

(1999) 05 GAU CK 0048
In the Gauhati High Court
Case No : Writ Appeal No. 114 of 1996

Tulya Gogoi and Others

APPELLANT

Vs

Association of Architects and Others

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Architects Act, 1972 — Section 14, 15, 18, 19, 2

Citation : (1999) 2 GLT 109

Hon'ble Judges : Brijesh Kumar, C.J;P.G. Agarwal, J

Bench : Division Bench

Advocate : B.K. Das and P.K. Roy, for the Appellant; B.D. Goswami and D. Das, for the Respondent

Final Decision : Dismissed

Judgement

Brijesh Kumar, C.J.—This Writ Appeal has been preferred by the Appellants against the judgment and order dated 22.2.96 passed by the learned Single Judge in Civil Rule No. 2148/92 by which it has been directed that the authorities shall not use the name, style and designation of Architect in respect of Respondent Nos. 9 to 34 in the writ petition (Appellants in this appeal). The Appellants who were appointed as Architectural Draftsman were redesignated by means of the impugned order dated January 20,1988 as Junior Architect which was challenged by the Respondent No. 1, namely, Association of Architects, Assam, by filing the above noted Civil Rule.

2. We have heard the learned Counsel Shri B.K. Das for the Appellants and the learned Counsel appearing for the Respondents.

3. The writ petition was filed by Association of Architects, Assam which is registered under the Societies Registration Act. It is averred that its members are qualified and registered Architects under the provisions of the Architects Act, 1972. Some of them are private professionals and others are employed including in the P.W.D., Assam. The present Appellants were appointed by different orders

passed by the Chief Engineer, P.W.D. as Architectural Draftsman. Order dated January 20, 1988 was issued by the Government of Assam saying that in the interest of public service the Governor of Assam was pleased to redesignate the post of Architectural Draftsman, P.W.D. as Junior Architect with immediate effect. This redesignation has been objected to by the Association of Architects, Assam on the ground that the Appellants have undergone three years Diploma Course in Architectural Assistantship from the Girls' polytechnic which is neither recognised by the Central Government nor by the Council of Architecture. They are also not registered as Architect as provided u/s 37 of the Architects Act, 1972 (hereinafter referred to as the "Act, 1972"). Therefore, designation of Architect or Junior Architect cannot be bestowed upon them. It violates the provisions of the Act, 1972. It was also the case of the Petitioner association that the Appellants were being considered for promotion to the post of Assistant Architect in the Public Works Department from the post of Junior Architect in the similar manner as provided for the Diploma holder Junior Engineers in the P.W.D. who are promoted to the post of Assistant Engineer and so on. The case of the Petitioner further is that under the Service Rules in the P.W.D. there is no post of Junior Architect. Hence the process of consideration of promotion of the Appellants as Assistant Architect was bad in law and prayer was made that the Government may be restrained from proceeding further in the matter. Various provisions of the Act, 1972 have been placed before us.

4. Clause (a) of Section 2 of the Act, 1972 defines the word "architect" to mean a person whose name is entered in the register. Section 14 of the Act, 1972 provides for recognition of qualifications granted by the authorities and it provides that qualifications included in the schedule or notified u/s 15 shall be recognised qualifications for the purpose of the Act. As indicated earlier, according to the Petitioner-Respondent, three years' diploma in Architectural Assistantship given by the Girls' Polytechnic, Assam is not a recognised qualification in terms of Section 14. A reference has also been made to Section 21 of the Act, 1972 which provides that the Council may prescribe the minimum standard of architectural education required for granting recognised qualifications by colleges or institutions in India. Section 22 of the Act, 1972 provides for regulation of professional conduct of the Architects by the Council of Architecture. Section 23 provides for preparation and maintenance of register of architects. Section 25 provides for qualification for entering in the register and says that a person shall be entitled on payment of prescribed fee for his name to be entered in the register if he carries on his profession of architect in India and holds a recognised qualification, or in case he does not hold such a qualification but being an Indian citizen has been engaged in practice as an architect for a period of not less than five years prior to the date appointed under Sub-section (2) of Section 24. Section 35 provides for some preference to be given to the registered architects in the matter of employments in the government and local bodies and institutions. The relevant provisions contained in Section 37 which prohibits the use of title of "architect" reads as under:

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.-For die purposes of Clause (a)-

(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.

5. The learned Single Judge by means of the impugned judgment disposed of the writ petition holding that the Government cannot use the title of Architect in respect of persons who are not qualified and registered under the Act. It was further provided that promotion may be given to those persons in due course, but not with the name and style of Architect and that the service condition of the Appellants may not be changed.

6. Learned Counsel for the Appellants has vehemently urged that the provisions contained in the Architects Act, 1972 would not be applicable in the case of those who are in the Government employment. There is no denial of the fact that the names of the Appellants are not registered in the register of Architects as provided under Sections 24 and 25 of the Act. There is also ho denial of the fact that the qualification as held by the Appellants, namely, three years diploma course from the Girls" Polytechnic, Assam, is not recongnised qualification u/s 14 of the Act having not included in the schedule. Section 14 of the Act reads as follows:

14. Recognition of qualifications granted by authorities in India.-(1) The qualifications included in the Schedule or notified u/s 15 shall be recongnised 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.

