
(2018) 08 DEL CK 0185

In the Delhi High Court

Case No : Civil Writ Petition No. 1787 OF 2017 & CM No. 7906 OF 2017

Rajinder Kumar

APPELLANT

Vs

Council Of Architecture & Anr

RESPONDENT

Date of Decision : 07-08-2018

Acts Referred:

Architects Act, 1972 — Section 22, 37, 37(1), 37(1)(b)

Citation : (2018) 08 DEL CK 0185

Hon'ble Judges : VIBHU BAKHRU, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, inter alia, impugning the report dated 08.08.2016 (hereafter "the impugned report") submitted by the

Disciplinary Committee of respondent no.1 (the Council of Architecture "hereafter "the Council"). The Disciplinary Committee has found the

petitioner "guilty of violation of Regulation 2(1)(viii) of the Architects (Professional Conduct) Regulations, 1989". The

said clause requires an Architect to maintain a high standard of integrity.

2. The disciplinary proceedings against the petitioner were commenced pursuant to a complaint dated 03.06.2015 filed by respondent no.2 (who is also

an architect). Respondent No.2 had alleged that the petitioner violated the public notice dated 16.02.2015 (published on 20.02.2015) issued by the

Council inasmuch as the petitioner's website also indicated that the petitioner had collaborated with various architectural and design firms (twenty in

number) located all over the world. Respondent no.2 had reasoned that this

implied that there was a definite financial arrangement between the clients, the petitioner and foreign collaborators which required to be inquired into. Respondent no.2 had colourfully termed the action of the petitioner in disclosing his foreign the collaborations on his website as "cocking a snook at the Council's public notice.

3. The petitioner also impugns the public notice dated 16.02.2015 (which was published on 20.02.2015). However, Mr Nayyar, learned senior counsel appearing for the petitioner has restricted the petitioner's challenge at this stage to the impugned report dated 08.08.2016. He submitted that the said report was unreasoned and, therefore, liable to be set aside. The learned counsel appearing for the Council submitted that the present writ petition was premature since the impugned report had not been accepted by the Council.

4. Although, this Court was inclined to reject the petition as being premature, however, it is ex-facie clear that the impugned report is unsustainable.

Further, the finding of the Disciplinary Committee that the petitioner has not maintained a high standard of integrity is sufficient to sully the petitioner's reputation. Therefore, this Court considers it apposite to examine the controversy as raised in the petition.

5. The petitioner is an architect by profession. In 2005, the petitioner started a website for providing information about the work done by the petitioner in the subject field.

6. On 16.02.2015, the Council issued a public notice whereby it was stated that the Council has been receiving complaints regarding the violation of the Architects Act, 1972 (hereafter "the Act") by foreign architects, consulting firms and others by way of hiring foreign architects to provide architectural services, without following the due procedure in terms of Section 37 of the Act. The said public notice further stated that several Indian architects have been working as local or liaison architects for the projects, which have been designed by foreign architects, without ensuring compliance of the Act and all the aforesaid activities would attract penal action under the provisions of the Act.

7. Thereafter, on 03.06.2015, respondent no.2 filed a complaint before the Council alleging that the petitioner had acted in the contravention of the impugned notice. Consequently, the Council sent a letter to the petitioner on 08.06.2015 calling upon the petitioner to submit his reply to the aforesaid

complaint. The petitioner filed his reply on 17.07.2015 denying all the allegations made in the said complaint.

8. On 27.08.2015, the Council held its 64th meeting wherein it formed an opinion that a prima facie case is made against the petitioner and, therefore, it decided to refer the matter to its Disciplinary Committee for further investigation. The petitioner was called upon to appear before the Disciplinary Committee on 08.08.2016 to submit his case. The petitioner appeared before the Disciplinary Committee and further sent a letter dated 31.08.2016

stating that he had removed the webpages that provided any reference to his past experience with foreign architects, from his website.

9. The Disciplinary Committee submitted the impugned report on 08.08.2016, wherein it observed that "the website of Respondent should not have

given prominence to the issue of collaboration with foreign architects". The said report was considered by the Council in its 66th meeting (held on

25.08.2016) and, on 04.11.2016, the petitioner was informed that he has been found guilty of professional misconduct. Thereafter, on 10.02.2017, a

letter was issued to the petitioner calling upon him to appear before the Bar of the Council on 11.03.2017.

10. Aggrieved, the petitioner filed the present petition.

11. At the outset, it would be relevant to refer to the public notice dated 16.02.2015. The contents of which are set out below:-

"Attention: Architects, Real Estate Developers, Foreign Architects, Govt. Department and all concerned The Council of Architecture (COA), set up

under the Architects Act, 1972, is a regulatory body for Architectural Education and Profession.

