

(2009) 11 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) No. 2794 of 1998

Desh Kumar and Others

APPELLANT

Vs

Indian Institute of Architects and Others

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Citation : (2009) 11 DEL CK 0114

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : J.C. Madan and A.P. Sinha, for the Appellant; R.K. Singh and Deepa Rai, for the Respondent

Judgement

Sanjiv Khanna, J.—The present writ petition was allowed by the judgment dated 6th September, 1999. Thereafter, review application RA No 102/99 was allowed vide order dated 2.3.2001 and the judgment was recalled.

2. Mr. Desh Kumar, Ms. Seema Kumari and Mr. Virendra Kumar, the petitioners herein were students of Indian Institute of Architects (hereinafter referred to as IIA, for short), a recognized Institute under the Architects Act, 1972. The admitted factual position is that the petitioners have cleared Part I and Part II examination and the written papers of Part III examination but have been declared as failed in viva voce test. The contention of the petitioner is that as per the Scheme of Examination and Syllabus of Study (hereinafter referred to as Scheme and Syllabus, for short) applicable to them, they were not required to appear and clear the viva voce test in Part III examination.

3. The petitioners have placed on record as Annexure P-2, a booklet of the IIA with the heading Scheme and Syllabus for Part I, II and III examinations. As per the said Scheme and Syllabus, Part III examination consisted of two papers : Professional Practice 1 (Building Contracts and Regulations) of 100 marks for 3.00 hrs and Professional Practice 2 (Litigation, duties, etc.) of 100 marks for 3.00 hrs. The pass percentage prescribed was 45 marks in each paper.

4. The respondent-IIA on the other hand, relies upon another booklet which is also issued by IIA, Scheme and Syllabus for Part I, II and III examination. As per the said booklet, in addition to the two papers mentioned above each student after passing part III written examination had to appear in viva voce test as a part of professional practice and the total marks allocated to viva voce test was 100 marks.

5. The two booklets, one produced by the petitioner and the other by the respondent IIA do not bear any date and therefore by merely looking at the booklet it is not possible to decipher the dates on which the booklets were published and became applicable.

6. It is however an admitted case of the parties that the petitioner Nos. 1 and 3, Mr. Desh Kumar and Mr. Virendra kumar had taken admission in respondent No. 1-IIA in the academic session beginning 1985-86 and petitioner No. 2, Ms. Seema Kumari had taken admission at IIA in the academic session 1991-92 (she took admission in June, 1991). It is submitted on behalf of the petitioners that the viva voce test for Part III examination was introduced in the new Scheme and Syllabus w.e.f. 1st January, 1992. Respondent No. 1-IIA, on the other hand, in the counter affidavit have submitted that viva voce test or oral examination was a part of the old Scheme since 1972. It is further pleaded that the petitioners had appeared in the viva voce test under the old Scheme in 1997 but had failed and therefore they were allowed as a special case to once again appear in the viva voce test held in December, 1997.

7. The stand of the respondent-IIA that viva voce test in Part III examination was prescribed under the old Scheme since 1972, is not correct. As stated above, the petitioners have placed before this Court a copy of the Scheme and Syllabus for Part I, II and III examination published by the respondent No. 1-IIA. The petitioners who had taken admission in 1985 and 1991 could not have procured the Scheme and Syllabus for Part I, II and III examination of a period prior to 1972. In fact the original Scheme and Syllabus has been shown to me in Court and it does not appear to be of the said vintage.

8. Respondent No. 1 had filed a review petition on 16th September, 1999, which was allowed by the Court. Respondent No. 1, IIA contrary to the stand taken in the counter affidavit, in the review application being RA No. 102/1999, had submitted that there was a change in Scheme and Syllabus w.e.f. academic session 1985-86 and the petitioners have relied upon booklet i.e., the scheme and syllabus which were in force during the period 1984-85. Accordingly it was submitted that w.e.f. academic year 1985-86, viva voce test was included in Part III examination and therefore the petitioners have not cleared Part III examination. In other words, since the petitioners have not cleared the viva voce test, they cannot be granted degree. It is submitted that the booklet i.e., the scheme and syllabus relied upon by the respondent No 1-IIA was applicable from the academic year 1985- 86 onwards and booklet relied upon by the petitioner was applicable prior to 1985-86. It is further stated in R.A. No. 102/1999 that a

wrong counter affidavit was filed on behalf of respondent No. 1.

