
(2014) 02 AHC CK 0140

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 57577, 65973 of 2008 and 22155 of 2011

Mukesh Goyal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Advocates Act, 1961 — Section 29
Architects Act, 1972 — Section 14, 15, 24, 35, 35(2)
Indian Medical Council Act, 1956 — Section 15(2)
Uttar Pradesh Industrial Area Development Act, 1976 — Section 19

Citation : (2014) 5 ADJ 409 : (2014) 5 AWC 5199 : (2014) 3 UPLBEC 2020

Hon'ble Judges : Arvind Kumar Mishra-I, J; Arun Tandon, J

Bench : Division Bench

Advocate : Mahendra Rai, A.R. Dubey, Manish Goyal, Gajendra Pratap Singh, Anurag Khanna and Jagdev Singh, Advocate for the Appellant; Ramendra Pratap Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Gajendra Pratap Singh, learned Senior Counsel assisted by Manish Goyal, advocate on behalf of the petitioner and Ramendra Pratap Singh, learned counsel for the respondents.

These three writ petitions have been filed by one and same person. All these writ petitions have been clubbed together and are being decided by means of the common judgment.

The petitioner before this Court is employed as Architecture cum Planning Assistant, in New Okhala Industrial Development Authority (hereinafter referred to as NOIDA).

By means of writ petition No. 57577 of 2008, the petitioner has prayed for quashing of the advertisement dated 17.7.2008 in so far as it pertains to the post of Associate Town Planner, be filled by way of direct recruitment. He further prays that his claim for promotion on the post of Associate Town Planner/

Associate Architect be considered in accordance with the Board's resolution dated 24.2.1996 taken in its 85th Boarding Meeting by virtue of petitioner's being senior most Architectural cum Planning Assistant having a degree in Architecture and registered as Architect with the Council of Architecture notwithstanding the provisions of Recruitment and Promotion Policy, 2005.

2. By means of writ petition No. 65973 of 2008, the petitioner has prayed for quashing of the resolution of NOIDA dated 24.11.2008 qua items No. 15 of Supplementary Agenda. He has further prayed that the post of Associate Architect/Associate Town Planner be filled by promotion from amongst the senior most Architect cum Planning Assistant holding necessary qualifications.

3. By means of third writ petition No. 22155 of 2011, the petitioner has prayed for quashing of the impugned resolution dated 29.3.2011 passed in 172 Board Meeting of NOIDA (Annexure 28 to the writ petition) and a mandamus commanding the NOIDA to ensure compliance of the provisions of the Architect Act 1972 and not to appoint any person as Architect or Associate Architect/Associate Town Planner who is not registered as an Architect with the Council of Architecture in accordance with Architect Act, 1972. It has further been prayed that that the authority may be asked to make promotion on the post of Associate Town Planner and Associate Architect on the basis of 100% promotion from those who possess a degree in Architecture Town Planning based on report of C.T.C.P. as per the Policy and Service Rules of U.P. Town and Country Planning Department and Greater NOIDA. By means of prayer No. 4, the petitioner has prayed for promotion being considered from the date of eligibility of the candidate.

4. An amendment application has also been filed in writ petition No. 22155 of 2011 whereunder the petitioner has prayed for quashing of the promotion and recruitment policy of 2005 in so far as it permits promotion quota of 60% on the post of Associate Town Planner and to be filled without insisting upon a degree in Architecture as essential qualification and to strike down provision of promotion on the post of Town Planner in planning cadre in so far as it fixes the feeding cadre as Associate Town Planner.

5. The facts which are more or less common to these writ petition are as follows :

The petitioner before this Court is working as Architectural cum Planning Assistant in NOIDA since January, 1988. He claims to be possessed of a degree of Architect from Indian Institute of Architects and is also registered as Architect with the Council of Architecture. His name is mentioned as such in the register maintained for the purpose. It is petitioner's case that NOIDA has framed Service Regulations 1981 (hereinafter referred to as Regulations 1981) with the previous approval of the State Government in respect of its employees. A copy of which is enclosed at page No. 96 of the third writ petition. These service regulations have been framed in exercise of powers u/s 19 of the U.P. Industrial Area Development Act, 1976 with the approval of the Government of the Uttar

Pradesh.

