

(2008) 06 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 345 of 2007

State of Goa and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Architects Act, 1972 — Section 14, 15, 20, 21, 3
Constitution of India, 1950 — Article 162

Citation : (2009) 1 BomCR 257

Hon'ble Judges : Chavan R.C., J; Bobde S.A., J

Bench : Division Bench

Advocate : S.S. Kantak, A.G. and M.D. Salkar, Addl. Govt, for the Appellant;
C.A. Ferreira, Asst. Soli. Gen. for respondent No. 1 and Anand Grover, Naveen
Nath and Shivan Desai, for the Respondent

Final Decision : Allowed

Judgement

Bobde S.A., J.—This is a petition by the State of Goa, its Directorate of Technical Education and Goa College of Architecture. The College of Architecture is an institution, established and administered by the Government of Goa. By this petition, the petitioners have challenged the order dated 14.6.2007 issued by respondent No. 2- Council of Architecture, a statutory body, constituted under the Indian Architects Act, 1972. By the impugned order, the Council has directed that the admissions to the institution shall be withheld from the Academic Session 2007-2008 as the intake of the students is frozen.

2. This impugned order was preceded by communication dated 12.6.07 to the effect that the Executive Committee of the Council of Architecture at its 90th Meeting held on Wednesday, 6th June, 2007 has decided to make the National Aptitude Test in Architecture (N.A.T.A.) compulsory in all the architectural institutions in the Country from the Academic Session 2007-2008 and further that for the Academic Session 2007-2008 the intake of the students shall be subject to the condition that the institution must submit an undertaking that the

students shall be admitted through N.A.T.A. and that if such an undertaking is not given, the intake of students shall be frozen. It is, however, the contention of the Central Government that the N.A.T.A. is not compulsory, particularly since the Common Entrance Examination has been prescribed and is held for the purpose of admissions. Be that as it may, the Petitioner No. 3 College has stated that it is admitting students on the basis of the N.A.T.A..

3. The main contention on behalf of the petitioners is that the impugned order freezing the intake of the students i.e. admission of students in the petitioner No. 3 College is void since there is no Authority in the Council of Architecture to direct that the students shall not be admitted in a college or institution. The main justification by the respondents is that they have such a power or Authority, possessed by them as a power incidental to the power to prescribe minimum standards of education for the purpose of recognition. Therefore, it is necessary to consider the scheme of the Indian Architecture Act, 1972 ("the Act" for short) under which the Council of Architecture is constituted. The Council of Architecture is constituted u/s 3 of the Act.

4. The power to recognise qualifications is conferred by Section 14 on the Central Government as follows:

14(1) The qualifications included in the Schedule or notified u/s 15 shall be recognised qualifications for the purpose of this Act.

(2) Any Authority in India which grants an architectural qualification not included in the Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consultation with the Council, may, by Notification in the Official Gazette, amend the Schedule so as to include such qualification therein, and any such Notification may also direct that an entry shall be made in the Schedule against such architectural qualification declaring that it shall be a recognised qualification only when granted after a specified date:

Provided that until the first Council is constituted, the Central Government shall, before issuing any Notification as aforesaid, consult an expert committee consisting of three members to be appointed by the Central Government by Notification in the Official Gazette.

It may be noted from Sub-section (2) above that any Authority in India which grants an architectural qualification must apply to the Central Government to have its qualification recognised and the Central Government is empowered to include the qualification after consultation with the Council and direct that an entry be made in the Schedule against such architectural qualification granted by the Authority or the College.

5. The power to withdraw qualification is conferred on the Central Government as follows:

20. (1) When upon report by the Executive Committee it appears to the Council:

(a) that the courses of study and examination to be undergone in, or the proficiency required from the candidates at any examination held by; any college or institution, or

(b) that the staff, equipment, accommodation, training and other facilities for staff and training provided in such college or institution,

do not conform to the standards prescribed by regulations, the Council shall make a representation to that effect to the appropriate Government.

(2) After considering such representation the appropriate Government shall forward it along with such remarks as it may choose to make to the College or institution concerned, with an intimation of the period within which the college or institution, as the case may be, may submit its explanation to the appropriate Government.

(3) On receipt of the explanation or where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government, in respect of the college or institution referred to in Clause (b) of Sub-section (5), shall make its recommendations to the Central Government.

