

(2016) 08 GUJ CK 0090

In the Gujarat High Court

Case No : Special Civil Application No. 12359 of 2016

Shantaben Manubhai Patel School of Studies and Research in
Architecture

APPELLANT

Vs

Council of Architecture

RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Architects Act, 1972 — Section 21

Citation : (2017) AIR(Gujarat) 21

Hon'ble Judges : Mr. N.V. Anjaria, J.

Bench : Single Bench

Advocate : Mr. D.C. Dave, Sr. Advocate with Mr. Udayan P. Vyas, Advocate, for the Petitioner No. 1; Mr. V.M. Dhotre, Advocate, Mr. Navin Nath, Sr. Advocate with Mr. Mayur V. Dhotare, Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

Mr. N.V. Anjaria, J. - The petitioner, which is an educational institution, filed the present petition praying for a direction to command the Council of Architecture, New Delhi-the respondent herein to permit the petitioner with intake of 40 seats in five years degree programme in the Bachelor of Architecture for the Academic Year 2016-17 offered by the petitioner Institute. It is prayed to declare that the communication dated 20th June, 2016 addressed by the respondent Council denying the intake of 40 seats is arbitrary and unreasonable.

2. Since the commencement of Academic Year 2012-13 which was the first year of Bachelor of Architectural (B. Arch.) Course in the petitioner Institute, the intake capacity of 40 seats was approved by the respondent Council of Architecture. For the subsequent years the same intake capacity was allowed to be continued. For the current Academic Year 2016-17, the Inspection Committee reported, upon which the Council reduced the seats.

2.1. It is the case of the petitioner that before the commencement of the Academic Year, it supplied and met with the deficiencies in the requisite faculties,

thus fulfilled the standards for the intake of 40, yet the Council denied the intake seats but allowed 30 seats. It is the reasonableness and rationality of this decision, which is brought for being tested.

3. The stage-wise facts of the case and the events may be usefully outlined.

3.1. For the purpose of extension of approval to five years degree course in B.Arch., in the fifth year, that is Academic Year 2016-17, the Inspection Committee of the respondent Council visited the petitioner Institute in the month of April, 2016;

3.1.1. By addressing a letter dated 05th May, 2016, the Principal of the Institute informed the Council that one Professor Ms. Preety R. Shah was appointed as regular Principal in March, 2014 through a selection committee in which Council's representative was also present, but when the on-line application was filled in, in December, 2015, the system did not accept the name. It was pointed out that thereafter the petitioner had appointed three Assistant Professors and one Associate Professor in the set up. In the said communication dated 05th May, 2016, name of all the faculties and their cadre, who are appointed in the Institute for the purpose of teaching was mentioned (Page 27. By the said letter the petitioner pointed out that minimum standards regarding faculty were met with;

3.1.2. A notice dated 06th May, 2016 came to be issued to the petitioner by Council calling upon the petitioner to show cause as to why the intake capacity in the B. Arch. Degree course from existing 40 should not be reduced to 20 for the Academic Year 2016-17 for non-maintenance of the minimum standards of architecture education prescribed by the respondent Council. The said notice dated 06th May, 2016 was issued after the inspection.

3.1.3. It appears that in order to give opportunity to the petitioner to make good the alleged deficiencies, the aforesaid show cause notice was in the nature of corrective step and the opportunity. It was stated therein thus,

"In view of the above, your institution is required to submit the list of faculty, Form-16 & salary details etc. in the enclosed Proforma, along with relevant documents, to the Council for further consideration of the Executive Committee. If the institution accepts the decision proposed by the Executive Committee, it may confirm the same so that the letter of approval could be issued by the Council.

In case your institution wishes to avail an opportunity for a personal hearing (Review) to present its case before the Executive Committee, the institution will be required to pay an amount of Rs.25,000/- by way of demand draft towards "Review Charges" in favour of "Council of Architecture", payable at New Delhi, along with information in attached proforma and other relevant documents. It may be noted that the institution can avail the opportunity for filing review before the Executive Committee only once."

