

(2003) 11 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No's. 7389 and 8723 of 2003

S. Borappa and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

Architects Act, 1972 — Section 2 (a), 25, 37

Citation : (2003) ILR (Kar) 5127 : (2004) 2 KarLJ 425 : (2004) 1 KCCR 108 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Ravivarma Kumar, for the Appellant; H.B. Narayana, HCGP for R1, Shankar Lingappa Nagaraju, for R2 and P.S. Manunatha, for R3, for the Respondent

Judgement

Patil, J.—The petitioners seeking a direction in the nature of interalia ousting 2nd respondent from the post of Member, MUDA, after quashing the Notification dated 20th January 2003 bearing No. NAE:MYAPRA: 2001 vide Annexure-A, in so far as it pertains to the 2nd respondent is concerned, have filed these Writ Petitions.

2. The grievance of the petitioners in these petitions is that, the 2nd respondent has been appointed by the Government as a Member to the 3rd respondent-MUDA, under the Karnataka Urban Development Authorities Act, 1987, in the category of "Architect Member", by a Notification dated 20.1.2003 vide Annexure-A. The 2nd respondent is not a qualified person in the said category; he is not a qualified Architect and he is not a registered practitioner. When this fact has been brought to the notice of the concerned authorities and requested them not to permit the 2nd respondent to continue as a member of the 3rd respondent as per the Notification issued by the Government appointing the 2nd respondent, contrary to the mandatory provisions of the Karnataka Urban Development Authorities Act, 1987, they have not taken any action. In view of the inaction on the part of the authorities concerned, the petitioners have approached this Court,

assailing the correctness of the impugned Notification dated 20.1.2003, vide Annexure-A, by way of filing these Writ Petitions.

3. The Principal submission canvassed by the learned Counsel for the petitioners is that, the appointment of the 2nd respondent as a member of the MUDA in the Category of Architect is contrary to the mandatory provisions of the Act. To substantiate his submission, he placed reliance on Sub-section 3(L) of Section 3, which states that: "A person having experience in Architecture", Further he placed reliance on the Architects Act, 1972. The "Architect" is defined under sub-section (a) of Section 2 as: "Architect" means a person whose name is for the time being entered in the register". He also placed reliance on Section 14 read with Section 25 and Section 35 and 37 of the said Act and also the Annexure-B which is the public Notice issued by the Competent authority - Registrar of Council for Architecture, regarding "Beware of unqualified and unregistered persons practicing as Architects". Therefore, he has submitted that the impugned Notification issued by the Government appointing the 2nd respondent as an Architect to the MUDA, is one without any authority of law and contrary to the mandatory provisions of the Act, and as such, it is liable to be set aside.

4. Per contra, the learned Government Pleader appearing for 1st respondent, filed statement of objections and interalia substantiated the impugned Notification issued by the Government appointing the 2nd respondent as one of the Member to the 3rd respondent in the category of Architect. Further, he has vehemently submitted that, the petitioners have no locus standee to maintain the instant Writ Petitions, challenging the appointment of the 2nd respondent made by the Government and submitted that, the requirement of law is that, if a person has got knowledge about the Vastushilpi, such person is entitled to be appointed as one of the member to the 3rd respondent. Further he has submitted that, the post of Member of MUDA cannot be read in isolation from the scheme of implementation. What is the requirement of law is that the persons those who have got the experience and knowledge, it is sufficient for appointing them as a member and no qualification as such has been prescribed under the relevant provisions of the Act. Therefore, he has submitted that the 1st respondent has not committed any error in issuing the Notification dated 20.1.2003 vide Annexure-A, appointing the 2nd respondent as member of the MUDA. Further, he stated in para-6 of the statement of objections that, the 2nd respondent is trained in "Vasthu Shastra and Shaivagama" with experience in building constructions and during the course of training under Vasthu, he has studied Architecture and therefore, he cannot be regarded as disqualified to become a member of MUDA and he has denied that the 1st respondent has appointed the 2nd respondent purely on political consideration. The 2nd respondent is a qualified person who has acquired knowledge of Architecture, which is manifest from the training and experience acquired by him. To substantiate his case, he has produced Annexures-R1 to R3. Therefore, he has submitted that the impugned Notification issued by the Government is in strict compliance of the relevant provisions of the Act, and the Writ Petitions are liable

to be dismissed on the ground that, the petitioners have not made out any good grounds to interfere with the impugned Notification issued by the Government.

