
(1982) 09 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Appeal No. 547 of 1980

Om Prikash Mittal

APPELLANT

Vs

Council of Architecture and Others

RESPONDENT

Date of Decision : 17-09-1982

Acts Referred:

Citation : AIR 1983 Delhi 223 : (1983) ILR Delhi 197

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : R.S. Malhotra, Yashpal, Mukul Gupta and K.R. Nagraja, for the Appellant;

Judgement

S.B. Wad, J.

(1) In this petition, u/s 226 of the Constitution the petitioner has challenged the order of the Council of Architecture passed on October 9, 1979, refusing the registration to the petitioner as an Architect, u/s 25(b) of the Architect Act, 1972. The relevant portion of the order reads :

"I regret to inform you that on the basis of the documents submitted, and your personal interview, you cannot be registered as an Architect u/s 25(b) of the Architect Act, 1972 as the Council is not satisfied that you were engaged in practice of ex service as an Architect for more than 5 years prior to 27th April, 1974."

The petitioner has also prayed for a declaration that Section 35 and 37 of the Act violate Article 14 and 19(I)(g) of the Constitution and are, Therefore, unconstitutional.

(2) For appreciating the petitioner's grievance, the object and scheme of the Act will now to be noted. The statement of objects and reasons fully explain the reasons for the passing of the Act. The statement reads :

"SINCE independence and more particularly with the implementation of the Five-

year Plans, the building construction activity in our country has expanded almost on a phenomenal scale. A large variety of buildings, many of extreme complexity and magnitude like multi-stored office buildings, factory buildings, residential houses, is being constructed each year. With this increase in the building activity, many unqualified persons calling themselves as architects are undertaking the construction of buildings which are uneconomical and quite frequently are unsafe, thus bringing into disrepute the profession of architects. Various organisations, including the Indian Institute of Architects, have repeatedly emphasised the need for statutory to protect the general public from unqualified persons working as architects. With the passing of legislation, it will be unlawful for any person to designate himself as "architect" unless he has the requisite qualifications and experience and is registered under the Act. The Legislation is generally on the same line as similar Act in other countries."

Section 37 of the Act prescribes that after the expiry of one year from the date and pointed under sub section (2) of Section 24, no person other than a registered architect or a firm of architect shall use the title and style of architect. The appointed date fixed under the said Section is 27th April, 1974. Since the prescription of the qualifications and experience for the registration of a person as an architect were being prescribed for the first time by the said Act, it was necessary to make a special provision for the registration of persons who were working as architects before that date. Section 24 provides for a Registration Tribunal consisting of 3 persons to examine whether a person is qualified enough to be registered as an architect. The decision was to be taken by the Tribunal after giving the person affected an opportunity of being heard and after calling for relevant records. Register of architects prepared after such an examination was described as the "first register". It may be mentioned that the Central Government had pointed such Registration Tribunal under the Chairmanship of justice P. N. Khanna of this Court and the "first register" was prepared for the administration of the Act and for discharging various functions under the Act, Section 3 of the Act envisages a Council of Architecture. It is a large body of about 50 people with the representation of the profession, Central Government and State Governments. Section 21 empowers the council to prescribe minimum standards of architectural education. Sections 18 and 19 empower the Council to regulate the courses for the training of architects and to enforce academic standards through the institutions training in architecture. Section 22 empowers the council to frame regulations to prescribe professional conduct, etiquette and a code of ethics for architects. The council can remove an architect from the register if an architect is found guilty of professional mis-conduct by virtue of power u/s 30 of the Act. As stated above, Section 37 prohibits a person from using the title or to style himself as an architect unless he is registered by the council. Section 35 gives a preference to a registered architect in matter of appointment as an architect under central or State Government or a local body.

