

(2015) 09 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6564 of 2012

Er. Sanjay Kumar Jha

APPELLANT

Vs

The State Government of Bihar and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Bihar Municipal Act, 2007 — Section 314, 322

Constitution of India, 1950 — Article 12, 14, 16, 19(1)(g), 19(g)

Citation : AIR 2015 Patna 197 : (2015) 4 PLJR 610

Hon'ble Judges : I.A. Ansari, A.C.J; Chakradhari Sharan Singh, J

Bench : Division Bench

Advocate : Maya Shankar Mishra, for the Appellant; Lalit Kishore, PAAG and B.B.K. Singh, AC to PAAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J—Claiming to be the professional Graduate Civil Engineers, the petitioner in the present writ application, filed under Article 226 of the Constitution of India, has sought for a declaration from this Court that Sections 314 and 322 of the Bihar Municipal Act, 2007 (hereinafter referred to as the Act of 2007) are ultra vires Articles 14, 16, 19(g) and 39A of the Constitution of India, the same being against the interest of the Graduate Civil Engineers and welfare of the State and also inconsistent with the National Building Code of India, 2005. He has sought for a direction upon the respondents to make amendment in the Bihar Municipal Act, 2007, by removing "Architect Act, 1972" from the said Act of 2007 and further authorizing Graduate Civil Engineers to sanction Building Plans and Maps under the said Act of 2007. He has also sought for a direction upon the respondents to modify the letter, dated 22.6.2009, issued under the signature of Principal Secretary, Department of Urban Development and Housing, Government of Bihar, by adding in Clause 2(k) of the letter to the extent that professional Graduate Civil Engineers will also be authorized to sanction the building plans.

2. We have heard Mr. Maya Shankar Mishra, learned counsel for the petitioner, Mr. Lalit Kishore, learned Principal Additional Advocate General, Bihar as well as Mr. Vishwa Bibuhti Kumar Singh, learned counsel representing the Patna Municipal Corporation.

3. It is the case of the petitioner that prior to coming into force of Bihar Municipal Act, 2007, the petitioner as well as other Graduate Civil Engineers were empanelled with the erstwhile Patna Regional Development Authority (PRDA) and were authorized and empowered to sanction the building plans under Section 43 of the Bihar Regional Development Authority Act, 1974, and Bihar Regional Development Authority Act, 1981. The Graduate Civil Engineers were empanelled for the said purpose with Muzaffarpur Regional Development Authority and other Regional Development Authorities of the State of Bihar.

4. Bihar Municipal Act, 2007 (Bihar Act, 2011) came to be enacted upon its publication in Bihar Gazette, on 05.04.2007, for the purpose of consolidating and amending the laws relating to Municipal Governments in the State of Bihar in conformity with the provisions of the Constitution of India as amended by the Constitution (Seventy-fourth Amendment) Act, 1992, based on the principles of participation in, and decentralization, autonomy and accountability of, urban self-government at various levels, inter alia, to ensure professionalisation of the Municipal personnel. Sections 314 and 322 of the Act, constitutional validity of which is under challenge in the present writ application read thus:--

"314. Sanction of building plan.--No persons shall construct or commence to construct, any building or structure of permanent nature or execute any work relating to construction of building undertake or any alteration, addition or modification of an existing building unless, the building plan is approved by a certified Architect registered under Architects Act, 1972.

Provided that no Architect shall sanction any building plan unless it is inconformity with building bye-law framed by the State Government/Municipality.

Provided further that any Architect, who is found to have approved a building plan in contravention or in deviation of building bye-law, he shall be liable to be prosecuted and shall be liable to pay fine of Rupees fifty thousand or sentence to imprisonment for a period which may extend to one year or both.

322. Municipalities to maintain Register of Registered Architects.--(1) Every municipality shall maintain a register of registered Architects, who shall be considered as authorized registered Architects.

(2) Every registered Architects desirous of getting his name included in register of municipality shall make an application to the Chief Municipal Officer alongwith a fee of Rs. Five thousand.

(3) On such application being made the Chief Municipal Officer on being satisfied that the applicant is a registered Architect under Architect Act, 1972, shall cause his name to be entered in the register of Architects of the Municipality.