7. Section 15 provides for recognition of qualification granted by any university or other institution in any country outside India. It appears that the Girls' Polytechnic granting three years' diploma to the Appellants has not applied to the Central Government for its inclusion in the schedule. In any case, it is nobody's case that it finds place in the schedule. According to the definition of the word "architect" it means a person whose name is entered in the register. Register of architects is maintained under Sections 23 and 24 of the Act. Thus from the provisions indicated above, it is quite clear that the qualification which is held by the Appellants is not recognised qualification in terms of Section 14 of the Act and the Appellants are also not entered in the register of architects. On behalf of the Appellants, however, it is indicated that the qualification held by the Appellants is recognised by the State Council of Technical Education and the Girls' Polytechnic is recognised by All India Council for Technical Education. It may be correct, but the question is whether it meets the requirement of the provisions of Architects Act or not. In case it does not meet the requirement of the provisions of the Act, one may not be entitled to use the title or designation of "Architect". A clear prohibition is also contained u/s 37 of the Act.

8. We may now consider the submission made on behalf of the Appellants that the Architects Act, 1972 would not be applicable to the architects working in the Government Department. In this connection learned Counsel has drawn our attention to the statement of objective reasons of the Architects Act, 1972. According to the said statement, since the building activity had increased manifold all around, namely, multi-storeyed office building, factory building, residential houses, etc., minimum qualified persons calling themselves as Architects have been undertaking the construction of building which are uneconomical and not safe. Thus with a view to protect the general public from unqualified persons working as Architects a statutory regulation would be necessary. The statement of objects and reasons also says that with the passing of the legislation it would be unlawful for any person to designate himself as "architect" unless he has the requisite qualification and is registered under the Act. Thereafter the main features of the Bill are indicated in the statement of objects and reasons. The feature at serial No. 4 has been particularly placed before us which stipulates that after expiry of two years from the date of the Act coming into force, a registered architect shall get preference for appointment as an architect under the Central or State Government or any other local body. From this feature it is tried to be shown that there is clear bifurcation of those

carrying on private profession and those who may be provided Government employment. Those who get Government employment, they would be governed by the conditions of service of the Government department and not by the provisions of the Act; whereas the private professionals whose conduct is sought to be channelised and mal practices are sought to be checked, they will be governed by the provisions of the Act. To lay a further emphasis on this aspect of the matter learned Counsel for the Appellants has urged that so far Government employees are concerned, their conduct is controlled and governed by the rules of the Government service. In case they commit any gross negligence or any other misconduct they can well be dealt with under the Rules applicable to the Government employees, but private professionals would not be controlled by any provisions except as contained in the Architects Act, 1972. It is thus submitted that the purpose of enacting the Architects Act, 1972 was only to have control over the private professionals.

9. Learned Counsel for the Appellants has also drawn our attention to Section 23 of the Act which provides for preparation and maintenance of register of architects. One of the information prescribed to be recorded in the register is indicated in Clause (d) of Sub-section (3) is the professional address. It provides as follows:

(3) The register shall include the following particulars, namely:

(a)....

(b)....

(c)....

(d) his professional address; and....

Form 2 as prescribed under the Rules requiring similar information has also been pressed into service to infer that the register is maintained only for the professionals. It maybe indicated that Clause (e) of Sub-section (3) of Section 23 further provides that such further particulars are also to be mentioned as prescribed by the rules. It is difficult to infer from the above noted provisions that the provisions of the Act apply only to the private professionals.

10. Learned Counsel for the Appellants has cited before us a decision of the Hon"ble Supreme Court reported in Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, where it has been held that in case of doubt about the meaning of a word of a statute it is to be understood in the sense in which they best harmonise with the subject for the enactment and the object which the Legislature had in view. The meaning need not be strictly in accordance with the grammatical or etymological propriety of language nor its popular use, but the object which is sought to be attained has to be kept in mind. On the basis of this decision it is submitted that the objects of enacting Architects Act, 1972 was to protect the general public from unqualified persons working as architects. Such unqualified persons work in a manner which is

unsafe and uneconomical and they also bring the profession of architect to disrepute. With this end in view the enactment was made. The submission is that the Government does not need any such protection. It is not included in the general public. Hence the provisions of the Act are to be interpreted in the manner that they serve the object and purpose of the Act for which it is enacted rather than to have in its sweep the Government employees also who remain under the control of the Government and are bound by the Government rules and are answerable to it.

11. On behalf of the Respondents reliance has been placed upon a decision reported in *Om Prikash Mittal Vs. Council of Architecture and Others*, in which the validity of the provisions of the Architects Act including Section 37 has been upheld. We hardly find that this decision is of any help on the point involved in present case. The vires of the Act is not under challenge.

