugned decision to restrict registration of individuals possessing recognized qualification of IIA after 2002 by holding competence/viva voce test runs counter to the specific instruction given by Central Government not to derecognize such qualification till decision on this issue is taken by it under Section 20 of the Act clearly runs counter to the letter and spirit of the aforesaid statutory scheme and is accordingly ultra vires the powers vested in COA under the said Act. For the aforesaid reasons, the impugned judgment and order is upheld and the appeal is dismissed and the application being C.A.N. No. 644 of 2015 is accordingly disposed of.

Dr. Manjula Chellur, C.J.

I agree.

Later:

Prayer for stay of operation of the judgment is considered and rejected.