(4) The Central Government:

(a) after making such further enquiry, if any, as it may think fit, in respect of the college or institution referred to in Sub-section (3), or

(b) on receipt of the explanation from a college or institution referred to in Clause (a) of Sub-section (5), or where no explanation is submitted within the period fixed, then on the expiry of that period, may, by Notification in the Official Gazette, direct that an entry shall be made in the Schedule against the architectural qualifications awarded by such college or institution, as the case may be, declaring that it shall be a recognised qualification only when granted before a specified date and the Schedule shall be deemed to be amended accordingly.

(5) For the purpose of this section, "appropriate Government" means:

(a) in relation to any college or institution established by an act of Parliament or managed, controlled or financed by the Central Government, the Central Government, and

(b) in any other case, the State Government.

Under this provision, the Council, upon report by the Executive Committee, if it appears to the Council that the courses of study and examination or the staff, equipment, accommodation, training and other facilities do not conform to the standards prescribed by regulations, may make a representation to the effect to the appropriate Government, which may after considering such representation, forward the representation to the College and call upon for explanation and on the basis of such explanation where it is an appropriate Government may make a

representation to the Central Government. It is the Central Government which is empowered to withdraw the qualification by declaring that the qualification ceases to be recognised qualification after a particular date. The manner of doing it is prescribed by the provision as "declaring that it shall be a recognised qualification only when granted before a specified date". Obviously the intention is to save the students who have already undergone and appeared for the examinations when the qualification was recognised from being stranded with a derecognised qualification.

6. It is contended on behalf of the petitioners that the respondent Council of Architecture has no Authority to direct that the Petitioner No. 3 College of Architecture shall not admit any students for the Academic Session 2007-2008. According to the learned Advocate General, in accordance with the aforesaid provision, only the Central Government may withdraw the recognition vide Section 20 of the Act and not the Council of Architecture, in accordance with the procedure prescribed by Section 20. The Council of Architecture has no power to unilaterally direct the freezing of admissions. The submission is correct on a plain reading of the provision.

7. The petitioners are supported in this contention by respondent No. 1 Union of India. It is the contention of Mr. C. A. Ferreira, the learned Asst. Solicitor General that an Authority or a college which trains students for a particular architectural qualification is obliged to approach the Central Government only when it wants to have its qualification recognised. In other words, according to the learned Counsel, a college or an Authority may run a course and grant a qualification de hors the Act. There is no bar to running a course and granting a qualification, but such a qualification would not be recognised, except in accordance with the Act. Correspondingly, the Act only confers on the Central Government, in consultation with the Council of Architecture, the power to withdraw the qualification in accordance with Section 20 of the Act; but the Act nowhere confers on any Authority the power to direct that a particular Authority or a college may not admit any students.

8. Mr. Grover, learned Counsel appearing on behalf of respondent No. 2 the Council of Architecture, however, submitted that the Council has the power to direct freezing of intake of the students in exercise of its power u/s 21 of the Act. Section 21 reads as follows:

21. The Council may prescribe the minimum standards of architectural education required for granting recognised qualifications by colleges or institutions in India.

We do not find from Section 21 any power conferred expressly or impliedly on any Authority to direct that a college or an institution should not admit any students. Section 21 confers on the Council power to prescribe minimum standards of architectural education which are required for granting recognised qualifications by colleges or institutions in India. That power cannot, by any interpretation, be held to include the power to direct freezing of the intake of

students as ancillary or incidental to the power to prescribe minimum standards. A power can be said to be an implied power when its exercise is so related to the main power that it can be safely assumed that the Legislation has impliedly conferred the former to enable the exercise of the latter. Similarly, an ancillary power is one whose exercise is necessary for the effective exercise of the main power. The power in question here is neither implied nor ancillary. Indeed the power to prescribe minimum standards of architectural education can be exercised by the Council without any impediment in the absence of the power to freeze the intake of students.

9. It is clear that the scheme of the Act contemplates that a college or institution, which grants a qualification, does not need the permission of any Authority under the Act to run a course in a college or an institution and grant a qualification. But it becomes necessary for the College or Institution to approach the authorities under the Act only if it wants its qualification to be a recognized qualification. Therefore, where there is some relevant noncompliance by the college or institution, the Act has conferred the power to withdraw recognition, corresponding to the power to grant recognition. There is no corresponding power to freeze the intake of students if there is some non-compliance by the institution or college. Indeed, there is no such power in the Act and we are of the opinion that the power to direct freezing of admissions is not incidental or ancillary to the power to prescribe minimum standards of architectural education required for granting recognised qualifications by colleges or institutions in India.