9. In the rejoinder filed to the review application, respondent No. 1 - IIA has stated that the old Scheme and Syllabus were under review since 1983 and that the Board of Education had resolved to change and revise the old Scheme and Syllabus for examination. Copy of the minutes of the Board of Education resolution dated 26th September, 1985 has been filed as Annexure R-2 to the rejoinder.

10. Clause 49 of the Constitutional Bye Laws of IIA dated 2nd August, 1974 reads as under:

49. ARCHITECTURAL EDUCATION AND EXAMINATIONS:

(a) The Council shall appoint for a two year term a Board of Architectural Education to deal with matters relating to Architectural Education. The Board shall consist of such Members of the Institute as the Council may decide.

(b) The Board shall submit to the Council for approval any scheme it may devise or architectural education and the conduct of examinations. The Council shall from time to time frame and publish rules regarding examinations defining the cases and circumstances under which such examinations shall be held, the subject they shall comprise of, the fee be paid or deposited by the candidates, and nature of certificates to be granted to successful candidates.

(c) The Council on the recommendations of the Board of Architectural Education shall appoint Examiners consisting of the Members of the Institute and such other persons as the Council may invite. The council in the recommendation of the Board may recognize from time to time the qualifications of education institutions in Architecture as equivalent to the examination held by the Institute for membership of the Institute.

(d) The Council may, on a request by an educational institution, imparting training in Architecture, for recognition of its examination from the Institute's examinations, authorize the Board to inspect and report on the scheme of training, staff and equipment etc. of the Institution concerned.

(e) The Board of Architectural Education shall conduct such examinations through examiners, as the Council shall prescribe from time to time, for candidates seeking to be elected as Members of the Institute.

11. As per the aforesaid clause, the Board of Education is required to submit to the Council for approval, any scheme it may devise for architectural education and the conduct of examination. Resolution of the Board is not final. Rejoinder to the Review Application No. 102/1999 therefore does not state that the suggestions dated 26th September, 1999 given by the Board of Education were approved and implemented by the Council. The petitioners have placed on record copy of 51st annual report of respondent No. 1 for the period 1985-87. As per the said report, revision of Scheme of examination was one of the pending works

which was under consideration and no decision had been taken. Respondent No. 1-IIA has not placed on record, any resolution or approval granted by the Council to the recommendations dated 26th September, 1985 made by the Board of Education.

12. Para 9 of the Scheme and Syllabus filed by the petitioners prescribes examination fee payable by candidates for appearing in Part I, II and III examinations. As per the Scheme and Syllabus relied upon by the petitioners each candidate was required to pay examination fee of Rs. 300/- for Part I, II examinations and Rs. 100/- for each paper for Part III examination. As per the Scheme and Syllabus for Part I, II and III examinations relied upon by the respondent No. 1, the examination fee prescribed for Part I, II and III examinations was Rs. 600/- each. In the amended writ petition or additional grounds to which there is no counter affidavit, petitioners have specifically pleaded that they had paid examination fee of Rs. 300/- each. Also, a receipt of Rs. 300/- issued to Mr. Virendra Kumar for Part I examination to be held in June-July 1990 is enclosed as an Annexure. Obviously, the said receipt was issued under the Scheme and Syllabus produced by the petitioners.

13. I find merit in the present Writ Petition and agree with the petitioners that viva voce test was not a part of Part III examination under the Scheme and Syllabus applicable to the petitioners. Accordingly, the petitioners are not required to appear and clear the viva voce test. Respondent No. 1 will examine the results of the petitioners and in case they have cleared part I,II and the two written papers of Part III examination, their results will be declared, certificates will be issued and necessary consequences will follow. The aforesaid exercise will be completed within one month from the receipt of copy of this Order. The petitioners will comply with all formalities as are required for becoming Members of the Council.

Writ Petition is accordingly disposed of. In the facts and circumstances of the case, there will be no order as to costs.