3.1.4. The Principal of the petitioner Institute responded with letter dated 23rd May, 2016 to submit the information sought for;

3.1.5. It is the case that instead of affording further opportunity to the petitioner to augment the strength of the faculties, a communication dated 20th June, 2016 was addressed by the Registrar of the respondent Council, received by the petitioner on 29th June, 2016, in which the petitioner was informed that intake for the petitioner Institute was fixed at 30 for the Academic Year 2016-17;

3.1.6. In the aforesaid communication which is impugned, dated 20th June, 2016, the following was communicated.

"The approval accorded by the Council to your institution is subject to compliance of the Council Norms attached herewith as Annexure-A. The approval accorded to your institution shall be subject to appointment of adequate Faculty of Architecture at your institution as per Council Norms, prior to commencement of academic sessions 2016-17. A copy of the assessment report is enclosed herewith.

The observations of the Executive Committee are mentioned below for necessary information/compliance.

- Deficit of 1 Prof., 2 Associate Professors, and 1 Asstt. Prof. still there
- The appointed Asstt. Professors are not qualified as per COA norms."

3.1.7. It was mentioned that adequate faculty strength was not available. It was indicated that the faculties have to be available as per the norms prescribed by the Council before commencement of Academic Year.

3.2. It is pertinent to note that in the letter dated 08th June, 2016 whereby the petitioner Institute was asked to appear before the Executive Committee meeting to be held on 16th June, 2016, the petitioner could not avail the said opportunity as communication dated 20th June, 2016 came to be addressed by the Council stating that the intake capacity is fixed at 30 for the Academic Year 2016-17.

3.3. The petitioner Institute addressed letter dated 01st July, 2016 to the Council with reference to inspection report explaining its stand. In the soon-Page thereafter-sent communication dated 11th July, 2016, the petitioner informed the Council that additional number of faculties as regarded were appointed and that the intake of 40 may be permitted. In course of hearing, learned advocate for the petitioner produced letter dated 16th August, 2016 addressed by the petitioner to the Council, which was taken on record. In this communication, the petitioner pointed out that subsequent to the inspection, the deficiencies no longer remained and they were complied with.

3.4. As per the said letter, the Institute was requested to take into account the following factual aspects.

"(a) It is true that the list of 14 faculties appended to our communication dated

11th July, 2016 was having in all 2 faculties in the names of Ar. Purvi M. Oza as Associate Professor and Ar. Dish Verma as Assistant Professor who were marginally falling short of the requisite qualification prescribed by the COA for being appointed as Associate Professor and Assistant Professor respectively."

"(b) However, subsequently, even the aforesaid deficiencies have been duly taken care of by appointing in all 3 faculties in the names of Ar. Rachita Patel, Ar. Shivangi Darji and Ar. Yash Patel as Assistant Professor. All these 3 faculties possess requisite qualification for being appointed as Assistant Professor as prescribed by the COA."

"(c) In view of the above, Ar. Purvi M. Oza and Ar. Disha Verma, who were appointed on tenure basis, no longer continue as faculties. As such, in the petition we have place on record the final list of faculties with the names of the aforesaid three faculties?."

4. Learned senior counsel Mr. Dhaval C. Dave with learned advocate Mr. Udayan P. Vyas submitted that the petitioner Institute has fulfilled the requirement of having the faculties as the Principal was appointed and the Professor, Assistant Professors and Associate Professors were also appointed in the teaching staff to meet with the standards prescribed by the respondent Council.

4.1. It was highlighted from the record that finally the following faculties were appointed and available in the administration and teaching field at the Institute.

Sr.No.

Name

Academic/Administrative Designation

Date of Joining and Nature of Appointment

Selection by the Selection Committee with Council's representative

1.

Professor Preety Rameshcnandra Shah

Professor/Principal

10.12.2012

Regular Appointment

03.12.2012

2.

