

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 4th January, 2012

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WP(C) NO.8653/2008

INSTITUTE OF TOWN PLANNERS, INDIA

..... Petitioner

Through: Mr. Rakesh Kumar Khanna, Sr. Adv.
with Mr. Pramod Gupta & Ms. Seema
Rao, Advs.

Versus

COUNCIL OF ARCHITECTURE & ORS.

..... Respondents

Through: Mr. Naveen R. Nath with Ms. Amrita
Sharma & Mr. Darpan K.M., Advs.
for R-1.
Mr. Amitesh Kumar & Mr. Jatan
Singh, Advs. for R-2/AICTE.
Mr. Baldev Malik, Adv. for R-3/UOI.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the Minimum Standards of Architectural Education Guidelines for Post-Graduate Programme, 2006 published by the respondent No.1 Council of Architecture (COA), to the extent they lay down guidelines for Town & Country Planning courses viz. M. Arch. (Urban & Regional Planning), M. Arch. (Transportation Planning & Design) and M. Arch. (Housing). The petition also seeks to prohibit the respondent No.1

COA and its affiliate Institutes and Colleges from introducing / conducting the said Post-Graduate courses. The petition yet further seeks direction in the nature of mandamus directing the respondent No.1 COA to operate within the framework of The Architects Act, 1972.

2. Notice of the petition was issued and on the application of the petitioner for interim relief, vide interim order dated 04.03.2009, it was directed that any admission made in respect of the courses aforesaid shall be subject to the outcome of the writ petition and the respondent No.1 COA was also directed to communicate the order to the students seeking admission to the said courses. However in LPA No.180/2009 preferred by respondent No.1 COA, vide order dated 27.04.2009 the requirement for respondent No.1 COA to so inform the students was dispensed with. Counter affidavits have been filed by respondent No.1 COA, respondent No.2 All India Council for Technical Education (AICTE) as well as respondent No.3 Ministry of Human Resource Development (MHRD). The counsels have been heard.

3. The petitioner, in the year 1951, was incorporated as a company under Section 26 of the Indian Companies Act, 1913 (equivalent of Section 25 of

the Companies Act, 1956) and claims to be the national level apex body of professionals in the field of Town & Country Planning, with approximately 3000 members on its rolls. The petitioner claims to have been *inter alia* involved in evaluation and monitoring of the course curriculum of the Universities and Schools imparting education in Town & Country Planning and also claims to have been according recognition to the various Institutions / Schools imparting such education and which recognition entitles the students clearing the said courses to become members of the petitioner.

4. It is the case of the petitioner that the three courses aforesaid, though titled as Master of Architecture, but the course curriculum thereof is of Town & Country Planning over which respondent No.1 COA has no jurisdiction. It is further the case of the petitioner, that the respondent No.2 AICTE is the nodal authority for recognition of any technical courses; that technical education in Section 2(g) of the All India Council for Technical Education Act, 1987 is defined as meaning programmes *inter alia* in Architecture & Town Planning; that it is thus the respondent No.2 AICTE which is empowered to lay down norms and standards for courses, curricula,

physical and instructional facilities, staff pattern, staff qualifications etc. for such courses; that the petitioner has entered into a Memorandum of Understanding (MOU) with the respondent No.2 AICTE for utilization by respondent No.2 AICTE of expertise of the petitioner in the field of Town & Country Planning and for assessment of proposals for establishment of new institutions or introduction of new courses in Town & Country Planning.

5. The Guidelines aforesaid, impugned in this petition, *inter alia* require the Universities & Institutions intending to impart Post-Graduate programmes and courses in Architecture particulars whereof are given in “Appendix A” to the Guidelines and which include the three courses aforesaid to which objection is taken to furnish a detailed syllabus, course contents, period of studies and scheme of examinations to respondent No.1 COA for consideration and approval.