(3) Section 25 makes provision for registration where the applications are made after 27th April, 1974, the appointed date u/s 24(2) of the Act. A person can be

registered u/s 25, if he

"(A) holds a recognized qualification or (b) does not hold such a qualification but being a citizen of India, has been engaged in practice as an architect for a period of not less than 5 years prior to the date appointed under sub-section 2 of Section 24 or (c) possesses such other qualifications as may be prescribed by the Rules."

The decision regarding registration is taken by the Registrar as empowered by Section 26(2) of the Act. Section 26(3) provides for the appeal to the Council against the order of the Registrar. The appeal should be filed within 3 months of the date of rejection of the application by the Registrar.

(4) The petitioner passed the examination conducted by All India Council of Technical Education and was awarded national certificate in Civil Engineering in 1961. In 1967, he got the national diploma in Civil Engineering from the same institute. This diploma is held to be equivalent to Bachelor in engineering examination. He got this diploma when he was serving as a junior engineer in C.P.W.D. He worked in C.P.W.D. as a junior engineer from September 27, 1963 till May 12, 1972. He was enrolled as a member by the Institute of Engineer (MIE) thereafter. In 1973, he was issued a license by the Municipal Corporation of Delhi to practice as engineer. He was also included in the list of approved architects and valuers under "Own Your Home" scheme of the Life Insurance Corporation of India. He was permitted by the urban estate office, Faridabad to act as an architect and was registered as such.

(5) On 24-7-1975 the petitioner made an application for registration in Form No. Xi prescribed by the Rules. As against the column "date of commencement of profession) service the petitioner wrote "Affidavit attached". As against the column "whether practicing independently as partner or employed", the petitioner wrote "plasticizing independently, Prof. M/s. Mittal & Associates". In the affidavit the petitioner stated that he had been in the architectural profession for the last 15 years and had designed and supervised a number of buildings including residential, commercial and factory buildings. It may be noted that the petitioner did not disclose that he was working as a Junior Engineer in the Cpwd from 1963 to 1972. He also did not disclose the particulars or plans of the buildings designed and supervised by him. At the time of the arguments, the counsel for the respondent pointed out that the petitioner did not disclose in his application that he had applied for registration u/s 24 and the Registration Tribunal had rejected his application. For the propose of this petition we may assume that a fresh application can be made u/s 25(b) even if an application u/s 25(1) rejected. On receipt of the application, the Registrar of Council informed the petitioner that he had not mentioned "the actual date of commencement of the profession of architecture". The petitioner replied that he was "engaged in the profession and architecture since July 1, 1961". On the scrutiny of the application, the Registrar rejected the application for registration u/s 25(b) after considering the particulars stated in the application and the other relevant

documents filed by the petitioner. This order was passed on 23-12-1976. The order reads :

"THE applicant Shri O. P. Mittal does not hold any architectural qualification. He worked as Junior Engineer in Cpwd from 27-9-1963 to 12-5-1972 as per statement made in the application filed with the Municipal Corporation of Delhi for licenses No. E-571 vide certified copy of municipal license (receipt No. 554057 dated 20-1-73). He, Therefore, does not fulfill the condition of 5 years in practice as Architect prior to 27-4-74 u/s 25(b) of the Act. His application, Therefore, is rejected."

His appeal against the order of the Registrar was rejected by the Council on October 9, 1979. The relevant portion of the order is quoted above.

(6) The impugned order is challenged by the petitioner on the following grounds : (1) That the order is not passed by the Council as required by Section 26 of the Act but by the Advisory Committee; (2) He was denied the proper opportunity of being heard. He was not allowed to file same documents and certain documents filed by him were not considered; (3) The order was a non speaking order ;-(4) The Council misconstrued the provisions of Section 25(b) inasmuch as it took the view that the five years experience prescribed by the Section must be in private practice and not in Government service. His experience for 9 years in Cpwd was over-looked. (5) Section 37 of the Act was violative of Article 14 and 19 of the Constitution. Restricting the use of the title architect only to certain category of qualified persons as distinguished from other qualified persons has no rational nexus to the objects of the Act; (6) The right to carry profession Article 19(1)(g) is denied to him by virtue of the said Section; (7) Section 35(2) was a discriminatory as it seeks to jeopardise and injuriously restrict the progress of otherwise qualified and competent practitioners of the profession of architectural, (8) The impugned decision is discriminatory and violates Article 14 inasmuch as some other persons, similarly situate, have been granted the registration, while the same is refused to the petitioner.