Ar.Bharat Balubhai Panchal

Professor Design-Chair

15.06.2016

Full Time Tenure

-

3.

Ar.Seemantini Soraganvi

Associate Professor

02.07.2012

Regular

03.12.2012

4.

Ar.Shilpi Bhaskar Gggarwal

Associate Professor

01.07.2015

Regular

18.04.2016

5.

Ar.Pratik Japarakash Patel

Associate Professor

15.06.2016

Full Time Tenure

-

6.

Ar.Jignesh Bhogilal Oza

Associate Professor

12.07.2016

Tenure

-

7.

Ar.Ruma Manojkumar Singh

Assistant Professor

18.12.2012

Regular

03.12.2012

8.

Ar.Devyani Sanjiv Deshpande

Assistant Professor

16.06.2014

Regular

11.03.2014

9.

Ar.Jemish Bhanubhai Lathiya

Assistant Professor

16.06.2014

Regular

11.03.2014

10.

Ar.Rachita Patel

Assistant Professor

11.07.2016

Tenure

-

11.

Ar.Mayuri Rajendrakumar Thanki

Assistant Professor

15.06.2016

Full Time Tenure

-

12.

Ar.Monika Piyushkumar Patel

Assistant Professor

15.06.2016

Full Time Tenure

-

13.

Ar.Karishma Dhruv Patel

Assistant Professor

15.06.2016

Full Time Tenure

-

14.

Ar.Yash Patel

Assistant Professor

11.07.2016

Tenure

-

15.

Ar.Shivangi Jay Darji

Assistant Professor

02.07.2015

Tenure

-

4.2. On the other hand, learned senior counsel Mr. Navin Nath assisted by learned advocate Mr. Mayur Dhotare referred to the norms and minimum standards prescribed, more particularly with reference to the requisite faculties for the Degree Course in question, prescribed by the respondent Council. He submitted that these norms are prescribed in exercise of statutory powers under Section 21 of the Architect Act, 1997. It was further submitted that they are in the nature of regulatory measures and are intended to maintain the standards of education and imparting of training of the courses. He submitted that the Council was within its right to exercise the discretion and the powers vested in it, so as to allow intake of 30 seats, instead of 40 seats at the petitioner Institute. It was submitted that it was a regulatory power validly exercised.

4.3. The respondent Council in its affidavit-in-reply, particularly in paragraph 9, has in terms stated as to what could be the faculty strength required for intake of 40. Paragraph 9 of the affidavit is reproduced with pertinence.

"9. An opportunity of personal hearing (Review) was also granted to the Petitioner institute, on 16.06.2016, which was held at the office of the Council at New Delhi. It was specifically pointed out in the letter dated 06.05.2016 that "the institution can avail the opportunity of filing review before the Executive Committee only once. As on the date of the review hearing before the Executive Committee, the faculty strength of the Petitioner Institute, in comparison to the prescribed strength to have a student intake of 40 as follows :

Faculty post

Required faculty for intake of 40 as per MSAE 2015

Faculty as shown by institution

Eligible as per Council's norms

Remarks

Principal

1

1

1

Professor

1

1

0

Professor shown has resigned

Associate Professor

4

2

2

2 Associate Prof short.

Assistant Professor

7

5

3

2 Assistant professors had resigned. Thus, 4 Assistant Prof. short.

Total

High deficiency in faculty "

4.4 But in paragraphs 11 and 12 of the affidavit, the stand taken reads thus.

"11. Therefore, after due consideration, and after having afforded a personal hearing to the Petitioner institute, which was attended to by the Principal herself, the Executive Committee of the Council, vide letter dated 20.06.2016 communicated to the Petitioner institute its decision to fix the intake of the institution at 30 students for the academic year 2016-17.

12. The Petitioner institute, it appears, to make good the deficiencies in its teaching staff, made fresh recruitments. However, the same cannot be considered once the Executive Committee of the Council has already provided opportunity to the Institution once and accordingly made the decision to fix the student intake at 30 for the academic year 2016-17."

