

(2011) 09 DEL CK 0014
In the Delhi High Court
Case No : LPA No. 597 of 2011

Council of Architecture

APPELLANT

Vs

All India Council for Technical Education and Another

RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 2, 3
Architects Act, 1972 — Section 3, 3(3)
Constitution of India, 1950 — Article 226

Citation : (2011) 09 DEL CK 0014

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Dhruv Mehta, Naveen R. Nath and Hetu Arora, for the Appellant;
Amitesh Kumar, for Resp. 1, Sushil Kumar, CGSC and Alok Shukla, for Resp. 2,
for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—Being dissatisfied with the order dated 16th May, 2011 passed by the learned Single Judge in WP (C) No. 4662/2007, the Council of Architecture (COA), the appellant herein, has preferred the intra-Court appeal under Clause X of the Letters Patent.

2. Filtering the unnecessary details, the factual matrix that is required to be expounded is that the first respondent, All India Council for Technical Education (AICTE), a statutory body constituted under the All India Council for Technical Education Act, 1987 (for short "the 1987 Act"), invoked the jurisdiction of this Court under Article 226 of the Constitution of India being grieved by the communication dated 20th December, 2006 made by the COA informing to the AICTE that the nominations made by it were not in accordance with the provisions of the Architects Act, 1972 (for short "the 1972 Act") and were legally invalid and hence, the said nomination of two members by the AICTE was not acceptable to the COA.

3. The Department of Higher Education in the Ministry of Human Resource Development (HRD), Government of India, 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 nomination. The COA was called upon to invite two members nominated by the AICTE for the forthcoming meeting by the COA to be held on 29th June, 2007 but when no invitation was forthcoming, the AICTE was compelled to knock at the doors of the court for seeking a writ of certiorari for quashment of the decision / communication dated 20th December, 2006 of the COA and for issue of a command to the COA not to hold a meeting on 29th June, 2007 without the participation of two members of the AICTE. A writ of mandamus was also sought directing the COA to accept the nominations made by the AICTE by its letter dated 11th October, 2006.

4. Before the writ court, it was contended by the AICTE that if the dictionary clause pertaining to technical education occurring in Section 2(g) of the 1987 Act is appropriately appreciated and further if the scheme of things is taken into consideration in accordance with the practice, it would be quite vivid that the AICTE has the power and authority to nominate two members. A contention was canvassed that the Apex Court has upheld the validity of the 1987 Act. In support of the said stand, reliance was placed on 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,

5. The stand put forth by the AICTE was resisted by the COA on the foundation that the legislative intendment, as is clear from the language employed in Section 3(3)(b) of the 1972 Act, does not permit nomination by the AICTE constituted under the 1987 Act and the legislative intention being clear, the court should not interpret the provision in a way which would tantamount to modifying the language of the statute. To buttress the said submission, the decisions in Unique Butyle Tube Industries (P) Limited v. U.P. Financial Corporation (2003) 2 SC 455, Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, and Union of India (UOI) and Others Vs. Priyankan Sharan and Another, were commended to.

6. The learned Single Judge, analyzing the provisions of both the communications, the previous resolution dated 30th November, 1945 which was effective till the 1987 Act came into force, the absence of real change in character of the AICTE and taking aid of the concept of purposive interpretation and avoidance of an interpretation leading to absurdity, quashed the communication dated 20th December, 2006 from the COA to the AICTE and directed that hereinafter the COA shall be bound to accept the nominations sent by the AICTE.

7. Mr. Dhruv Mehta, learned senior counsel, criticizing the order of the learned

Single Judge, has contended that the AICTE was established under a resolution of the Government of India dated 30th November, 1945 in exercise of the executive power of the State but the AICTE that has come into existence under the 1987 Act has no power to nominate the members for COA as that would cause violence to the language employed in the 1972 Act. The learned senior counsel would urge that had the legislature really so desired, it would have amended the provision contained in the 1972 Act and in the absence of any amendment, the Court does not have the jurisdiction to provide the *causis omissis* but the learned Single Judge has precisely done so which makes his order absolutely indefensible.

8. The learned senior counsel had further urged that the 1987 Act does not have the repeal and saving provision from which it can be construed that the pre-existing AICTE as established by the executive order of 30th November, 1945 is saved. On the contrary, by 28th March, 1988, the date on which the 1987 Act came into force, the first Council under the 1987 Act was constituted u/s 3 of the said Act and, therefore, a significant hiatus had come into being by virtue of the commencement of the 1987 Act but as the learned Single Judge has opined that there was no hiatus, a grave error has crept into the decision. It is his further submission that the provisions of the 1972 Act cannot be interpreted by relying on the 1987 Act inasmuch as the legislative intention has to be ascertained within the four corners of the relevant legislation in issue.

9. The learned counsel for the respondents, in support of the stand of the AICTE, have urged that the contentions raised by the COA are absolutely on the foundation of a total artificial interpretation of the 1972 Act and, hence, unsustainable. It is canvassed by them that the learned Single Judge has rightly adverted to the concept of "technical education" under the 1987 Act and, therefore, the submission that the legislative intention can only be gathered from the 1972 Act does not stand to reason. That apart, it is highlighted that the COA has been accepting the nominated members after the 1987 Act came into force but for the first time, a cavil was raised in 2006 on an innovative plea and on an unacceptable foundation.