(4) Every registered Architect who is or was registered/empanelled with any of the Regional Development Authority on or before commencement of this Act shall be deemed to be registered Architects of a Municipality for a period of six months from commencement of this Act.

Provided that every Architect whether or not registered/empanelled with any Regional Development Authority on or before commencement of this Act, shall make application to the Chief Municipal Officer within six months, failing which he shall cease to be a registered/empanelled Architect:

Provided further that six months after commencement of this Act, only such Architects shall be entitled to approve Building Construction Plan whose name is registered in the register of Architects of the Municipality."

5. Section 314 of the Act prohibits any person from constructing or commencing to construct any building or structure of permanent nature or executing any work relating to construction of building undertaken or any alteration, addition or modification of an existing building unless the building plan is approved by a certified Architect, registered under Architects Act, 1972. An Architect has been prohibited from sanctioning any building plan unless it is in conformity with building bye-law framed by the State Government/Municipality. The proviso to Section 314 of the Act contains penal provisions if an Architect is found to have approved a building plan which is in contravention or in deviation of building bye-law.

6. Section 322 of the Act mandates every Municipality to maintain a list of registered Architects, who shall be considered as authorized registered Architects. Sub-sections (2), (3) and (4) of the Act provides the procedure of empanelment/registration in a Municipality, who will approve the building plans, as contemplated under Section 314 of the Act. The second proviso to Section 322 of the Act contemplates that after six months of the commencement of the Act, only such Architects, who are registered under Section 322 of the Act shall be entitled to approve building construction plan.

7. Upon conjoint reading of Sections 314 and 322 of the Act, it would be manifest that no person, other than a certified Architect registered under the Architects Act, 1972, with his name having been entered in the register of Municipality under Section 322 of the Act, can approve a building construction plan from six months after the commencement of the Act.

8. It is the case of the petitioner that the said provision is in violation of the National Building Code of India, 2005, issued by the Bureau of Indian Standards.

9. Learned counsel, appearing on behalf of the petitioner, questioning the validity of Sections 314 and 322 of the Act, has contended that the said provisions introduces unreasonable classification among persons having competence and proficiency in the field of planning and construction of building and there is no intelligible differentia to create such classification enabling only Architects,

registered under the Architects Act, 1972, to approve building plans. It is, accordingly, his case that the distinction between two classes of professionals, created by enactment of Sections 314 and 322 of the Act, is not only violative of Article 14 of the Constitution of India, but that such classification takes away the fundamental rights of the petitioner and others similarly situated qualified professionals, Civil Engineers, to practice their professions, and carry on their occupation guaranteed under Article 19(1)(g) of the Constitution of India. It is his further plea that the said enactment, validity of which has been challenged in the present writ application, is against directive principles of State policy as contained in Article 39A of the Constitution of India, which mandates that State, within the meaning of Article 12 of the Constitution of India, shall direct its policy towards securing that the citizens have a right to adequate means of livelihood. It is his case that because of the enactment in question, livelihood of the petitioner and others similarly situated persons, who were otherwise empanelled, for approving building plans, their right to livelihood has been taken away and, therefore, the said provisions are ultra vires Articles 14, 19(1)(g) and 39A of the Constitution of India.

10. Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the respondents State of Bihar, defending the validity of Sections 314 and 322 of the Act, has contended that the legislative competence of the State Legislature to enact the law, validity of which has been challenged, is not questioned by the petitioner. He has asserted that State Legislature is competent to enact law on the subject. As a matter of fact, the petitioner has not raised any issue as regards the lack of legislative competence of the State Legislature to make the law. He has contended that only Architect, registered under the Architects Act, 1972, in terms of Section 322 of the Act, has been authorized to approve building plans with the purpose of ensuring better public safety in the matter of construction of buildings within the area of concerned Municipality. He has submitted that the professionals, who are certified Architects registered under the Architects Act, 1972, have specialization in the matter of plan, design and construction of buildings and they have earned a licence to practice architecture after having undergone advanced education and practicum. He has, therefore, submitted that such professionalisation violates neither Article 14 of the Constitution of India nor Article 19(1)(g) of the Constitution inasmuch as it is well within the legislative competence of the State Legislature to decide as to which class of professionals will be better suited in the matters of designing, planning and constructing various types of buildings within municipal areas.