5. The respondent Council of Architecture has prescribed norms for imparting B. Arch. Course which is five year full time Bachelor Degree Course. The prescription of norms are by deriving powers under Section 21 of the Architect Act. The petitioner Institute fulfils the requirement of possessing the minimum area of land, sufficient space for sports and for co-curricular activities, etc. The petitioner has got a valid affiliation with Gujarat Technological University. In respect of fulfilment of these standards, there is no dispute. It is the requirement of faculty and minimum teaching staff employed is the issue.

5.1. The Norms in Clause Nos.4 and 5 of the Norms set out by the Council are relevant. It is provided in the Norms-para 4 that the Institution shall recruit and always maintain the Architecture Teaching Faculty as per the Minimum Qualifications, Experience and Structure for Teaching Posts in a Degree Level Architectural institution, prescribed in Appendix-B1 of the Minimum Standards of Architectural Education, 2015 of the Council. As per the next Clause in para 5, for an annual intake of 40, the Institution shall have minimum staff structure of full time faculty, in addition to the Principal/Director/Head of the Institution. This has to include one Professor, four Associate Professors and seven Assistant Professors. It is also stated that minimum 50% teaching faculty must be recruited on cadre-wise regular basis. Balance teaching faculty upto 50% can be on cadre-wise tenure basis. For intake more than 40, proportionate increase in faculty shall be as per detailing provided in the Minimum Standards of 2015. Clause 12 is about the requirement of representation of the Council in the Selection Committee for appointing a faculty on regular basis. The said clause says that the Institution shall be required to have a nominee of the Council in the interview Board or Selection committee etc. set up for recruitment in respect of Architecture Teaching Faculty.

5.2. Minimum standards for Architectural Education, 2015 (page 95) which apply,

tabularizes the full time teaching staff requirement on the basis of the sanctioned intake as under, of which what is relevant is the requirement in the fifth year for the purpose of present case, wherein one Principal, one Professor, four Associate Professors and seven Assistant Professors, making total strength 13 is prescribed. It is further mentioned in Note 6 below the tabular form that maximum one Professor can be appointed as Professor, Design-Chair per intake of 40. In Note 7 it is provided that Professor, Design-Chair and other faculty members appointed on tenure basis cannot be considered as Head of the Institution or Principal or Director. The case of the petitioner fulfils these requirements.

5.3. Thus the above norms prescribing the standards contemplate that the institution must have a Principal or Director or Head. In addition to Principal or Director, it must have the faculty in the nature of one Professor, four Associate Professors and seven Assistant Professors. It is further contemplated that of the total number of teaching faculty, 50% must be recruited on regular basis and cadre-wise. The remaining teaching faculty upto 50% is permissible cadre-wise but tenure basis. Now the details enumerated in the tabular form above showing the faculties recruited in the petitioner Institute, brings home the position that the Principal and Professors in the requisite numbers are appointed. Person named at Serial No.1 is a Professor and appointed a Principal since 03rd December, 2012. The appointee at Serial No.2 is a Professor. There are four Associate Professors appointed, and nine are the Assistant Professors. It could be demonstrated that 50% faculties have been appointed on regular basis and cadre-wise and the others are appointed on tenure basis. Those who are appointed on regular basis as per the regular selection process, the Selection Committee was comprised of a representative of the respondent Council. The 50% tenure appointments which are not regular appointments but time-bound appointments and the appointees thereon are accordingly selected by the Institute.