6. A bare perusal of the Regulation 16 of Regulations 1981 would establish that the NOIDA authority has been conferred power to make appointment by way of direct recruitment, promotion, deputation or by any other sources as the Authority may approve. Regulation 16 provides that at least 66% of Group "A" posts shall be filled by direct recruitment and the remaining 34% posts shall be filled by promotion on the basis of seniority subject to the rejection of unfit and fulfillment of other requisite qualification and conditions as may be specified. So far as Group "B" posts are concerned, it has to be ensured that 50% of the posts will be filled by way of promotion. Such promotion be made on the basis of seniority subject to the rejection of unfit. Sub-rule 4 confers a power upon the Authority to modify the source of recruitment or percentage of the promotion or direct recruitment in relation to any post.

It is, therefore, clear that under the Regulations 1981, power to lay down condition/qualification for promotion within quota prescribed from the feeding cadre is left with the NOIDA.

7. It is not in dispute that NOIDA has framed a policy in the matter of the promotion on various posts for NOIDA known as Recruitment and Promotion Policy 2005 (hereinafter referred to as Policy 2005) for NOIDA. A copy of the policy has been enclosed at page 139 of the paper book. So far as posts of Associate Town Planner is concerned, the policy provides that 60% posts are to fill by way of promotion and the only eligibility for the purpose has been fixed as 15 years experience as Planning Associate, no other qualification has been prescribed under the policy.

8. Similarly for the posts of Associate Architect, it has been provided that 60% posts shall be filled by way of promotion and the eligibility criteria has been fixed as 15 years experience as Architect Assistant. (Reference page Nos. 142-143 of the paper book).

9. It may also be noticed that so far as direct recruitment on the aforesaid two posts is concerned, the Policy 2005 contemplates that a degree in Architecture and Town Planning and degree in Architecture as an essential qualification for the two posts respectively.

10. It appears that in the meeting of NOIDA Board held on 20.3.2006 it was considered as to whether a degree in the concerned subject would be necessary for the purpose of promotion on the post of Associate Town Planner and Associate Architect also or not. The Board resolved that an opinion be obtained from Mukhya Nagar Gram Niyojak, Uttar Pradesh. On record, there is a letter of Mukhya Nagar and Gram Niyojak, Uttar Pradesh, dated 22.12.2008 which recommends that for the post of Associate Town Planner and Assistant Architect, degree or diploma in Nagar and Gram Niyojak should be essential qualification.

11. It appears that on receipt of this recommendation, NOIDA sought further

opinion from the State Government. Because of all this, promotion on the post of Associate Architect and Associate Town Planner respectively continued to remain in abeyance. As a matter of fact, the employees of NOIDA who had put in 25-27 years of service were denied consideration of their claim for promotion only because of the correspondence.

12. A proposal was, therefore, submitted in the meeting of the Board of NOIDA for the process of promotion being completed in accordance with the promotion policy of 2005 quoted above. This proposal has been enclosed as annexure 28 to the present writ petition at page 231.

13. The petitioner has prayed for quashing of the decision taken in 172 Board Meeting of NOIDA as per the prayer clause but this Court finds that the decision so taken in 172 Board Meeting is not available on the records of the writ petition.

14. It is settled law that no writ of certiorari can be issued without the order being brought on record. On this ground alone the prayer made in the writ petition No. 22155 of 2011 for quashing the said decision is liable to be refused.

15. We may now examine the issue raised by means of the present writ petitions on merits also so that the controversy is settled finally.