6. The respondent No.1 COA in its counter affidavit has pleaded that Town & Country Planning has always been an integral part of the course curriculum for the undergraduate degree programme in Architecture; the basic courses of B. Arch. which has been prescribed as part of the Minimum Standards of Architectural Education Regulations, 1983 itself prescribes

subjects such as Landscape Design, Surveying and Leveling, Building, Service and Equipment, Humanities, Estimating and Costing, Principle of Human Settlement, Town Planning, Urban Design, Landscape & Urban Planning etc.; that the petitioner has no locus to question the authority of respondent No.1 COA for prescribing standards of education; that there are no undergraduate programmes in the subject of Town & Country Planning except that offered from the School of Planning & Architecture, New Delhi; that Urban Design, Housing and **Site** Development etc. are integral part of the Architecture and thus the respondent No.1 COA cannot be said to be having no power to prescribe guidelines and courses for the three programmes aforesaid. Reliance is placed on para 76 of judgment in ***MD Army Welfare Housing Organization Vs. Sumangal Services (P) Ltd.*** (2004) 9 SCC 619 where Hudson on 'Building and Engineering Contracts' defining the role of "Architect" was quoted with approval. It is further contended that the AICTE Act does not vest the respondent No.2 AICTE with the power to regulate either Architectural education or Town Planning and that under the AICTE Act no regulation has been framed in respect of Town Planning. With respect to the MOU between the petitioner and the respondent No.2 AICTE, it is stated that the same was only for three years

from the year 2006 and has lapsed and in any case cannot interfere with the Guidelines published by respondent No.1 COA. On the competence to publish the said Guidelines, source thereof is traced in Section 21 & Section 45(2)(e)(g)(h) & (j) of The Architects Act.

7. The respondent No.2 AICTE has supported the petitioner and has claimed itself to be the sole repository to lay down norms and standards for issues related to technical education including Town Planning. It is also pleaded that The Architects Act is only for the purposes of providing for registration of Architects and recognition of Architectural qualifications and the respondent No.1 COA has no such powers as have been exercised. Similarity is cited with Pharmacy Act, 1948 establishing the Pharmacy Council of India but which has no power qua the courses / education in Pharmacy. It is also claimed that not only Town Planning but even the subject of Architecture falls in the domain of respondent No.2 AICTE.

8. The respondent No.3 MHRD has also supported the petitioner and in its counter affidavit pleaded that the role of respondent No.1 COA is limited to maintaining minimum standards of architectural education and standards of professional conduct and etiquette and a code of ethics for architects and

the respondent No.1 COA has no jurisdiction over the matters pertaining to the architectural courses / institutions. It is further pleaded that it is the respondent No.2 AICTE which has jurisdiction in this regard.

9. The petitioner along with its additional affidavit has filed the Recruitment Rules of Ministry of Works and Housing, Government of India prescribing membership of petitioner as a 'desirable qualification' for employment as Chief Planner, Additional Chief Planner & Town Planner.

10. The respondent No.3 MHRD in its supplementary affidavit has pleaded that, Architecture & Town Planning are two different **subjects**; respondent No.1 COA is concerned with the architectural profession only. It is further pleaded that the dispute between COA and AICTE as to the extent of powers and functions qua architectural education to be exercised by respondent No.1 COA is pending consideration before the Supreme Court. It is however clarified that the said dispute has nothing to do with regard to the education in Town Planning and the Government of India does not envisage any role to be played by respondent No.1 COA in respect to education in the subject of Town Planning.

11. The respondent No.1 COA has been established by the Central Government vide Section 3 of The Architects Act and is to consist *inter alia* of electees from Institute of Architects, nominees of AICTE, nominees of Heads of Architectural Institutions in India, Chief Architects in the Ministry of the Central Government, Architects from each State etc. There is no provision in The Architects Act prescribing the functions of respondent No.1 COA. However, The Architects Act vide Section 23 vests the duty of maintaining a Register of Architects for India on respondent No.1 COA; vide Section 29 vests the jurisdiction to remove from the Register the name of any Architect in the Respondent No.1 COA; and vide Section 30 the respondent No.1 COA has been further vested with the jurisdiction to hold an enquiry into allegations of professional misconduct against the Architects.