5.4. The respondent Council offered its procedure mechanism to the petitioner to make good the faculty requirements during inspection and post-inspection, and by providing for procedure to review its decision. The process of recruitment to have the requisite number of qualified faculty was continued by the petitioner during the inspection, and even thereafter. Three faculties of Assistant Professors came to be appointed between 23rd May, 2016 being the date when the necessary details pertain to faculty were submitted by the petitioner and request for personal hearing-cum-review of the decision was made, and 16th June, 2016 being the date on which the representative of the petitioner was called for personal hearing by the Executive Council. It is the un-controverted case of the petitioner that at that time the petitioner explained to the Executive Committee that requisite number of faculties to satisfy the minimum standards and to make good the corresponding requirement for intake of 40 seats were available. Therefore the process of recruitment of faculties was underway when the inspection team visited the petitioner Institute. The details thereof were given to

the inspecting team. Finally the petitioner could by recruiting the qualified faculties as per the norms pleaded before the Council that the minimum standards set by it or having the requisite number of faculties cadre-wise were satisfied. There is no gainsaying that the petitioner in its continued efforts could ultimately make good the deficiencies before the commencement of the Academic Year.

5.5. What is required is that the Institute should fulfil the requirements before the commencement of the Academic Year, as was clearly stated by the respondent Council in its communication dated 20th June, 2016 whereby it accorded and extended approval for intake of 30 students.

5.6. In paragraph 10 of the petition and the grounds raised, after referring to communications dated 01st July, 2016 and 11th July, 2016, the petitioner put-forth his case that requirement as regards faculties was satisfied and intake of 40 was required to be allowed and that reduction to 30 seats therein was not justified. In response to the averments in paragraph 10 and the grounds raised against the impugned decision, in affidavit-in-reply, the Council responded in the following words, which is both clinching to curious and consider.

"It is denied that the Petitioner institute has not been treated fairly. The reduction is only from 40 to 30, and the intake shall be increased to 40 in the next academic year, if the Petitioner institute fully complies with the MSAE throughout."

5.7. The above averments clearly given out that in the view of the Council, the reduction effected is from 40 seats to 30 seats only, and thus it is sought to be justified on the quantum of reduction. It is further stated that the said intake of 30 shall be increased to 40 in the next Academic Year, if the petitioner Institute complies with the minimum standards throughout. In other words, what has been suggested and stated is that the minimum standards for 40 seats intake are obtained; that the petitioner Institute was fairly treated in reducing intake only to 30, and further that if the said standards are complied with throughout, the seats shall be increased to 40 in the next Academic Year. Putting it differently, the stand evinced is that, on the present minimum standard seats sanctioned are 30, but on the same standards maintained throughout, in the next Academic Year seats would be enhanced to 40. One searches a rational nexus in vain.

5.8. The requirement fulfilled on the basis of which intake of 30 was approved, were the requirements to be fulfilled for intake of 40 students as well. The petitioner Institute has got the faculty strength of one Professor appointed as Principal, one Professor, Design-chair, four Associate Professors and nine Assistant Professors. In the affidavit-in-reply in paragraph 14 it is stated that the prescribed strength of teaching staff has to be of 13, comprised of one Principal, one Professor, four Associate Professors and seven Assistant Professors and that therefore, according to affidavit, the petitioner does not satisfy the said strength.

This is factually erroneous. As seen above, the petitioner Institute satisfies the prescribed faculty strength, and in fact has more numbers of Assistant Professors.

6. Rationality and reasonableness are the criteria which would legitimise and legalise any action or decision by the authorities. In the field of education in particular, the authorities and bodies in charge of the affairs in any sphere would be expected to profess refinement in these standards. Education has its own importance in terms of rights to be asserted and availed in the sphere. It involves the interests of student in particular and society's interests in educational arena in general. The bodies and authorities in charge of, and in control of education affairs are therefore expected to practise pervasive and reigning approach of being rational, reasonable and of eschewing arbitrariness even of smallest measure.

6.1. The Supreme Court in *Tata Cellular v. Union of India* [(1994) 6 SCC 651], though with reference to the powers exercised in the contractual realm by the government, explained the principle of rationality and reasonableness on which Court can apply its judicial review power. It was stated that it is open to the Court to review the decision maker's evaluation of facts. It was further observed that the Court would intervene where the facts taken as a whole could not logically warrant the conclusion of the decision maker. If the weight of facts pointing to one course of action is overwhelming, then the decision the other way, cannot be upheld.