16. Before this Court, it has been contended that under Architect Act 1972, no person is authorized to use word Architect either as a prefix or as a suffix unless he has a degree of Architect and is registered with Architect Council of India in accordance with the Act 1972. For the purpose, reference is made to Section 37 of the Act as also to the judgment of Madhya Pradesh High Court in the case of Mukesh Kumar Manhar and Another Vs. State of Madhya Pradesh and Others,

17. By means of the amendment application filed in the years 2013, the petitioner has also prayed for quashing of the recruitment and promotion policy 2005 in so far as it provides 60% quota for promotion for the post of Associate Town Planner/Associate Architect without insisting upon a degree in Architecture. The petitioner has also prayed for quashing of the policy to the extent it provides that 100% post of Town Planner shall be filled from the feeding cadre of Associate Town Planner. Reference is made to Section 14 of the Architect Act for the purpose of contending that the qualifications for awarding a degree of Architect the qualifications as mentioned in Schedule have to be satisfied. It is the case of the petitioner that unless a person who is to be appointed on the post of Associate Architect or Town Planner is possessed of such degree, he cannot be promoted on the post and, therefore, the policy of 2005 is bad.

18. Learned counsel for the petitioner refers to the duties to be discharged by Associate Town Planner and Associate Architect as detailed at page 116-117 of the paper book and submits that the duties are akin to those of Architects/Town Planner and, therefore, in absence of a degree of Architect and registration, the designation which mentions Architect/Town Planner as suffix qua the promotion post would be illegal. For the proposition, learned counsel for the petitioner has

also placed reliance upon the following judgments namely, Om Prikash Mittal Vs. Council of Architecture and Others, , Laxmanbhai B. Chelani Vs. Union of India (UOI) and Others, , Utpal Bose and others Vs. State of West Bengal and others,

19. On behalf of NOIDA, Ramendra Pratap Singh submitted that as per Regulation of 1981, power to lay down qualification for promotion and direct recruitment are vested in NOIDA. The NOIDA in its wisdom has framed policy for promotion 2005 which provides quota for promotion as well as essential qualification to be possessed by the candidate for being promoted from the feeding cadre. He submits that the competence of NOIDA to frame promotion policy 2005 is not under challenge and, therefore, unless the petitioner is able to demonstrate that any provision of NOIDA Act or Regulations 1981 have been violated by the Policy 2005, no relief as prayed can be granted. He submits that Architect Act 1972 will have no effect in the matters of promotions which are to be granted on various posts by NOIDA constituted under an State Act. Reference to the provisions of Architect Act by the petitioner is wholly misconceived and out of the context.

20. It is also submitted that the decision taken in the Board Meeting of NOIDA dated 20.3.2006 which is heavily relied upon by the petitioner is only a deliberation on the issue as to whether a degree of Architect be made as essential qualification for the purpose of promotions on the post of Associate Town Planner and Associate Architect are not. He informs that the report of Mukhya Nagar and Gram Niyojak dated 22.12.2008 received by NOIDA, had been forwarded to the State Government for necessary directions in the matter. The State Government has not issued any direction in the matter of degree of Architect being made essential qualification for the purpose of promotion on the post of Associate Architect and Associate Town Planner till date. Since promotions were withheld for years together, Board has decided to complete the process of promotions on the basis of existing provisions as per Policy 2005. Nothing illegal or arbitrary can be attributed to such decision of the Board. He explains that the promotions against the existing vacancies if made in accordance with Rules as are existing on the date of consideration, it cannot be said that NOIDA has committed any illegality in any manner. The qualification approved even if altered at any subsequent point of time with the State Government by NOIDA, the same would only be prospective in nature. The writ petitions filed on behalf of the petitioner are wholly misconceived.