11. Mr. Lalit Kishore, learned Principal Additional Advocate General, is right in his submission that a law, made by the Parliament or the State Legislature, can be struck down by the Courts on two main grounds, namely:--

"(a) Lack of legislative competence;

(b) Violation of any of the fundamental rights guaranteed by Part III of the Constitution of India or of any other Constitutional provisions."

12. We are not required to test the validity of Sections 314 and 322 of the Act on the first ground, as noted above, since no question have been raised as regards lack of legislative competence of the State Legislature. We are thus, left with the question as to whether Sections 314 and 322 of the Act violate the petitioner's fundamental right under Articles 14 and 19(1)(g) of the Constitution of India or the directive principles of the State Policy under Part IV of the Constitution of India as reflected by Article 39A of the Constitution of India.

13. At the very outset, we reject the plea of the petitioner that Sections 314 and 322 of the Act could not have been enacted in view of National Building Code of India, 2005, which empowers Engineers and Architects in sanctioning plans of residential buildings, the same being in the form of guidelines issued by Bureau of Indian Standards for regulating the building construction activity across the Country. An Act of State Legislature cannot be called in question on the ground of need being in conformity with certain guidelines issued by the Bureau of Indian Standards, there being no challenge to legislative competence of the State Legislature.

14. We find substance in submission made on behalf of the State of Bihar that the legislative wisdom of the State legislature to authorize any certified Architects registered under the Architects Act, 1972, for the purpose of approving building plans, cannot be questioned in the present proceeding as the art of architecture is focused on designing buildings and this is the very purpose of Sections 314 and 322 of the Act. The Civil Engineers do not have any specialized training in design and construction of buildings. In our opinion, it cannot be said that there is no nexus between the purpose to be achieved by confining the authorization of approval of buildings plan to the certified Architects registered under the Architects Act, 1972, when considered in the light of the purpose for which the said provisions have been made i.e. to sanction a building plan, which is a specialized field.

15. We are, therefore, of the view that Sections 314 and 322 of the Act cannot be said to be ultra vires Article 14 of the Constitution of India. We do not find any substance in the submission made on behalf of the petitioner that such enactment has taken away the petitioner's right under Article 19(1)(g) of the Constitution of India, when no citizen can claim any indefeasible right to hold to a particular post or a particular job or to continue to practice profession of his own choice. Reference may be made, in this regard, to Supreme Court's decision in case of Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India (UOI) and Others, AIR 1981 SC 844 : (1981) 42 FLR 192 : (1980) LabIC 1367 : (1981) 1 LLJ 193 : (1981) 1 SCC 568 : (1981) 2 SCR 52 .

16. There can be no dispute over the legal position that right under Article 19(1)(g) of the Constitution of India can be subjected to reasonable restrictions in the interest of general public. A citizen, though has a fundamental right, under Article 19(1)(g) of the Constitution of India, to carry on trade or business, but he does not have any fundamental right to insist upon the Government doing

business with him. What is guaranteed under Article 19(1)(g) of the Constitution of India is the right of a citizen to pursue a calling of his own choice, which is subject to such reasonable restriction as may be imposed by the State.

17. In our opinion, Sections 314 and 322 of the Act do not take away a right of Civil Engineers to carry on their profession or business. The impugned provisions have been made for a specific purpose to be achieved by involving only such professionals for the purpose of approval of building plan, who are specialized in the field of designing, planning and construction of buildings.

18. We do not find the provisions, under challenge in the present writ application, to be violative of the directive of principles of State Policy under Part IV of the Constitution of India.

19. We are, therefore, of the considered view that Sections 314 and 322 of the Bihar Municipal Act, 2007, cannot be held to be ultra vires Articles 14 or 19(1)(g) of the Constitution of India.

20. We do not find any merit in this application. This application is, accordingly, dismissed.

I.A. Ansari, Actg. C.J.

I agree.