12. As far as Architectural Education is concerned, Section 2(d) of The Architect Act defines recognized qualification as meaning “any qualification in Architecture for the time being included in the Schedule or notified under Section 15 of the Act. The Schedule to the Act is not found to contain any of the three courses, subject matter of this petition, or for that matter any

Post-Graduate courses. Under Section 15 of the Architects Act, the power to recognize Architectural Qualifications granted by authorities in foreign countries is of the Central Government, though in consultation with respondent No.1 COA but not of respondent No.1 COA. The same has no application to the present case. Under Section 16 of the Architects Act, the power of amendment of the Schedule is also of the Central Government, though again in consultation with the respondent No.1 COA. Section 17 of the Architects Act provides that possessing a recognized qualification shall be sufficient qualification for enrolment in the Register. Though under Section 18 of The Architects Act the authorities granting recognized qualifications in India are required to furnish to respondent No.1 COA information sought as to courses of study and examinations to be undergone but no power has been given to respondent No.1 COA to prescribe courses of study. Again under Section 19 of the Architects Act though respondent No.1 COA has power to carryout inspection of Colleges or Institutions for granting recognition to the Architectural qualifications imparted by such College or Institution but only for making recommendation to the Central Government. The respondent No.1 COA, under The Architect Act has no power to recognize such College or Institution. The power of withdrawal of

recognition, under Section 20 of The Architects Act, again is of the Central Government though on the recommendation of respondent No.1 COA.

13. Section 21 of The Architects Act relied upon by the respondent No.1 COA however is as under:

“21. Minimum standard of architectural education. – The Council may prescribe the minimum standards of architectural education required for granting recognized qualifications by colleges or institutions in India.”

Though under the aforesaid provision, the respondent No.1 COA has been conferred the power to prescribe minimum standards of architectural education but only for grant of recognized qualifications and which recognized qualifications are mentioned in the Schedule as aforesaid and in which the three courses, subject matter of the present petition, do not find mention. Once it is held that the three courses i.e. M. Arch. (Urban & Regional Planning), M. Arch. (Transportation Planning & Design) and M. Arch. (Housing) are not recognized qualification, COA under Section 21 of the Architects Act would have no power to prescribe minimum standards therefor. There is no other provision in the Act whereunder respondent No.1 COA can trace its power to prescribe minimum standards for grant of

qualifications other than the recognized qualifications. Section 45 of the Architects Act to which also reference has been made, empowers the respondent No.1 COA to make regulations but only with the approval of the Central Government. However, the said Regulations again have to be with respect to recognized qualifications and not others.

14. What emerges from aforesaid is, that the source of power to prescribe minimum **standards** for the courses of M. Arch. (Urban & Regional Planning), M. Arch. (Transportation Planning & Design) and M. Arch. (Housing) which are not recognized qualifications under The Architect Act, and as has been done vide impugned guidelines cannot be traced to The Architect Act.

15. The counsel for respondent No.1 COA has invited attention to Architects (Professional Conduct) Regulations, 1989 framed in exercise of powers under Section 45 of the Architects Act and which require every Architect to observe and uphold respondent No.1 COA's conditions of engagement and scale of professional charges. He has next invited attention to the conditions of engagement and scale of professional charges to contend that practice of architectural profession encompasses within itself Urban

Design & City Planning. Attention is also invited to the Minimum Standards of Architectural Education Regulations, 1983 also framed in exercise of powers under Sections 45 & 21 of the Architects Act which *inter alia* provide as under:

“Notwithstanding anything contained in these regulations, the, institutions may prescribe minimum standards of Architectural Education provided such standards does not, in the opinion of the Council, fall below the minimum standards prescribed from time to time by the Council to meet the requirements of the profession and education thereof.”

It is contended that by virtue of the aforesaid clause, the respondent No.1 COA is empowered to prescribe minimum standards for qualifications other than recognized qualifications (defined in the Architect Act) as have been prescribed by way of Guidelines impugned in this petition. Reference is made to the judgment dated 11.02.2005 of this Court in W.P.(C) No.2669/2005 titled *Ms. Sharmishtha S. Das Vs. UOI* (which is also subject matter of proceedings pending before the Supreme Court) laying down that the provisions of The Architects Act are not impliedly repealed by AICTE Act and the final authority for fixing the norms and standards for admission to the architecture course and the course content would be the