6.2. In *Charanjit Lamba v. Army Southern Command* [(2010) 11 SCC 314] the Apex Court observed and held,

"? "34. The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a straitjacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out of exercise of power of judicial review. We are not unmindful of the development of the law that from the doctrine of *Wednesbury* [*Associated Provincial Picture Houses Ltd v. Wednesbury Corpn.*] unreasonableness, the court is leaning towards the doctrine of proportionality."* (Para 18)

6.3. The *Wednesbury* principle of reasonableness is a recognised parameter for judicial review of an action or decision of any authority. A decision of the authority would be liable to be quashed where it is possible to conclude that its decision is such that it could not have been directed to the destination it is directed, having regard to the corresponding facts and the relevant law. It is about a decision maker's propriety, so called, to correlate the facts with its conclusion. When both falls apart, in other words, the conclusion does not match with the facts or vice-a-versa, the vices of unreasonable and irrationality creeps in. The character of perversity in such decision arises, rendering the decision unsustainable in law. A decision is to be regarded as unreasonable if it is partial

to the operative facts. It would become irrational where the decision operates unequal and disproportionate to the informing factual matrix.

6.4. The Wednesbury principle has been paving the way for the doctrine of proportionality. The shift of paradigm on this score was explained in the English decision in *Council of Civil Service Union v. Minister for Civil Service* [1984 (3) All ER 935 (HL)] wherein the grounds for judicial review was widened. The "reasonableness" substituted by the "concept of proportionality" was explained thus.

"By "irrationality" I mean what can be now be succinctly referred to as "Wednesbury unreasonableness"?.. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

6.5. The doctrine of proportionality is as such the other side of Wednesbury principle, which brings out the element of irrationality in different way or with a different logic, and in a way more succinctly. It highlights the disproportionateness in the decision having regard to the degree of gravity of attendant facts. The doctrine of proportionality underlines that the facts of the case must resonate with the decision which may be based on such facts. In other words, the decision must correspond in its proportionality to the facts established or crystalised for the purpose of decision. The test of proportionality is concerned with the way in which the decision maker would order, trailor and arrange his priorities, in the decision to be taken. It is a doctrine which enjoins the decision maker to do a balancing act to attribute the relative importance and proper focus to the facts and factors in the case, to the decision to be arrived at.

6.6. In *Maharashtra Land Development Corporation v. State of Maharashtra* [(2011) 15 SCC 616], the Supreme Court explained,

"The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between particular goals and the means employed to achieve those goals, so that administrative action impinges on the individual rights to the minimum extent to preserve public interest. Thus implying that administrative action ought to bear a reasonable relationship to the general purpose for which the power has been conferred. The principle of proportionality therefore implies that the court has to necessarily go into the advantages and disadvantages of any administrative action called into question. Unless the impugned administrative action is advantageous and in public interest such an action cannot be upheld. At the core of this principle is the scrutiny of the administrative action to examine whether the power conferred is exercised in proportion to the purpose for which it has been conferred. Thus, any administrative authority while exercising a discretionary power will have to necessarily establish that its decision is balanced and in proportion to the object of the power conferred."

[para 61]

7. It is the stance of the respondent Council that intake capacity for 40 students could be granted for the next Academic Year 2017-18 if the norms are maintained throughout the year. Therefore, the respondent Council has perceived that on similar set of facts and the availability of faculty requirements, the intake for 40 is liable to be granted for the ensuing Academic Year, however in the current Academic Year it has sanctioned strength of 30 seats. If on the same set of facts and requirements of fulfilment of standards, intake of 40 students is found otherwise acceptable, then why a decision is taken not to permit the petitioner with intake of 40 students, saying that such intake could be sanctioned for the next Academic Year. Does the decision not militate against rationality? Is the approach reasonable in absence of any plausible reasons for not permitting the intake of 40 seats for the current Academic Year? It is this aspect which raises a moot question of law.

