

(2018) 01 DEL CK 0212

In the Delhi High Court

Case No : Civil Writ Petition No. 3319 Of 2017

Sudhir Vohra

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

School of Planning & Architecture Act, 2014 — Section 3, 3(1), 3(2), 3(3)(a), 3(3)(b), 3(3)(c), 3(3)(d), 3(3)(e), 3(3)(f), 3(3)(g), 3(3)(h), 12, 13(i), 13(2), 13(2)(d)

Citation : (2018) 01 DEL CK 0212

Hon'ble Judges : Gita Mittal, J;C.Hari Shankar, J

Bench : Division Bench

Advocate : Amit Bhagat, Sonali Chopra, Hetu Arora Sethi, R.K. Singh, D. Verma

Final Decision : Allowed

Judgement

C. Hari Shankar, J

1. The petitioner, an architect by profession, impugns the inclusion of Respondent No.4 in the Board of Governors of Respondent No.3, the School of Planning & Architecture (hereinafter referred to as "SPA"), vide order dated 06th March 2017, issued by the Department of Higher Education, Ministry of Human Resource Development (Respondent No.1 herein). Consequently, the writ petition prays that the name of Respondent No.4 be removed from the Board of Governors of the SPA.

2. The SPA, which has been declared as an Institution of National Importance under the School of Planning & Architecture Act, 2014, (hereinafter referred to as "the Act") is admittedly a specialized university, which exclusively provides training, at various levels, in different aspects of human habitat and environment.

3. Section 12 of the Act provides that the authorities, of Delhi Schools covered by the Act, shall include a Board of Governors and a Senate. The Board of Governors (hereinafter referred to as "the BOG") of any school is, by virtue of sub-Section (i) of Section 13 of the Act, the principal executive body of the

particular School in question.

4. Section 13(2) of the Act provides for the Constitution of the BOG, and reads thus:-

"(2) The Board of every School shall consist of the following Members, namely:-

(a) Chairperson to be appointed by the Visitor from among a panel of three names recommended by the Central Government who shall be an eminent Architect or Planner;

(b) Principal Secretary or Secretary, Technical Education or Higher Education of the respective State Government or Union territory in which the School is situated;

(c) one representative from the Institute of Town Planners, India to be nominated by the President of the Institute of Town Planners, India:

(d) one representative from the Council of Architecture to be nominated by the President of the Council of Architecture:

(e) a representative from the All India Council for Technical Education to be nominated by the Chairman of All India Council of Technical Education;

(f) a representative of the University Grants Commission;

(g) one expert from the professions of architecture or landscape architecture or urban design and one from Urban and Regional Planning nominated by the Council of School of Planning and Architecture;

(h) two representatives from Senate; one each from Department of Planning and Department of Architecture, by rotation for a period of two years, in order of seniority;

(i) two persons not below the rank of Joint Secretary to the Government of India to be nominated by the Central Government from amongst persons dealing with technical education and finance or their nominee, ex officio;

(j) one person not below the rank of Joint Secretary to the Government of India to be nominated by the Government of India, Ministry of Urban Development;

(k) the Director of the School, Member, ex officio;

(l) the Registrar of the School shall act as a Secretary to the Board.

Of the various clauses of Section 13(2) (supra), clause (d) alone concerns this petition.

5. The "Council of Architecture" referred to in Clause (d) of Section 13(2) of the Act is constituted by Section 3 thereof. Section 3 of the Act, which is of relevance, reads as under:

"3. Constitution of the Council of Architecture:

(1) The Central Government shall, by notification in the Official Gazette, constitute, with effect from such date as may be specified in the notification, a Council to be known as the Council of Architecture, which shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract, and may by that name sue or be sued.

(2) The Head Office of the Council shall be at Delhi or at such other place as the Central Government may, by notification in the Official Gazette, specify.

(3) The Council shall consist of the following members, namely:-

(a) five architects possessing recognised qualifications elected by the Indian Institute of Architects from among its members;

(b) two persons nominated by the All India Council for Technical Education established by the Resolution of the Government of India in the late Ministry of Education No. F.16-10/44-E. III, dated the 30th November, 1945;

(c) five persons elected from among themselves by heads of architectural institutions in India imparting full-time instruction for recognised qualifications;

(d) the Chief Architects in the Ministries of the Central Government to which the Government business relating to defence and railways has been allotted and the head of the Architectural Organisation in the Central Public Works Department, ex officio;

(e) one person nominated by the Central Government;

(f) an architect from each State nominated by the Government of that State;

(g) two persons nominated by the Institution of Engineers (India) from among its members; and

(h) one person nominated by the Institution of Surveyors of India from among its members.

Explanation.-For the purposes of this sub-section,-

(a) "Institution of Engineers (India)" means the Institution of Engineers (India) first registered in 1920 under the Indian Companies Act, 1913 (7 of 1913) and subsequently incorporated by a Royal Charter in 1935;

(b) "Institution of Surveyors of India" means the Institution of Surveyors registered under the Societies Registration Act, 1860 (21 of 1860).