21. With regard to the judgments which have been relied upon by the learned counsel for the petitioner, it is contended that Architect Act 1972 does not prohibit any person other than who are registered as Architects from practicing the profession. Section 37 of the Act has a limited scope as is apparent from simple reading of Section 37 itself. It has no application in the matter of promotion in statutory authorities like NOIDA which are constituted under a State Act. He further submits that the judgment in the case of Mukesh Kumar Manhar (supra) defeats the contentions raised on behalf of the petitioners rather

than supporting him. So far as judgment in the case of Laxmanbhai B. Chelani (supra) and Utpal Bose (supra) are concerned, they are clearly distinguishable. None of the cases deals with service matters qua promotion to be effected in statutory authority like NOIDA covered under an State Act.

22. We have heard learned counsel for the parties and examined records of the writ petition.

23. We may record at the very outset that Promotion Policy of 2005 was not challenged by the petitioner at the time the writ petition was filed in the year 2011. It is after more than two years of filing of the writ petition, an amendment application has been filed by the petitioner with the prayer that Recruitment and Promotion Policy of 2005 be quashed. Absolutely no reasons/facts and grounds have been disclosed as to how the Policy of 2005 is bad except for pointing out that in view of Section 14 read with Section 37 of the Act, no person can be appointed on a post which has the word Architect as suffix or prefix to it nor any person can discharge duties of Architect unless he is possessed of a degree of Architecture and has registration with the Council of Architect.

24. We may reproduce the provisions of Sections 14 and 37 relied upon by the learned counsel for the petitioners, the same are read as follows:

14. Recognition of qualifications granted by authorities in India.--(1) The qualifications included in the Schedule or notified u/s 15 shall be recognised 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 recognised, 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 recognised 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.

37. Prohibition against use of title.-- (1) After the expiry of one year from the date appointed under sub-section (2) of Section 24, no person other than a registered architect, or a firm of architects shall use the title and style of architect:

Provided that the provisions of this section shall not apply to--

(a) practice of the profession of an architect by a person designated as a "landscape architect" or "naval architect";

(b) a person who, carrying on the profession of an architect in any country

outside India, undertakes the function as a consultant or designer in India for a specific project with the prior permission of the Central Government.

Explanation.--For the purposes of clause (a),--

(i) "landscape architect" means a person who deals with the design of open spaces relating to plants, trees and landscape.

(ii) "Naval architect" means an architect who deals with design and construction of ships.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both.

From simple reading of Section 14 of the Act, it is clear that it provides for the qualifications with reference to which a person can be awarded a degree of Architect.

25. Section 37 of the Act prohibits the use of name of Architect by a Firm or individual without being registered with the Architect Council of India. No section of Architect Act could be referred to by the learned counsel for the petitioner for establishing that no other person except one who is holder of degree of Architect and is registered with the Council of Architect can discharge the functions of an Architect. It would be useful at this stage to refer the following paragraphs of the judgment of Mukesh Kumar Manhar (supra):

There is a significant difference between the Architects Act, 1972 dealing with the profession of Architects and enactments dealing with Medical and Legal professions. Section 15(2) of the Indian Medical Council Act, 1956 bars any person other than medical practitioners enrolled on the State Medical Registers from practicing Medicine or holding the office as "physician" or "surgeon" in any Government Institution or other Institution maintained by any local or other Authority. Similarly, Section 29 of the Advocates Act, 1961, provides that only one class of persons are entitled to practice the profession of law, namely, advocates entered in the Roll of any Bar Council under the provisions of Advocates Act. Thus there is a clear bar on persons who are not enrolled with the State Medical Council or State Bar Council, from practising as a Medical Practitioner or Advocate.

In contrast, the Architects Act, 1972 does not prohibit persons other than those who are registered as Architects from practising the profession. As noticed above, Section 37 only prohibits any person other than a registered architect using the title and style of Architect. It does not prohibits a person, who is not a registered as an Architect with the Council of Architecture from carrying on or discharging any Junction that can be carried or by a registered Architect. The functions normally associated with Architects are : (i) taking instructions from clients and preparing designs; (ii) site evaluation, (iii) design and site

development, (iv) design of structure, (v) design of sanitary, plumbing, drainage, water supply and sewage, (vi) design of electrification, communications, (vii) Incorporation of appropriate heating, ventilation, air-conditioning and other mechanical systems, fire detection and fire protection systems and security systems, and (viii) periodic inspection and evaluation of the construction work.