respondent No.1 COA and the Minimum Standards of Architectural Education Regulations, 1983 would continue to govern the architectural courses and quashing the entrance examination held by respondent No.2 AICTE for the five years decree course in Architecture. He has also argued that once the minimum qualification of B. Arch. is regulated, the respondent No.1 COA would axiomatically have power over M. Arch. courses also and M. Arch. courses cannot be outside the purview of respondent No.1 COA and the Court must fill up the lacuna in law. Attention is invited to the Scheme of Examination and Syllabus, 2003 published by the petitioner to show that persons with qualification of B. Arch. can also be members of the petitioner. It is also contended that in view of the Architects Act, the field for prescribing qualifications for the profession of Architect is occupied and the subsequent AICTE Act could not have made provision therefor. It is contended that in the absence of any express bar prohibiting the respondent No.1 COA from prescribing minimum standards for Post-Graduate qualifications, it would be so entitled. Reliance in this regard is placed on ***P.M. Bhargava Vs. University Grants Commission*** (2004) 6 SCC 661. Reference is also made to judgments of the Bombay, Allahabad and Kerala High Courts on the inter play of Architects Act and AICTE Act and all of

which are also subject matter of proceedings before the Supreme Court. Reference lastly is made to *AICTE Vs. Surinder Kumar Dhawan* (2009) 11 SCC 726.

16. I am unable to accept any of the contentions of the respondent No.1 COA.

17. The respondent No.1 COA is a statutory body. It can exercise only such powers as are vested in it and none other. There is nothing to show that the respondent No.1 COA was intended to or is the sole repository of the education in the field of Architecture. As aforesaid, it has only been empowered to make recommendations in this regard to the Central Government. It has not been empowered to take any steps / action itself. Section 21 of The Architects Act, while empowering it to provide minimum standards, limits the said power to recognized qualifications only and none other. Reliance on *P.M. Bhargava* (supra) to contend that respondent No.1 COA in the absence of express prohibition would be entitled to prescribe minimum standards for qualifications other than recognized is misconceived. The said judgment is not found to be laying down any such proposition. Moreover, the Court in that case was concerned with UGC which was found

to be empowered to take a decision on inclusion of courses for study. The respondent No.1 COA under the Architects Act is not found to be so empowered. Similarly, reliance on ***Surinder Kumar Dhawan*** (supra) is also misconceived. All that the said judgment lays down is that the Courts cannot sit as appellate authority to examine the correctness, suitability and appropriateness of a policy. However, this Court in the present case is not concerned with judicial review of policy but of the power of respondent No.1 COA and which power the respondent No.1 COA is not found to possess.

18. The Apex Court in ***Morgan Stanley Mutual Fund v. Kartick Das*** (1994) 4 SCC 225 held that in the absence of any provision in Consumer Prosecution Act, 1986 empowering the Foras constituted, under the said Act to grant interim orders held the said Fora to be not entitled to grant (interim injunction). Recently in ***Rajeev Hitendra Pathak v. Achyut Kashinath Karekar*** 2011 9 SCC 541 it was again held that the District Forum and the State Commission under the said Act being creature of Statute derive their powers from the express provision of the statute and the powers which have not expressly been given by the statutes cannot be exercised. Finding no power to set aside their own *ex parte* order or no power to recall / review

their own order to have not been vested in District Forum and State Commission, they were held not entitled to exercise such powers.

19. This Court also in ***Bhupinder Singh v. Delhi Commission for Women*** 137 (2007) DLT 411 held that the Delhi Commission for Women constituted under the Delhi Commission for Women Act, 1994, in the absence of any provision in this regard had no power for issuing maintenance.

20. Similarly, recently in ***Competition Commission of India vs. Steel Authority of India Ltd.*** (2010) 10 SCC 744, it was held that the power under Section 33 of the Competition Act, 2002, to pass temporary restraint order can only be exercised when the conditions laid down for exercise of the said power were met and not otherwise. So also in ***State Bank of Patiala vs. Vinesh Kumar Bhasin*** (2010) 4 SCC 368, it has been held that the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 did not empower the Commissioner under the said Act to issue any interim order directing a person with disability to be continued in service beyond the age of retirement; it was held that an authority functioning under the Disabilities Act has no power or jurisdiction

to issue a direction and the fact that the Act clothed the Commissioner with certain powers of Civil Court for discharge of its functions did not enable the Commissioner to assume other powers of a Civil Court which are not vested in him by the provisions of the Act and the powers of a Civil Court for granting injunctions – temporary or permanent, do not inhere in the Commission nor such a power can be inferred or derived.