(4) Notwithstanding anything contained in clause (a) of sub-section (3), the Central Government may, pending the preparation of the register, nominate to the first Council, in consultation with the Indian Institute of Architects, persons referred to in the said clause (a) who are qualified for registration under section 25, and the persons so nominated shall hold office for such period as the Central

Government may, by notification in the Official Gazette, specify.

(5) Notwithstanding anything contained in clause (f) of sub-section (3), the Central Government may, pending the preparation of the register, nominate to the first Council, in consultation with the State Governments concerned, persons referred to in the said clause (f), who are qualified for registration under section 25, and the persons so nominated shall hold office for such period as the Central Government may, by notification in the Official Gazette, specify".

6. Vide the impugned communication dated 06th March 2017, by Respondent No.1 to the SPA, the constitution of the new BOG of the SPA, under Section 13(2) of the Act, by the competent authority, was sought to be communicated. Of these, Respondent No.4 i.e. Sh. Balbir Verma, was nominated as a Member of the Board under Clause (d) Section 13(2) of the Act, i.e. as a "representative from the Council of Architecture to be nominated by the President of the Council of Architecture".

7. The precise case of the petitioner, before us, is that Respondent No.4 does not qualify as a "representative from the Council of Architecture" as he was not one of the members of the Council, within the meaning of Section 3 of the Act. This factual submission, of the petitioner, is not traversed by any of the respondents.

8. The stand of the respondents, in answer to the said contention of the petitioner, is that Clause (d) of Section 13 (2) of the Act refers only to a "representative from the Council of Architecture", and not a "Member of the Council of Architecture". In other words, the respondents seek to contend that the "representative", referred to in the said clause (d) of Section 13(2) need not necessarily be a Member of the Council of Architecture. That Respondent No.4, as an architect, is registered with the Council of Architecture, is not in dispute; the respondent would aver that, by virtue of such registration, Respondent No.4 was competent to be nominated as a Member of BOG as a "representative from the Council of Architecture" even though he was not a Member of the said Council.

9. To support this stand, Mr. D. Verma, learned counsel for Respondent No.4, would exhort us not to read too much into the use of the word "from" in Clause (d) of Section 13 (2) of the Act, even though other clauses of the same Section used the word "of". He has pressed, into service, certain judicial authorities, which, in his submission, rule that different words, used within the same statutory provision, may require, on occasion, to be given the same meaning. At worst, he would submit, the wording of Clause (d) of Section 13(2) of the Act may be characterized as inelegantly drafted, attributable possibly to laxity on the part of the draftsman.

10. Mr. Verma has also, in this context, drawn our attention to various legislative provisions-plain as well as subordinate - which, while referring to election of persons to posts, use the words "from amongst its Members", or expressions similar thereto. The absence of any such qualifying expression in Clause (d) of

Section 13(2) of the Act, he would submit, communicates the legislative intent to be that the zone of consideration, for selection of persons to be appointed under clause (d) of Section 13(2), was not limited to Members of the Council.

11. We have heard the learned counsel appearing for the rival parties before us at length, and bestowed our anxious consideration to the contentions advanced at the Bar.

12. The controversy, in our opinion, is narrow and does not admit of any complexity.

13. A juxtaposed reading of the various Clauses of Section 13(2) of the Act reveals that the words "from" and "of" have selectively and, apparently, deliberately-been used in different clauses thereof. Clauses (c), (d), (e) and (h) used the word "from" whereas Clauses (b), (f) and (k) used the word "of". Where different words are used by the legislature in the same statutory provision, the use of such different words have necessarily to be regarded as deliberate, and it would be interpretative folly, on our part, to attribute, to such different words, the same meaning. (Ref: CIT v. East West Import & Export (P). Ltd, Jaipur, AIR 1989 1 SC 836, Shri Ishal Alloy Steels Ltd. v. Jayaswalas Neco Ltd, (2001) 3 SCC 609, Kailash Nath Agarwal v. Pradeshia Indust and Inv Corp. of U.P. (2003) 4 SCC 305, D.L.F. Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, AIR (2003) 5 SCC 622, Member, Board of Revenue v. Arthur Paul Benthall, AIR 1956 SC 35).

14. Venkatarama Aiyar, J. speaking for the Bench in Member, Board of Revenue v. Arthur Paul Benthall ,1955 (2) SCR 842, ruled that "when two words of different import are used in a statute in two consecutive provisions, it would be difficult to maintain that they are used in the same sense".