(7) I will first deal with the challenge to constitutionality of Section 35(2) and Section 37. Section 37(1) states that no person other than a registered architect, or a firm of architects shall use the title or. style of architect one year after the appointed date under Sub-Section (2) of Section 24. This provision is a necessary consequential provision to mandatory requirement Of registration under the Act. The Act and the Regulations prescribes professional qualifications, for registration as an architect.- They also lay down the standard of professional, experience (of architectural work) required for an architect where a person does not hold the professional academic qualifications prescribed under the Act. Right to practice a profession is guaranteed by Article 19(1)(g) of the Constitution. Article 19(6) empowers State to make law relating to the professional or technical qualifications necessary for practicing any profession laying down professional qualifications for the profession of architecture as done by the Act and prohibiting persons who do not fulfill the said qualifications from posing

themselves as architects is constitutionally permissible. The restriction, if at all, is a reasonable restriction. There is no merit in the petitioner's contention that there is no nexus with the object of the Act. The object of the Act, as stated above, is to prevent unqualified persons calling themselves as architects and undertaking the construction of buildings which are uneconomical or unsafe and who bringing the profession of architect into disrepute. The provision is essentially in the interest of general public and it is meant for protecting the public from unqualified persons working as architects. The restriction imposed by Section. 37 does not violate Article 14 of the Constitution. Challenge to the validity of Section 35 of the Act is also without any merit. Section 35 gives preference to registered architects in matters of employment in government service and in the service of local authorities. Public works are undertaken by these bodies for the welfare of the people huge public fund are employed for that purpose. It is in public interest that the funds are properly utilised and substandard and uneconomical constructions are prevented. A qualified architect would naturally have preference over an unqualified person claiming to be an architect. There is no discrimination because by very definition a qualified architect falls in a different class from that of a person who is not qualified. Preference in public employment, is also an added encouragement for a prospective architect for achieving high professional and technical proficiency.

(8) Only two cases were cited by the counsel for the petitioner to substantiate the charge of discrimination. They are of Shri Gurcharan Singh and Shri H. K. Dixit. Gurcharan Singh was carrying on independent practice as an architect. He was working as a senior architectural draftsman in the architectural wing of the C.P.W.D. From 1-1-1971, he was given in selection grade as an architecture assistant. His work was certified by Shri H. Rehman, Chief Architect, Shri O. Muthachen, Engineering Chief, Shri J. M. Binjamin, Chief Architect Cpwd and Shri A. N. Banerjee, Secretary Ministry of Works and Housing, New Delhi. His architectural drawings of important and prestigious projects were also seen by the council. Shri Dixit, who holds a decree in Civil Engineering was working as a Civil Engineer in Bisra Stone Lime Company Ltd. Birmitrapur, Orissa. He was working both as an architect and Civil Engineer in the company. -The plans prepared by him and as sanctioned by municipality and town planning authority were produced. He had also produced sixty building plans prepared by him. The plans were examined by the committee and the committee was satisfied that Dixit had sufficient experience of designing major works. As against this, the petitioner did not produce any plans prepared by him and sanctioned by the Municipal authorities. He did not produce any letters engaging him as an architect. He also did not produce the income tax returns .He was specifically directed to produce these documents. Considering the material produced by the petitioner, the council was not satisfied that he had sufficient experience to be registered as an architect. I am satisfied from the record of Shri Gurcharan Singh and Dixit that the decision of the council was based on sufficient objective data. Compared to these two persons the petitioner did not disclose through any

record that he possessed experience equal to that of Gurcharan Singh or Dixit. The charge of discrimination is ill conceived and is Therefore, rejected. iCD/S2 J