12. There is no doubt that the argument as advanced on behalf of the Appellants is attractive, but it hardly appeals us. It is true, looking to the sudden spurt in the activity of building constructed for factories, industries, housing colonies, office complexes, etc. it was considered that the profession of architecture must be regulated. Only those who have proper education and training and are qualified to work as such may alone be permitted to work as architects. It is a legislation especially dealing with architects. Meaning of the word "architect" has been statutorily provided under Clause (a) of Section 2 where it has been provided that it means one whose name is entered in the register. A register of architects is prepared and maintained as indicated earlier under the provisions of Sections 23 and 24 of the Act. Section 25 provides that a person shall be entitled to be entered in the register who holds a recognised qualification. So far recognised qualification is concerned, it is one which is included in the Schedule u/s 14 of the Act. Any authority which grants an architectural qualification has a right to apply to the Central Government to have such qualification recognised. The Central Government in turn after consulting the Council of Architecture may, by a notification in the official gazette, recognise the qualification and include the same by amending the schedule including the qualification. The authority who imparts architectural education has to maintain certain standard in the educational training failing which the recognition is liable to be withdrawn. Therefore, such institutions have to maintain the standards of examination and provide staff, equipment, training and other facilities so that the candidates undergo courses of study and examination and acquire proficiency up to the standard as prescribed by Section 20 of the Act. Section 21 of the Act provides that the Council of Architecture may prescribe the minimum standards of architectural education. Professional conduct is also subject to the regulations framed by the council. The Council of Architecture, u/s 30 of the Act, is empowered to punish an architect if found guilty of misconduct, may suspend him from practice as an architect or remove his name from the register. Conduct of an architect is effectively controlled by Section 30. As a Government servant one may be punished under the Government Rules, but still he may practise the

profession of architecture. But check is placed by Section 30 under which the name of an architect is even liable to be removed from the register disentitling him to practise. Therefore, the argument that being in Government service an architect is accountable to his employer according to the rules does not hold good since mere punishment as a Government employee may not be enough to debar him from practising as an architect which is only controlled under Sections 22, 29 and 30 of the Act. The purpose of the Act, therefore, is not only to protect the individuals from unqualified or under qualified persons professing themselves to be Architects but also to regulate the standard of professional education so that they must attain the minimum proficiency and standards required for working as Architects. The standards of professional education set as well as the quality of the institutes imparting education in architecture as well as standards of examination as provided under Sections 18 to 21 are necessary to achieve desired standards of an Architect which is necessarily required for all alike—may be private profession or in Government employment. In this view of the matter, prohibition as contained u/s 37 of the Act against use of title and style of Architect except by a registered Architect fulfills the reasons and objects for which the Act is enacted.

13. Three year's diploma course in Architectural Assistantship held by the Appellants may be recognised by All India Council for Technical Education and the state council of Technical Education which may be good enough to get them some employment, but not as an Architect unless it is recognised by council of Architecture in terms of Section 14 of the Act. It is not known as to whether the authorities concerned have ever applied to the Central Government for recognition of diploma in Architectural Assistantship u/s 14 of the Act or not. It is also not even the case of the Appellants that the standards of the three years diploma course of Girls' polytechnic conforms to the standards of professional education as laid down by the council of Architecture under the Act. Under the provisions of the act only those who have recognised qualification would be entitled for being entered in the register of architect and the "architect" would mean one who is entered in the register of architects. In sequence of things prohibition is contained in Section 37 of the Act that no person other than a registered architect is entitled to use the title and style of architect.

14. We do not think it is possible to draw any distinction, as vehemently canvassed before us, between the architects carrying on their private profession as such and the architects who may be in the employment of the Government or in the employment of any other statutory body or local authority or for that purpose any other establishment. The proficiency as required of one carrying on the job of architect is provided, controlled and maintained by the provisions of the Act. It would be difficult to equate three years' diploma course of Architectural Assistantship with the degree course of Architecture imparted according to the standards set under the Act. The same standard of efficiency is required, may be the building activities are carried on by the State or by private individual. In these circumstances the prohibition as contained in Section 37 of

the Act cannot be confined only to the private professionals.

15. It may also be pointed out here that proviso to Section 37 indicates as to in which cases Section 37 would not be applicable. It would not apply in case of a "landscape architect" and "naval architect" who deal in design of open space relating to plants and trees, etc. and in designing construction of ship respectively. Section 37 will also not apply to one who carries on profession outside India but has undertaken any specific project in India. Apart from the categories as indicated above, no other exception to the applicability of Section 37 has been provided much less on the ground that one is engaged in private profession or in Government employment.

16. The Appellants were appointed as Architectural Draftsman. Their designation was sought to be changed later on after they had joined the employment. In our view, the learned Single Judge committed no error in holding that change in the designation describing the Appellants as Junior Architects was hit by Section 37 of the Act. We also feel that the learned Single Judge has rightly provided that while reverting back to the designation of the Appellants to "Architectural Draftsman" would not in any manner affect their chances of promotion as may be provided under the conditions of their services.

17. In view of the discussion held above, we hardly find any good reasons to interfere with the order passed by the learned Single Judge. The appeal has no merit and it is accordingly dismissed.