

(2013) 09 DEL CK 0338
In the Delhi High Court
Case No : Writ Petition (C) 2106 of 2012

Premendra Raj Mehta and Others

APPELLANT

Vs

National Building Construction Corp. Ltd. and Others

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Advocates Act, 1961 — Section 29, 33
Architects Act, 1972 — Section 15, 24, 25(2), 3, 37
Indian Medical Council Act, 1956 — Section 15(2)

Citation : (2013) 09 DEL CK 0338

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Prabhsahay Kaur, for the Appellant; Tanmay Mehta, for R-1, Mr. Amrit Pal Singh, for R-3, Mr. Sanjay Abbot, for R-4, Mr. Maveen R. Nath and Ms. Amita Sharma for Council of Architecture, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—Section 37(1) of the Architects Act, 1972 reads as under:

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.

The petitioners before this Court are architects duly registered in terms of the

aforesaid Act. The grievance of the petitioners is that respondent no. 1-National Building Construction Corp. Ltd. (NBCC) has awarded, to respondent no. 4, which is a foreign firm, work for providing consultancy services for its upcoming projects of re-development of Kidwai Nagar, East, though respondent no 4 is neither registered under the Architect Act nor has it taken permission from the Government in terms of the proviso to Section 37 of the Act. The petitioners, therefore, are seeking the following reliefs:

a) Issue a writ in the nature of certiorari or any other writ, order or direction quashing the Letter of Award dated 17.1.2011 issued by the respondent no. 1 in violation of the Architects Act, 1972;

b) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent No. 1 to 3 to refuse to award any further contracts to the respondent No. 4 or any other foreign entity's, unless the requisite permission under the Proviso to Section 37 of the Architect's Act, 1971 has been duly obtained.

2. In its counter affidavit respondent No. 1-NBCC has taken a preliminary objection that since the petitioners did not participate in the tendering process for re-development of Kidwai Nagar, nor have they indicated any intention for such participation, they have no locus standi to file the present writ petition. It is also submitted that the petition does not comply with the Delhi High Court (Public Interest Litigation) Rules, 2010 and, therefore, cannot be treated as a petition filed in public interest. On merit, it is stated by respondent No. 1 that Section 37 of the Act only regulates use of the term "architect" as title or style and has no bearing on the right to engage any architectural practice. It is further stated in the counter affidavit of respondent No. 1 that it is open to any firm even, if it is not registered under the Act, to bid for any tender, as long as they have, on their Rolls, an architect registered u/s 37 of the Act. It is submitted that the work awarded by the respondent No. 1 is for comprehensive services not limited to architectural services but extends to other fields such as consultancy and engineering as well. It is further submitted that the architectural functions assigned to respondent No. 1 would be carried out principally by its Indian partners M/s. Sapna Kumar who is duly registered u/s 37 of the Act.

3. In its counter affidavit respondent No. 4 has reiterated the submissions made in the counter affidavit of respondent No. 1-NBCC. Respondent No. 3-Union of India has, however, endorsed the stand taken by the respondent No. 1 and 4 and has sought dismissal of the writ petition on the ground that Section 37 only prohibits any person other than registered architect from using the title and style of architect subject to explanation mentioned therein. Respondent No. 2-Council of Architect, however, endorsed the stand taken by the writ petitioners.

4. The first question which arises for consideration in this case as to whether the petitioners have a locus standi to file this writ petition. The writ petition has not been filed in public interest and during the course of hearing the learned counsel

for the petitioners reiterated that they have not filed a PIL. Her contention was that being the architects registered u/s 37 of the Act, the petitioners are personally interested in the outcome of the petition and, therefore, they cannot possibly file a petition in public interest.

5. Admittedly, none of the petitioners applied for awarding of the work which respondent No. 1 has assigned to respondent No. 4. I fail to appreciate how the petitioners can be said to be personally aggrieved on account of work which respondent No. 1-NBCC has awarded to respondent No. 4 when they never applied for award of the said work. I could appreciate if the writ petition was filed by the Council of Architects formed u/s 3 of the Architects Act, 1972 to which certain functions have been statutorily assigned under the provisions of the said Act. For instance, Section 15 of the Act provides for consultation with the Council before recognizing architectural qualification granted by the authorities in other countries. The Council is also authorized to enter into negotiation with the authorities in other countries for setting up a scheme of reciprocity for the recognition of the architectural qualifications. It is the Council which prescribes minimum standard of architectural education as well as the standards of professional conduct and ethics for architects. The Council can also remove the name from the register of architects besides making inquiries into the complaints of misconduct by the architects. The Council is also competent to make regulation with the approval of the Government in respect of the matters specified in Section 25(2) of the Act. Therefore, undisputedly, the Council plays an important role in regulating the profession and conduct of architects registered with it. But, it would be difficult to accept that an individual architect registered in terms of the Act can be said to be an aggrieved person on account of the work being awarded to a firm which is not registered in terms of Section 37 of the Act.

6. The learned counsel for the petitioner, on the issue of locus standi relied upon the order of the Supreme Court in *Sai Chalcitra Vs. Commissioner, Meerut Mandal and Others*, In the said case the grievance of the petitioner before the High Court was against grant of license to respondent No. 3 to run a video parlour. Their claim was that such exhibition had badly affected their business, the video parlour of respondent No. 3 being situated very close to their cinema hall. This was also their submission that the grant of licence was in violation of certain provisions of UP Regulation of Cinema Act, 1955. The writ petition was dismissed by a Single Judge of the High Court on the ground that he could not raise a grievance against his rival in a trade, particularly, when he was exhibiting films much before the licence was granted. Allowing the appeal, the Apex Court held that the High Court was in error in dismissing the writ petition on the ground of locus standi as being in the same trade, the appellant had a right to seek cancellation of the licence granted to respondent No. 3 on the ground that such licence was in violation of the Act and the Rules. However, in the case before this Court, it cannot be said that the award of contract to private consultancy service, respondent No. 4, has affected the profession of the

petitioners who never applied for award of the said contract.