8. Making a striking submission, learned counsel pointed out that in the State of Gujarat, as many as six Institutes namely Anant National University, Vadodara Design Academy, Parul University, IPSA, Rajkot, SEDA Navrachana and ITM have been granted approval though in those Institutes there was a deficit in terms of faculty and the requisite number of Associate Professors and Assistant Professors were not appointed. He submitted that by virtue of such facts, he was not pleading negative equality was putting-forth the convenient approach and self-serving treatment by the respondent Council. Be as it may. The petitioner has to stand on its own merit-strength.

9. It may be true that the respondent Council in granting the approval for extension for intake capacity and approving intake capacity of students exercises its statutory power. In *Delhi Science Forum v. Union of India* [(1996) 2 SCC 405] the case was that under the first proviso to Section 4(1) of the Telegraph Act, 1885, powers were vested with the Central Government for grant of licences to non-government companies for establishing, maintaining and working of telecommunication system. The Supreme Court held that exercise of the said statutory discretion would also attract *Wednesbury* principle.

9.1. The Apex Court stated,

"The new experiment has to fulfil the tests laid down by courts for exercise of a statutory discretion. It cannot be exercised in a manner which can be held to be unlawful and which is now known in administrative law as *Wednesbury* principle, stated in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* [(1947) 2 All ER 680 : (1948) 1 KB 223]. The aforesaid principle is attracted where it is shown that an authority exercising the discretion has taken a decision which is devoid of any plausible justification... ?"

(Para 11)

9.2. In celebrated English decision *Associated Provincial Picture Houses Limited*

(supra) has enunciated it thus,

" ? What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters".

10. In the facts of the present case however the power of not allowing intake of 40 students is exercised on the set of facts stated above. They are the same set of facts and conditions which are considered good and satisfactory for allowing intake of 40 students. Yet the discretion is exercised by the respondent Council to accord approval of 30 seats only. The test of reasonableness has to be satisfied in respect also of the discretion which may be statutorily exercisable by the authority. Even if the respondent Council enjoins regulatory power, the regulatory power has also to be exercised reasonably and non-arbitrarily. Once the element of reasonableness and rationality are disregarded in the exercise of powers, the regulatory step slips into the measure of penal nature. Arbitrariness exercised itself is penalising without any reason whatsoever. The decision has to stand to the standards of Wednesbury principle of reasonableness and proportionality so as not to offend Article 14 of the Constitution. The Court is unable to justify the stand and the approach of the respondent Council on the either touchstone.

10.1. For the foregoing discussion and reasons, the stand and the decision of the respondent Council in denying the petitioner Institute the extension of approval for intake of 40 students for the Academic Year 2016-17 for five year degree course in Bachelor of Architecture run by the Institute is held to be unreasonable, irrational and further held to be failing to stand to the parameters of the proportionality doctrine. In that view, the decision is rendered arbitrary and in violation of Article 14 of the Constitution. As a result, communication dated 20th June, 2016 of the Registrar, Council of Architecture, New Delhi-respondent herein and the decision reflected therein are hereby set aside. The respondent Council is mandated and directed to allow intake of 40 seats for the petitioner Institute in respect of five years degree programme in Bachelor of Architecture (B. Arch.) for the Academic Year 2016-17.

11. Petition stands allowed and disposed of in the aforesaid terms.

(N.V. Anjaria, J.)

FURTHER ORDER

At this stage learned senior advocate Mr. Navin Nath for the respondent Council prays for staying the aforesaid judgment and order.

In the facts and circumstances, the staying of the judgment may amount, by other stroke of pen, infructuating the relief granted to the petitioner. For the said

reason as well as for the reasons recorded in the order, the Court is not inclined to accede to the request to stay the judgment and order. Hence the request is rejected.