10. It is an undisputed fact that the All India Council for Technical Education was established for the first time by a resolution of the Government of India on 30th November, 1945. Section 3(3) of the 1972 Act provides that the Council shall consist of certain categories of members. For the purpose of completeness, it is appropriate to reproduce Section 3(3) in entirety -

(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.

Explanation. - For the purposes of this sub-section, -

(a) "Institution of Engineers (India)" means the Institution of Engineers (India) first registered in 1920 under the Indian Companies Act, 1913 and subsequently incorporated by a Royal Charter in 1935.

(b) "Institution of Surveyors of India" means the Institution of Surveyors registered under the Societies Registration Act, 1860.

11. On a perusal of the aforesaid provision, it is perceptible that the provision clearly lays down who shall be the councilors. It also defines what is meant by "Institution of Engineers (India)" and "Institution of Surveyors of India". It also provides that two persons nominated by AICTE, which has been established by the resolution of the Government of India in the late Ministry of Education No.F.16-10/44-E.III, dated 30th November, 1945, shall be the members. What is contended by Mr. Mehta is that the AICTE, as has been referred to u/s 3(3)(b), only refers to the AICTE established by the Resolution and, hence, it cannot be construed to convey the meaning that it is the AICTE established under the 1987 Act. The learned senior counsel would emphasise that the language of the statute being clear and unambiguous, the golden rule of literal interpretation should be adopted.

12. In this context, we may profitably refer to the decision in Nasiruddin and Others Vs. Sita Ram Agarwal, wherein the Apex Court has opined thus:

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has

not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used....

13. In Raghunath Rai Bareja (*supra*), the Apex Court referred to the decision in Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., wherein it has been held that in construing a statutory provision, the first and foremost rule of construction is the literary construction. All that the court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. After referring to the said decision, their Lordships proceeded to state as follows:

58. We may mention here that the literal rule of interpretation is not only followed by judges and lawyers, but it is also followed by the layman in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean.

[Emphasis supplied]

14. The submission of Mr. Mehta, learned senior counsel, is that as the language employed in the 1972 Act is clear and unambiguous, the literal rule of interpretation should apply. His emphasis is on the fact that the AICTE, that was in existence because of resolution dated 30th November, 1945, could alone nominate the two members and it has nothing to do with the character or the status or transformation of the AICTE by the 1987 Act. On a reading of said provisions, we are of the considered opinion that the statutory intention of the legislature in the year 1972 was absolutely clear and unambiguous that in the Council of Architecture constituted u/s 3 of the 1972 Act, there shall be two nominated members of the All India Council for Technical Education. The 1987 Act defines the "Council" u/s 2(b) to mean the All India Council for Technical Education established u/s 3. Section 3 provides how the Council shall be established and who shall be the members of the AICTE. The heart of the matter is whether the AICTE, which has come into existence by virtue of the 1987 Act, would lose its character and the role ascribed to it under other statutes wherein it has been referred to as the AICTE established under the Resolution dated 30th November, 1945. In this context, we may fruitfully reproduce a passage from Bharathidasan University (*supra*):

....It is hard to ignore the legislative intent to give definite meaning to words employed in the Act and adopt an interpretation which would tend to do violence to the express language as well as the plain meaning and patent aim and object underlying the various other provisions of the Act. Even in endeavouring to maintain the object and spirit of the law to achieve the goal fixed by the legislature, the courts must go by the guidance of the words used and not on certain preconceived notions of ideological structure and scheme underlying the law. In the State of Objects and Reasons for the AICTE Act, it is specifically stated that AICTE was originally set up by a government resolution as a national expert body to advise the Central and State Governments for ensuring the coordinated development of technical education in accordance with approved standards was playing an effective role, but, "however, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE" and taking into account the serious deficiencies of even rudimentary infrastructure necessary for imparting proper education and training and the need to maintain educational standards and curtail the growing erosion of standards statutory authority was meant to be conferred upon AICTE to play its role more effectively by enacting the AICTE Act.

[Underlining is ours]

We have reproduced the aforesaid passage only to highlight that the Apex Court has referred to the birth of the AICTE under a Government resolution and its transformation to a statutory body.

15. In our considered opinion, if the submission of the learned senior counsel for the appellant is accepted, it would lead to total absurdity and anomaly. Section 3 of the 1972 Act clearly stipulates who shall be the members of the Council. Two nominated members of the AICTE are to be the members of the COA. The AICTE is in existence. It has been brought into existence under a statute. The said institution presently is governed by the provisions of the statute. We really fail to appreciate how solely because on earlier occasion it was established by a resolution and presently it has become a statutory institution, it would lose its character. On the contrary, if the submission of Mr. Mehta is accepted, the interpretation would usher in an absurd situation. In *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, it has been laid down that it is a well known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would turn it into manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly. The said principle has been reiterated in *American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another*, . Thus, the interpretation placed by the learned senior counsel for the appellant is absolutely unacceptable and we repel the same.

16. Consequently, the appeal, being sans substance, stands dismissed without any order as to costs.