(9) The argument of the petitioner is that it is the council who should take the decision u/s 26 and the advisory committee had no jurisdiction to decide the appeal. The argument has no substance. As pointed out earlier, the council consists of about 50 members. They come from Various States. They also come as" representatives of several institutions. Five architects are elected by Indian Institute of Architects from amongst its members. The members of the Council come from different parts of India. It is impossible and impracticable for such a large body to meet for each appeal. The Legislature is aware of this difficulty. Section 10(1) of the Act, Therefore, provides that the council may constitute committees for such general or special purposes as the council deems, necessary to carry out its functions under the Act. The appointment of the Advisory committee was made u/s 10. The decision of the advisory committee is approved by the council. Even in quasi judicial matters, it is not unknown to distribute the functions in more than one authority. Under the C. C. A. Rules the disciplinary authority appoints, an enquiry officer to carry out the disciplinary enquiry but the final decision is taken by the disciplinary authority. In this case the advisory committee consisted of eminent experts. Shri B. Kambo, who acted as a Chairman was a Chief Town Planner and Architect and Adviser to Government of Rajasthan. Major General Harkirat Singh was the nominee of Institution of Engineering of India. Shri B. N. Banerjee was the Chief Architect to the Government of West Bengal and Mr. M. H. Siddiqi. was the Chief Architect of the "Government of Jammu and Kashmir. The submission of the petitioner is without any merit.

(10) The next submission of the petitioner that he was not given the proper opportunity of being heard, is wrong. The petitioner was directed to appear in person and produce the documents such as actual plans prepared by him, the letters of the municipal authorities sanctioning such plans, the letters of the owners of the building appointing him as an architect and income tax assessment orders. He merely submitted a general list of the works allegedly undertaken by him without furnishing the said documents. He was given oral hearing. It is not a fact that he was prevented from producing any documents. The letter which called upon him to produce the above mentioned documents also gave him liberty to produce any other documents in. his possession. It is not the council but the petitioner who denied to himself the opportunity of presenting sufficient material or arguments in support of his case. The allegation of denial of opportunity is thus false. The petitioner then submits that the council did not properly appreciate the requirement of Section 25. According to the petitioner Section 25(6) should be liberally construed so as to include the experience as an engineer also. He submits that every engineer performs architectural functions. In his opinion, the council erroneously assumed that the experience of five years prescribed by Section 25(b) is an experience in a private practice. The submission of the petitioner is totally misconceived. It is too presumptuous for