5. Heard the learned Counsel for the petitioners and the learned Government Pleader for 1st respondent at a considerable length of time. After re-evaluating the materials available on record in totality with the assistance of the counsel appearing for both the parties, the short question that arises for consideration in these petitions is: Whether the appointment of the 2nd respondent as a member to the MUDA by the 1st respondent in the category of Architect is in accordance with law?

6. After careful perusal of the impugned Notification dated 20.1.2003, vide Annexure-A, it is manifest on the face of the record that, the said Notification has been issued by the Government contrary to the relevant provisions of the Karnataka Urban Development Authorities Act. In the said Notification, the name of the 2nd respondent is shown at item No. 5 - as the member of the 3rd respondent. In last column, it is mentioned as "Vastushilpi Varga". It is significant to note that, as per Sub-section 3(L) of Section 3 of the Act, "A person having experience in Architecture" can be appointed as one of the member of the authority representing the specific category. As pointed out by the learned Counsel for the petitioners, it is clear that as per the Architects Act, 1972, the word "Architect" has been defined in Sub-section (a) of Section 2 as : "Architect" means a person whose name is for the time being entered in the register". Section 25 of the said Act, deals with the Qualification for entry in Register. Section 25 reads as under:

"Qualification for entry in register - A person shall be entitled on payment of such fee as may be prescribed by rules to have his name entered in the register, if he resides or carries on the profession of architect in India .. Provided that no person other than a citizen of India shall be entitled to registration by virtue of a qualification"

Further, it is relevant to extract Sub-section 1 of Section 35 of the said Act, which reads as under:

"Any reference in any law for the time being in force to an architect shall be deemed to be a reference to an architect registered under this Act."

Further, there is a prohibition against the use of title of Architect u/s 37 of the said Act. In view of the said mandatory provisions of the Central Act, if there is any violation it is punishable. The Central Act overrides the State Act. Prescribing the particular category of persons for representing that particular category to become the member of the Authority, has got its own object for implementation of the aim and object of the said Act. It is significant to note that, it has been specifically stated that, "A person having experience in Architecture" will be one of the member of the said authority, because, the authority being a Town Planning Authority of the City of Mysore, a well qualified and well experienced persons is required to represent the class of Architect, as they are the final

authority for the Town Planning of the entire city and they are the persons who have to prepare comprehensive development plan and which will be revised once in every ten years. The role of the said category is most important for preparing the plan to the City. In my opinion, these facts and circumstances have not been taken into consideration by the Government at the time of appointing the 2nd respondent as the Member to the 3rd respondent in the category of Architect. The 2nd respondent is not a qualified Architect and it has been clearly stated in the Act, as to who is the qualified Architect, as enumerated above. There is a considerable force in the submissions made by the learned Counsel for the petitioners that the 2nd respondent does not have any prescribed qualification or experience as an Architect. The submissions made by the learned Government Pleader in justification of the impugned Notification issued by the Government that, the 2nd respondent is appointed as a "Vastushilpi" class as per the Act and he has produced Annexures - R1 to R3 to substantiate his case, but they are not the certified copies issued by the competent authority as envisaged under the Central Act. Therefore, there is no force in the submission made by the learned Government Pleader, after careful perusal of Sub-section 3(L) of Section 3 of the Act, and the stand taken by the learned Government Pleader is contrary to the said Act. Further, the Council of Architecture, a statutory body constituted by Ministry of Human Resource Development, Government of India, under the Architects Act, 1972, has issued a public notice stating about "Beware of Unqualified and Unregistered persons practicing as Architects". In spite of that and without taking into consideration the aim and object of the 3rd respondent, the Government has proceeded to appoint the 2nd respondent as the member to the 3rd respondent in the category of Architect. Therefore, I am of the considered view that, the Notification issued by the Government appointing the 2nd respondent as the member of the 3rd respondent is not sustainable and it is liable to be set aside.

7. Having regard to the facts and circumstances of the case as stated above and taking into consideration the legal and material aspect of the matter as enumerated above, I do not find any justification to sustain the impugned Notification issued by the Government, appointing the 2nd respondent as member of the 3rd respondent in category of Architect and it is liable to be set aside.

8. For the foregoing reasons, the Writ Petitions are allowed. The impugned Notification dated 20.1.2003, issued by the Government in No. NO.NAE: MYAPRA: 2001 vide Annexure-A in so far as it pertains to appointment of 2nd respondent as one of the member to the 3rd respondent is concerned, it is hereby set aside.

However, it is made clear that, it is open for the Government to appoint a well qualified Architect as one of the member of the 3rd respondent in accordance with law, if so advised,

With the above observations, the Writ Petitions stand disposed of.