15. The reliance, by Mr. Verma, appearing for Respondent No.4, on provisions relating to elections to various bodies, containing the conditional expression "from amongst its members" (or expressions similar thereto) is, in our view, patently misconceived. The stipulation regarding the persons elected having to be from the Members of the body/bodies concerned is obviously so as to demarcate and delineate the zone of consideration from which the person or persons have to be elected. In clause (d) of Section 13(2) of the Act , the said zone already stands delineated by the use of the words "from the Council of Architecture". The use of the word "from" in our view, is deliberate and can admit of only one construction. Members of the Council of Architecture, and Members alone, would be entitled to be regarded as representatives from the said Council. Had the words been "representative of the Council of Architecture", it might, perhaps, have been possible to argue that the representative need not necessarily have been a Member of the Council. However, a "representative from the Council of Architecture" could only be from the Members of the said Council. The submission, of the respondent, that any architect registered with the Council of Architecture was eligible to be regarded as a representative from the Council

of Architecture, is in our considered opinion, totally unsustainable in law.

16. Our impression is fortified by a juxtaposed reading of Clause (d) of Section 13(2) of the Act with Section 3 thereof. Clause (d) of Section 13(2) of the Act, as has been repeatedly emphasized hereinabove, contemplates "one representative from the Council of Architecture to be nominated by the President of the Council of Architecture" to be a Member of the Board of Governors (BOG). The Council of Architecture is constituted under Section 3 of the Act. Sub-Sections (1) and (2) of Section 3 contemplate Constitution, of the Council of Architecture, by notification by the Central Government, and location of the Head-Office of the Council at a notified place, respectively. Sub-Section (3) specifically states that "the Council shall consist of the following members" whereafter eight categories of persons are enumerated in Clauses (a) to (h). These eight Clauses (a) to (h) of Section 3(3) of the Act, therefore, are exhaustive regarding the Members of the Council, and sub-Section (3) itself states, unambiguously, that the Council shall consist of the said members. The use of the word 'consist', in Section 3(3) makes it clear that the Council of Architecture is but a commodious appellation for the Members categorized in Clauses (a) to (h) thereunder, and nothing beyond that. The Council consists of its Members; per corollary, the Members constitute the Council. Selection from the Council, therefore, necessarily implies and envisages, selection from its Members. Any representative from the Council has, therefore, on a plain reading of the words, necessarily to be one of the Members who falls within the said eight Clauses (a) to (h) of Section 3(3) of the Act. Any person who does not fall within the said eight clauses would be an entity outside the Council of Architecture; quite obviously, therefore, he could not be representative from the said Council. Thus read, too, it is apparent that a Member of the Council, falling within one of the eight Clauses (a) to (h) of Section 3(3) of the Act, alone, is contemplated as the Member, of the BOG of the SPA, referred to in Clause (d) of Section 13(2) of the Act (supra).

17. In this view of the matter, it is not necessary for us to deal with all the decisions cited by Mr. Verma. Principles of interpretation of statute, it is trite, are not straight-jacketed, and are fundamentally fluid in nature, requiring to be moulded keeping in view the statutory provision being subjected to interpretation. There are no absolute principles of statutory interpretation. Construction, and understanding, of words used in statutory provisions, necessarily has to be conditioned by the contours and context in which they are used.

18. In *Murray vs. Foyle Meats Ltd*, 1999 (3) ALLER 769, the House of Lords echoed this thought, by pronouncing that "the Courts should avoid laying down so-called tests to be applied in every case for the danger in prescribing and designating tests is that it may divert attention from the language used in the statutory provision and encourage an approach not intended by the legislature."

19. For the same reason, we are not impressed by the submission, of learned counsel for the respondent, that the interpretation of Clause (d) of Section 13(2)

of the Act, as proposed by the petitioner, and accepted by us, would amount to adding, to the said clause, the words "from amongst its members". We are of the opinion that the use of the words "from the Council of Architecture" are more than sufficient to indicate, clearly and unequivocally, the legislative intent, that the nominee concerned had to be a Member of the Council of Architecture, and not just any one of the teeming millions of architects practicing in the country.

20. The issue may be viewed from yet another angle. The Council of Architecture is the apex body of Architects, the members of which representative the collective interests of all various architects practicing their profession in the country. As such, the Members of the Council of Architecture are themselves representatives of practicing architects. The reference, in Clause (d) of Section 13(2) of the Act, to "representatives from the Council of Architecture" has, therefore, necessarily to relate to one of the Members of the said Council who, by virtue of such Membership, is a representative of the "body-politic" of architects in the country.

21. In view of the above discussion, we are constrained to hold that the appointment / nomination of Respondent no. 4 as a member of the Board of Governors of the SPA, by the impugned communication dated 06th March 2017, from Respondent No.1 to the SPA, is illegal, being contrary to clause (d) of Section 13(2) of the Act, as he was, admittedly, not a Member of the Council of Architecture within the meaning of Section 3 (3) of the Act.

22. Resultantly, the appointment of the Respondent No.4 as Member of the Board of Governors of the SPA is quashed and set aside.

23. The writ petition is, therefore, allowed.

24. There shall be no order as to costs.