the petitioner, who was merely a Junior Engineer in C.P.W.D. to imagine that the persons of the eminence who set in the advisory committee did not understand the meaning or requirement of Section 25(b) of the Act. Some of them are eminent engineers and architects. They know the difference "between the professional work done by engineer and by an architect. There is certain amount of finality to the judgment of the high. power expert body. Their judgment as to what constitutes experience of architectural worker must be given high regard. It must be frankly admitted that the courts, which are not trained in the technical discipline of engineering and architecture, cannot claim any technical knowledge superior to the experts in the field. It is well recognised principle of law that the Court shall not substitute its own judgment to that of an expert particularly in the highly technical fields. The scope of enquiry by the Court is limited only to find out whether the technical requirements of law, in arriving at a decision, are followed or not or whether the decision is vitiated by malafides, fraud etc. The petitioner himself suppressed the fact that he was working as a junior engineer in the C.P.W.D. for 9 years. He did not mention it in the proforma application. Can such a petition now turn around and say that the Council did not consider his experience? As a matter of fact the statement of the petitioner that his experience in service is not considered is incorrect. The impugned order clearly states that Council was not satisfied that he was engaged "in practice service as an architect for more than 5 years prior to 29th April, 1974". The Council has thus considered both his private practice as well as service. But merely to confirm that the council was not on the wrong track, I permitted the petitioner to enumerate the duties of a junior engineer in C.P.W.D. By way of annexure P. 6 the petitioner has produced the duty chart of the junior engineers, as mentioned in appendix Xvi of the Central Public Works Department. The duty chart shows that the main functions of a junior engineer is to remain at the site throughout in order to see that works are executed according to the specifications, drawings, and standards. He arranges for the materials and keeps the government materials in his custody. He records measurements of works and prepares extracts of measurements at the time of preparation of bills, or closing of muster rolls. He submits progress reports of works as required by the superior. He maintains Register| accounts as such a cement register, curing register etc. He maintains accounts of temporary advances, stock accounts, and imprest accounts etc. He maintains the register of inspection of buildings. He marks the attendance and maintains attendance register and muster rolls of the labour. His other duties are to prepare estimates of annual repairs, to submit reports of accidents, to make first aid arrangements in case of accidents to verify the bills, to detect and report unauthorised occupation or additions or alterations. He keeps the drawings of buildings and services under his charge. He submits progress reports and other returns to the superior officers. He collects engineering data for estimates and prepares rough drawing and site plans connected therewith. He checks up the cost estimates. He helps the preparation and checking of designs. He scrutinizes the drawings prepared by the architects. The list of duties does not indicate that junior engineer is in any way concerned

with the planning and designing of the buildings. He is almost at the lowest rung officer amongst the civil engineers. The Assistant Engineer, Executive Engineer, Supdt. Engineer and Chief Engineer are superior officers in the normal hierarchy of civil engineer in all engineering establishments of the government. It is too much to say that the officer at the longest rung in engineer department, plans and designs the buildings. The duty chart fully justifies the decision of the council that the petitioner was not performing any architectural functions as a junior engineer. Once the period of 9 years as a junior engineer is excluded it is obvious that the period of five years as required by Section 25(b) would not be complete subsequent to assumed that the experience of the petitioner subsequent to 1972 was of the nature of architectural practice. However, the facts are different. The license which the petitioner secured from the M.C.D. is only for practicing as an engineer and not as an architect. So is the case with the panel enlistment-in L.I.C. Under the "Own your House Scheme" (CYE) of the Lic, valuation of houses required to be made for the purposes of advancing loan to policy holders. The L.I.C. permits an engineer as well as an architect to furnish such valuation of a building. To work as a valuer of L.I.C., Therefore, does not amount to carrying on the profession of an architect. The story as regards the registration with the urban estate office Faridabad. is not much different. In fact, no particulars are provided by the petitioner to judge the experience of architectural work performed by the petitioner by virtue of the said Faridabad registration. With the material produced by the petitioner (or lack of material) the council was fully justified in taking the decision of not registering the petitioner as an architect.

(11) The decision of the council is, however, challenged on the ground that the appellate order is a non speaking order. It is not correct to say that the order is not a speaking order. The petitioner did not produce any material, although full opportunity was given to him to do so. The service particulars of the petitioner were not furnished by him in his application. The Registrar discovered them. It is too obvious a fact that a junior engineer in C.P.W.D. does not plan or design any buildings or constructions works. The other certificates of practice produced by the petitioner, on their face, represent the practice as an engineer and not as an architect. The experts who sat in advisory committee are experts in the technical field. They are not trained lawyers or judges. It is too much to expect that they should disclose in the order each of the arguments and to give reply to them point by point. If the decisions are of expert bodies, are based on the proper data (evidence) and if the decisions are not coloured by any extraneous considerations and if the decisions show proper application of mind such decision must be assumed to be reasoned orders. There are no allegations of the nature stated above, vitiating the decision of the council. This submission of the petitioner is also to be rejected.

(12) For the reasons stated above, petition is dismissed but in the circumstances of the case, there shall be no order as to costs.