21. The Supreme Court in ***Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd.*** (2007) 8 SCC 381 also held that the State Electricity Regulatory Commission constituted under the Electricity Act, 2003 had no power to issue a direction for refund though was empowered to issue a general direction to the licencees to abide by the conditions of the licence and charge only as per the tariff fixed under the Act.

22. I have recently in judgment dated 23.12.2011 in W.P.(C) No.13647/2009 titled ***NDMC v. Usha Gangaria*** discussed several other judgments also in this regard and concluded that statutory bodies as respondent No.1 COA is, in the absence of specific provisions or anything to indicate that they are intended to be sole repository qua the matter for which

they are constituted so as to enable them to exercise any power not expressly vested in them as ancillary or incidental to their functioning or necessary to enable them to discharge their function effectively, cannot exercise powers so not vested in them. I am unable to find in the Architectural Act anything to show that respondent No.1 COA was intended to be the sole repository for education in the field of Architecture.

23. As far as the objection by respondent No.1 COA to the locus of the petitioner to maintain this petition is concerned, I find the petitioner the apex body of the professional Town and Country Planning to be sufficiently entitled to do so. For the same reason, the expiry of the terms of the MOU between the petitioner and the respondent No.2 AICTE is irrelevant.

24. The respondent No.1 COA having been found to be empowered to prescribe minimum standards of architectural education are required for granting recognized qualification mentioned in the Schedule of the Act only and which does not included the three qualifications qua which the petition has been filed, the question whether Town Planning is a part of the subject of Architecture or not need not be adjudicated. I may however mention that the clause supra in the 1983 Regulations relied upon by the respondent No.1

COA is also not found to be empowering COA to prescribe standards of education for any qualification other than recognized qualification mentioned in the Schedule to the Architectural Act. In any case, the regulations framed under the Act, cannot expand the scope thereof, there being no ambiguity whatsoever with respect thereto.

25. I am also unable to accept the contention that laying down of minimum standards of education for post graduate qualifications, as the three courses aforesaid qua which the petition is filed are claimed to be, is incidental or ancillary to the power vested under Section 21 of the Architectural Act in the COA to prescribe Minimum Standards of Education required for recognized qualifications. Had the legislature intended to so empower the COA, it would not have restricted its power to recognized qualifications mentioned in the Schedule. On the contrary, Section 14(2) of the Architectural Act vests the power to grant recognition to any architectural qualification in the Central Government and which power is to be exercised after consultation with the COA. Thus, when COA is not even empowered to recognize any architectural qualification, it cannot certainly be held to be empowered to prescribe minimum standards therefor.

26. In the circumstances, this is found to be no lacuna in law, as contended. The question is not of whether COA is prohibited from doing so, but of its entitlement to do so.

27. The petition therefore succeeds. It is held that respondent No.1 COA is not empowered to lay down or prescribe minimum standards of education for qualifications other than recognized qualifications mentioned in the Schedule of Architects Act. Accordingly, the Guidelines insofar as prescribing the minimum standards of education for the courses of M. Arch. (Urban & Regional Planning), M. Arch. (Transportation Planning & Design) and M. Arch. (Housing) which are not mentioned in the Schedule to the Architects Act and thus not recognized qualifications are held to be beyond the powers of respondent No.1 COA and are quashed / set aside. The respondent No.1 COA is further prohibited / restrained from in future, in exercise of power under Section 21 of the Architects Act, prescribing minimum standards of education for any course other than the recognized qualifications mentioned in the Schedule. The respondent No.1 COA is not found to be empowered to, either itself or through its affiliates conduct any courses and thus the question of restraining it from doing so does not arise. However, though vide interim order aforesaid admissions were made

subject to the outcome of this petition; but since the students likely to be effected are not before this Court, it is clarified that this judgment shall have prospective operation only and shall not effect students who were admitted during pendency hereof.

The petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JANUARY 04, 2012
'gsr'.