The statement of objects and reasons of the Architects Act states that the legislation is intended to protect the title of "architects", but does not intend to make the design, supervision and construction of buildings as an exclusive responsibility of architects. It clarifies that other professions like engineers will be free to engage themselves in their normal vocation in respect of building construction work provided that they do not style themselves as "Architects". Thus, as contrasted from the Advocates Act and the Medical Council Act, the Architects Act merely provides for registration of "architects" and matters connected therewith, and does not contain any prohibition against those who are not registered or enrolled performing the duties of Architects. The provisions of the Architects Act makes it clear that persons who are not registered as Architects, can carry on and discharge the functions which the Architects normally discharge, provided they do not call themselves as Architects.

If that is so, there can be no objection for a rule providing for non-architects being promoted to a particular Class II post, which may involve planning, designing and supervision of Building constructions. What is prohibited and what is objectionable in law is calling the persons discharging such functions related to architecture, as "Architects" when they are not registered as Architects. As the law now stands, the petitioners cannot contend that only persons qualified and registered as Architects can be promoted to Class II posts dealing with general Architectural junctions. Even Engineers, who do not have a degree of Architecture (and who are not registered Architects) but having qualifications in Engineering and experience in design and supervision, may perform the functions which are normally performed by an Architect. But such Engineers who are not registered Architects and posted to the Class-I or II posts, dealing with architectural aspects and designs, cannot be called as "Architects" or "Assistant Architects" unless they are registered Architects under the Architects Act. Therefore, any draughtsman who is not a registered Architect, when promoted to the Class II post will have to be called by title" other than "Assistant Architect". A draughtsman who is a registered Architect, when promoted to Class II, post, can however be called as "Assistant Architect".

We recognise the freedom and choice, vested in the executive, to prescribe the qualifications for various posts. But the qualifications prescribed, should not violate any statutory provision, nor suffer from the vice of arbitrariness or malafides. Statutory preference should not be ignored. Architecture is a specialised technical field dealing with design and execution of buildings and structures. Qualified architects have specialised knowledge in (i) designing of various types of buildings with reference to utility, safety, aesthetics, comfort and

economics, (ii) methods of building construction, (iii) the nature, strength and behaviour of building materials and their uses; and effect of climate on them; (iv) designing of water supply, drainage, sewage disposal, electricity supply and lighting; (v) techniques of urban development, integrated development and infrastructural development; (vi) landscaping with use of elements such as trees, plants, water, rocks; (vii) structural concepts and behaviour of structural elements; and (viii) estimating and costing of structures. Public interest requires that any post requiring design and supervision of buildings should, therefore, be filled by qualified Architects. If unqualified persons are placed in charge of design and construction, buildings may become uneconomical and unsafe. With manifold increase in building activity, it is not advisable to have non-architects manning important posts of Architects involving design and execution of huge and complex structures/buildings.

Section 35 provides that a person who is registered as an Architect shall get preference for appointment as an Architect under the Central or State Government (and in any other local and other authorities). This statutory preference given to architects is obviously because of their specialised knowledge. To ignore such specialised knowledge and to ignore the statutory preference and appoint non-Architects to perform architectural functions, to repeat, will not be in public interest.