The profession of architects is regulated, controlled and maintained under the provisions of the Act and Regulations framed thereunder. The Council is

empowered under Section 22 of the Act to lay down standards of professional conduct and etiquette and a code of ethics for Architects by

Regulations. These Regulations shall have overriding effect over any other law for the time being in force in India.

The COA is receiving complaints regarding the Violation of the Act by Foreign Architects/ Consulting Firms/ Indian Architects/ Real Estate

Developers and others by hiring Foreign Architects to render architectural services without following due procedure prescribed under proviso (b) of

Section 37 (1) of the Architects Act, 1972.

It is also noticed that Indian Architects (as defined under the Act) have been working as local / signing/ liaison architects for projects which have been

or are being designed by Foreign Architects without ensuring compliance of the provisions of the Act.

It is brought to the notice of the all concerned that engaging/ appointing foreign architects without following the procedure prescribed under Section 37

of the Act is a punishable offence. Therefore, all architects/ real estate developers and other Departments/ Agencies are advised to adhere to the

provisions of the Architects Act, 1972.

Issued in public interest.

Dated : 16.02.2015

New Delhi

Offg. Registrar

12. A plain reading of the aforesaid public notice indicates that the Council was concerned with violation of provisions of Section 37 of the Act. The

aforesaid Section is set out below:-

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 â?" for the purposes of clause (a) â?"

(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.

13. A plain reading of Section 37(1) of the Act indicates that no person other than a registered architect, or a firm of architects, is entitled to use the title and style of an architect. In the present case, there is no dispute that the petitioner is a duly registered architect. There is no allegation regarding his use of the designation 'architect'. It is, thus, obvious that the petitioner cannot be held guilty of violating Section 37(1) of the Act.

14. The public notice indicates that certain Indian architects have been working as local / signing/ liaison architects for projects, which are being designed by foreign architects who have not followed the provisions of the Act. The public notice also refers to Section 37 (1) (b) of the Act. A plain reading of Section 37(1)(b) of the Act indicates that it prohibits a foreign architect from undertaking the function of a consultant or a designer in India without permission of the Central Government. Any foreign architect who undertakes a specific project in India without prior permission of the Central Government would fall foul of Section 37 (1) of the Act. However, this has no application to an architect registered with Council. Prima facie, this Court finds it difficult to accept that the petitioner has violated any provisions of the Act or any regulations made thereunder.

15. The impugned report is also bereft of any reason for finding the petitioner guilty of failing to maintain high standards of integrity. Apart from stating that the petitioner should not have given prominence to the issue of collaboration with foreign architects "which does not in any manner indicate that the petitioner had not maintained a high degree of integrity" the Disciplinary Committee has not indicated any other reason for its view. This is clear from the operative part of the impugned report, which reads as under:-

"The Committee is of the view that the website of Respondent should not have given prominence to the issue of collaboration with foreign architects which is certainly in violation of the public notices issued by the Council of Architecture and provisions of Architects Act, 1972.

The Committee finds the Respondent Architect guilty of violation of Regulation 2(1) (viii) of the Architects (Professional Conduct) Regulations, 1989.

16. It is apparent from the above that the Disciplinary Committee has proceeded on the basis that entering into collaborations with foreign architects

was in violation of the public notice issued by the Council; however, there is no material to indicate as to whether the petitioner had entered into a

collaboration agreement after the issuance of the public notice. The petitioner had stated that the website in question had been designed and uploaded

ten years ago. It was further stated by the petitioner that it had not engaged any foreign architect/consultant for any project of his own. The

Disciplinary Committee has given no finding as to the aforesaid contention.

17. More importantly, as stated above, Section 37 of the Act does not prohibit any person from engaging a foreign architect. It only obliges a foreign

architect to seek the permission of the Central Government. Thus, the responsibility of the person to comply with the provisions of Section 37(1)(b) of

the Act rests with the foreign architect and not on the persons who engage or work with such architects. None of the said issues have been examined

by the Disciplinary Committee or appeared to have been considered by the Council while forming a prima facie opinion.

18. In view of the above, the disciplinary proceedings initiated against the petitioner as well as the impugned report are set aside. However, it is

clarified that the Council may examine the matter afresh and if it is of the opinion that there is a prima facie case against the petitioner, the Council

may cause an enquiry to be made in the matter by the Disciplinary Committee.

19. The petition is disposed of in the above terms. The pending application is also disposed of.