The learned counsel for the petitioners has also relied upon the decision of this Court in *P. Sivadasan Vs. Union of India (UOI) and Others*, where this Court *inter alia* observed that public interest litigation cannot be resorted to by litigants for redressal of their individual or private grievance. This judgment to my mind does not apply to the case before this Court since the petitioners cannot be said to be having an individual or private grievance on account of award of consultancy work to respondent No. 4. The learned counsel has relied upon the decision of this Court in *Shri Jagdish Chander Vs. New Delhi Municipal Council* where this Court referred to the observations of the Apex Court to the effect that public interest litigation is a weapon to be used with great care and circumspection and private malice, vested interests and/or publicity seeking cannot be allowed under the guise of public interest. This judgment also does not apply to the facts of the case before this Court.

The learned counsel for the petitioner has, in this regard, lastly referred to the judgment of the Supreme Court in *Kushum Lata Vs. Union of India (UOI) and Others*, where the petitioner, who was not allowed to participate in a mining bid had filed a PIL challenging the auction. The dismissal of the writ petition styled as a PIL was held to be justified. This judgment also has no applicability to the facts of the present case.

The learned counsel for the respondent has referred to the decision of this Court in *Hans Enterprises Vs. The Airports Authority of India and Another*, where the petitioner without purchasing or applying for a tender challenged the tender published by the respondent. It was held that since the petitioner neither applied for nor purchased the tender form he could not file the writ petition. This judgment, in my view, squarely applies to the present case since none of the petitioners before this Court had applied for grant of the contract which respondent No. 1 has awarded to respondent No. 4.

7. A plain reading of Section 37 of the Act which appears under the heading "Prohibition against use of title" would show that though the aforesaid provision bars a person other than a registered architect or a firm of architects from using the title and style; it does not prohibit him from rendering architectural services so long as he does not use the expression architect and does not describe his firm, if any, as a firm of architects. Had the legislative intent been to prevent rendering of architectural services by any person other than a person registered under the provisions of the Act, Section 37 of the Act would have been worded altogether differently. For instance, Section 33 of the Advocates Act, 1961 prohibits a person unless he is enrolled as an advocate from practicing in any Court or before any authority or persons. Section 29 of the Advocates Act also stipulates that from the appointed date there will be only one class of persons entitled to practice the profession of law, namely, Advocates. Section 15(2) of the Medical Council Act, 1956 also expressly prohibits a person other than a medical practitioner registered in any State, signing or authenticating a medical

or fitness certificate, giving evidence as an expert and hold office as Physician or Surgeon or any other office in the Government or any institution maintained by a local or other authority. No similar provision is, however, found in the Architects Act. The learned counsel for the petitioners contended and in my view rightly too that such an interpretation may result in unqualified persons providing services such as supervision of construction of buildings and the constructions supervised by such persons may not be safe and economical, but, then, the remedy lies in the Parliament amending the provision of the Act so as to prohibit unqualified persons from rendering architectural services, and not in the Court taking an interpretation which a plain reading of Section 37 does not suggest. Moreover such unqualified persons, after coming into force of the Act cannot represent themselves to be architects though they may continue to provide services such as supervision of construction of buildings.

8. Section 4 of the Architects Act came up for consideration before the Division Bench of Madhya Pradesh High Court in Mukesh Kumar Manhar and Another Vs. State of Madhya Pradesh and Others, and the following view was taken:

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 function 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.

9. The following observations made by a Division Bench of this Court in *The Municipal Corporation of Delhi and Others Vs. Ram Kumar Bhardwaj and Others*, are also pertinent in this regard, which read as under:

2. The Architects Act, 1972 sets out the qualification to be possessed by the persons to be registered as architects "under the said Act. It also prohibits persons who do not have such registration from describing themselves as architects and also deals with disciplinary action for misconduct of architects. It is, therefore, a complete enactment the effect of which is that a person cannot call himself an architect unless he is registered under the said Act. Of course, unlike the Advocates Act, which restricts the right to practice in courts only to the advocates qualified thereunder, the Architects Act does not restrict the practice by architects to persons registered under the said Act. Therefore, some persons who cannot call themselves architects may still be free to do the work which is ordinarily done by architects and they are not dealt with by the Architects Act.

10. During the course of arguments, the learned counsel for the petitioners referring to clause (b) of the proviso to Section 37 of the Act contended that since the said clause refers to the carrying on the profession of an architect the intent behind Section 37 is to prohibit such profession except by a person who is registered under the provisions of the Architects Act, 1972. The contention, in my view, is wholly misconceived. Sub-section (1) of Section 37 in general bars any person other than a registered architect or a firm of architects from using the title and style of architect. Clause (b) of the proviso excludes, from the ambit of the main sub-section, the persons who are carrying on the profession of an architect outside India and who with the prior permission of the Central Government undertake consultancy or designing work in India for a specific project, meaning thereby that a person covered by clause (b) of the proviso despite the embargo placed by sub-section (1) can use the title and style of architect while undertaking the consultancy or designing work in India, with the prior permission of the Central Government. For the reasons stated hereinabove, I find no merit in the writ petition and the same is dismissed. No order as to costs.