10. It was next contended by the learned Counsel for the Council of Architecture that the Council has prescribed Minimum Standards of Architectural Education Regulations, 1983 and it must be taken to have been conferred with the power to regulate the intake and admissions because the Act under which the Regulations are framed is a Legislation under Entry 66 of List I of the Seventh Schedule. We are completely unable to accept this submission which must be rejected. A reference may be usefully made to the scope of the legislative entry for considering whether the legislature has validly and properly enacted the legislation in its exercise of legislative power under the particular entry. However, the scope of legislative entry has no relevance when the Court is called upon to construe the scope of powers that are conferred on an Authority under the Act. This must be done with reference to the terms in which the power is conferred on a particular Authority.

11. It was next contended on behalf of the respondent Council of Architecture that because Entry 66 of List I of the Seventh Schedule uses the expression "Co-ordination and determination of standards", the Council of Architecture must be taken to have power to do all ancillary and incidental acts for the purpose of enforcing its standards, which must be taken to include the power to freeze the intake of the students. For this purpose, the learned Counsel for the respondents relied on a decision of the Supreme Court in *Bharati Vidyapeeth [Deemed University] and Others Vs. State of Maharashtra and Another*, . We find that the

decision does not help the respondent's case in any way. In that case, the question that fell for consideration was whether it was open for the State to frame Rules regulating admissions in a deemed University under Article 162, read with Entry 25 of List III of the Constitution or whether the subject of admission was already legislated upon under Entry 66 of List I of the Seventh Schedule by the U.G.C. Act. In that case, the Supreme Court considered the scope of Entry 66 of List I of the Seventh Schedule in which the expression "co-ordination" is used. In that context, Their Lordships observed that "coordination" does not merely mean evaluation. But it means harmonisation with a view to forge an uniform pattern for a concerted action according to certain design, and the power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. Therefore, according to Their Lordships, if any aspect of admission of students in colleges would fall within Entry 66, the power to legislate in regard to those aspects are entirely carved out of the subject of education and vested in Parliament and it falls outside the control of the provisions of Entry 25 of List III. It must be noted that their Lordships were construing the scope of Entry 66 of List I of the Seventh Schedule and scope of Entry 25 of List III. The decision is of no avail to the respondent for construing the scope of power conferred on the Council of Architecture under the Act. Assuming that the Act is enacted under Entry 66, and while exercising the legislative power it was permissible for the Parliament to confer power on the Council of Architecture or any other Authority to freeze the intake of students, it is clear from the provision of the enacted law that the Parliament has not conferred any such power. It is, therefore, of no avail for the respondent to contend that under Entry 66 the Parliament has power to confer such a power on the respondent Council of Architecture and therefore it has conferred such a power.

12. It was next contended by the learned Counsel for respondent No. 2 Council of Architecture that there were several deficiencies in the minimum standard of education maintained by Petitioner No. 3 College. The learned Counsel referred to the ratio of students to teachers which, according to the respondent, is not maintained by the Petitioner No. 3 College. On the other hand, it is the contention of the petitioners that there are no deficiencies and all the deficiencies have been removed by the petitioners. We do not consider it appropriate or even necessary to go into this question since we are of the view that there is no Authority in the respondent Council of Architecture to issue the impugned order.

13. In the result, we are of the view that the Act does not confer any power on the Council of Architecture to direct that the intake of students in a College or an Authority shall be frozen even on the ground that the college or the Authority has not maintained the standards of architectural education prescribed by the regulations. The Council is entitled, in a proper case, only to resort to other power such as power of making recommendations for derecognition of the college or the Authority, in accordance with Section 20 of the Act. As a result thereof, we allow the petition and set aside the impugned orders, directing

freezing of intake of students in the petitioner No. 3 College for the Academic Sessions 2007-2008 and 2008-2009. Rule is made absolute in terms of prayer Clauses (a) and (aa), which read as follows:

a. Issue an appropriate writ setting aside the Impugned Communication dated 14.6.2007 (Exh. D) of respondent No. 1 and further quash and set aside the Public notice issued in the dailies of 7/7/2007 {Exh. F}.

(aa) Issue an appropriate writ setting aside the Impugned Communication dated 8/5/2008.

14. The petition is allowed with costs in the sum of Rs. 10,000/-, to be paid by respondent No. 2.