We may in this context refer to the decision of the Division Bench of Gauhati High Court in *Tulya Gogai v. Association of Architects* (W.P. No. 114/1996, decided on 3-7-1999). In that case, the appellants were Architectural Draughtsmen, who did not possess degree in Architecture. By the order impugned, the post of Architectural draughtsman was redesignated as "Junior Architects". That was challenged by the Association of Architects. The learned Single Judge held that the Government cannot use the title of "Architect" in respect of persons, who are not qualified and registered under Architects Act. It was further directed that while giving promotion to those persons, name and style of "Architect" cannot be used. That was challenged on the ground that provisions of Architects Act will not apply to those in Government employment" and there can be no prohibition for Government terming any post as "Junior Architect" or "Architect" even if the incumbents of such posts were not registered Architects. While rejecting the appeal, the Division Bench observed :

We do not think it is possible to draw any distinction, as vehemently canvassed before us, between the architects carrying on their private profession as such and the architects, who may be in the employment of the Government or in the employment of any other statutory body or local authority or for that purpose any other establishment. The proficiency as required of one carrying on the job of architect is provided, controlled and maintained by the provisions of the Act.... The same standard of efficiency is required, may be the building activities are carried on by the State or by private individual. In these circumstances, the prohibition as contained in Section 37 of the Act cannot be confined only to the

private professionals.

We do hope that the above aspects will be kept in view by the State Government while taking a decision as to whether it should prescribe the qualification of Registered Architect (as earlier in vogue) for the posts of Assistant Architects and Architects.

26. It is therefore, clear that there is no prohibition under the Architect Act in the matter of any person being promoted on an particular class II post which requires the discharge of duties involving planning, designing and supervision of building and construction and what is prohibited is that such person being called an Architect at the best.

27. In our opinion Section, 37 of the Act has the purpose of protecting common man from being misled by use of word Architect by unqualified person or Firms. This prohibition as contained u/s 37 of the Act has absolutely no application in the matter of promotion to be granted under Service Jurisprudence as per the statutory provision, enforced by bodies authority like NOIDA. Even otherwise we are of the firm opinion that mere nomenclature of the particular post will not in any way be said to violate the provisions of Architect Act 1972 when discharge of duties akin to that of an Architect are not prohibited in any manner under the Architect Act, 1972. It is not the nomenclature but the nature of duties discharged by the officer which are relevant. The prohibition contained u/s 37 of the Act has to be read for the purpose, the Act 1972 was enforced. It is only to safeguard the interest of the common public dealing with the persons practicing Architect are as a profession that Section 37 will come into play. We record that Section 37 prohibits practice of the profession only and it does not in any way restrict or impair the promotion of the person under Service Jurisprudence to a higher cadre where posts have been designated as Associate Architect or Associate Town Planner.

28. Learned counsel for the petitioner then submitted that in view of Section 35(2) of the Act, a person holding degree of Architect has to be provided preference in the matter of appointment on the said post in Government or other similar institution.

29. It is also to be kept in mind that Architect Act 1972 is an Act of Parliament which NOIDA has been established under an Act of State of Uttar Pradesh namely U.P. Industrial Area Development Act 1976. The counsel for the petitioner could not demonstrate as to how the provisions of the Central Act can in any way be read as part of the regulation framed under an State Act or the provisions of Central Act can be said to have superseded the Regulations of the State Act. Even otherwise issue of preference would only arise when other things are equal in the facts of the case, promotion is to be made on the basis of the seniority subject to rejection of unfit. No preference on the basis of Section 35(2) of the Act 1972 can be claimed in the process of promotion initiated by the NOIDA because of the provisions of Central Act being not applicable to appointment

under the State Act.

30. The petitioner has also not come up with any prayer before this Court in the matter of preference for promotion on the post of Associate Architect or Associate Town Planner. It appears that the submissions are raised without any pleading at the time of hearing, such practice has to be deprecated. What has not been pleaded, must not be argued.

In view of what has been recorded above by us, we find that the petitioner is not entitled to any relief as prayed for. The writ petitions lack merit and are, accordingly, dismissed.

A copy of the amendment application as filed by learned counsel for the petitioner is kept on record.

Office is directed to trace out the original amendment application and keep it on record.