

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

% *Pronounced on: February 08, 2017*

+ W.P.(C) 8635/2016, CM APPL. Nos. 35579/2016

INDIAN INSTITUTE OF ARCHITECTSPetitioner

Versus

NATIONAL BUILDING CONSTRUCTION
CORPORATION & ORS.

..... Respondents

+ W.P.(C) 9702/2016, CM APPL. No. 38834/2016

INDIAN INSTITUTE OF ARCHITECTSPetitioner

Versus

UNION OF INDIA AND ORS.

..... Respondents

Present : Mr.Amit Bhagat, Adv. for the petitioner.
Mr.Ravi Prakash, CGSC with Mr.Aditya Dewan, Advocate for R-1.
Mr.Sanjay Jain, ASG with Ms.Ekta Sikri, Mr.Vaibhav Kalra, Mr.
Ajay Pal and Mr.Jasbir Bidhuri, Advs. for R-2/ITPO.
Mr.Ashim Sood, Ms. Nayantara Vohra and Mr.Dhruv Sood, Advs.
for R-3.
Ms.Kalasi Ravi, Adv. for R-4.
Mr.Sandeep Sethi, Senior Advocate with Mr.H.S.Chandhioke,
Mr.Prashant Mishra and Ms. Parul Kumar, Advocates for R.S.P.
Design.
Mr.Abhinav Bajaj, Adv. for Council of Architecture.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

MS. G. ROHINI, CHIEF JUSTICE:

1. These two petitions, by way of Public Interest Litigation, have been filed by the "Indian Institute of Architects", a society registered under the Societies Registration Act, 1860. It is stated that the Petitioner society was

registered in the year 1917 as a voluntary organization of architects to encourage the study of architecture, to elevate the standards of architectural practice and to promote the interests of architects throughout India.

2. W.P.(C) No.8635/2016 has been filed challenging the Notice inviting e-tender dated 20.06.2016 issued by the National Building Construction Corporation Limited / Respondent No.1 herein for procurement of "comprehensive architectural services" for re-development of Pragati Maidan complex into Integrated Exhibition-cum-Convention Centre, whereas W.P.(C) No.9702/2016 has been filed challenging the in principle approval granted by the Ministry of Human Resource Development/respondent No.1 to the Indian Trade Promotion Organization (ITPO)/respondent No.2 by letter dated 26.02.2014 for engaging the services of foreign architects for the Pragati Maidan Redevelopment Project.

3. We have heard the learned counsel for both the parties.

W.P.(C) No.8635/2016:

4. The National Building Construction Corporation Ltd. (NBCC) / Respondent No.1 is a Central Public Sector Undertaking under the Ministry of Urban Development, Government of India. The impugned Notice Inviting e-Tender (NIT) dated 20.06.2016 issued by NBCC has been assailed in the present petition primarily on the following grounds:

- (i) NIT is in violation of Architects Act, 1972 and the Regulations framed thereunder. Having invited tenders for providing "comprehensive architectural services", NBCC should not have allowed engineering consultants also to submit bids along with architects. The said action of NBCC is in violation of Sections 35, 36 and 37 of the Architects Act, 1972.

- (ii) As per Regulation 2(1)(xii) of the Architects (Professional Conduct) Regulations, 1989 (for short the "Regulations"), the NBCC is bound to follow the conditions of engagement and scale of charges prescribed by the Council of Architecture (hereinafter referred to as 'the Council')/Respondent No.3 herein and therefore, the architects should not have been compelled to pay Earnest Money Deposit, cost of tender/bid document and tender processing fees.
- (iii) NBCC is bound to act in compliance of the provisions of the Regulations read with the conditions of Engagement and Scale of Charges prescribed by the Council of Architecture/respondent No.3.

5. It is vehemently contended by the learned counsel appearing for the Petitioner that by way of the impugned NIT, NBCC has virtually altered the definition of "comprehensive architectural services" as defined under Regulation 2(1)(xii) of the Regulations. It is submitted that the Respondent No.3/Council being the statutory body alone is competent to specify what constitutes "comprehensive architectural services" and NBCC has no legal authority to dilute the same. The further contention is that the impugned NIT has virtually equated the architectural services with the engineering services which is impermissible under law since 'architecture' and 'engineering' are two different disciplines. While pointing out that under the impugned NIT, the architects are required to pay earnest money of Rs.17,55,000/- apart from Rs.56,250/- towards the cost of the bid document and Rs.5,750/- towards processing fees, it is contended that the said requirement apart from being in violation of the provisions of the Regulations, has also imposed arbitrary, unreasonable and illegal restrictions on the fundamental rights of the architects to carry on their profession.

6. On the other hand, it is submitted by Shri Sanjay Jain, the learned ASG appearing for the Respondents No.1 and 2 that the contentions of the Petitioner are untenable and without any basis since neither the Architects Act, 1972 nor the Architects (Professional Conduct) Regulations, 1989 contained any prohibition to take the services of the engineering consultants. Placing reliance upon *Tata Cellular v. Union of India* (1994) 6 SCC 651, it is further contended that absolutely no case is made out calling for judicial review of the tender process initiated by NBCC.

7. On behalf of the Respondent No.3 / Council for Architecture, Sh.Ashim Sood, while supporting the Petitioner in all respects, submitted that the Council being the regulator is the competent authority to prescribe the terms and conditions of engagement of architects and the same cannot be disturbed by NBCC.

8. We have also heard the learned counsel appearing for the Respondents No.4 and 5 in whose favour the work in question has been awarded pursuant to the impugned NIT.

9. As we could see, the Architects Act, 1972 is aimed at providing for the registration of architects and for matters connected therewith. 'Council of Architecture' has been constituted by the Central Government in terms of Section 3 of the said Act which is vested with the power for the registration of architects, holding of inquiries into the misconduct of registered architects and taking suitable actions, prescribing standards of professional conduct and etiquette and code of ethics for architects and assessment of the standard of education and training of architects within the countries. The expression 'architect' has been defined under Section 2(a) of the Act as a person whose

name is entered in the register maintained under Section 23 of the Act. Sections 36 and 37 of the Act upon which the petitioner placed much reliance read as under:

"36. Penalty for falsely claiming to be registered.- If any person whose name is not for the time being entered in the register falsely represents that it is so entered, or uses in connection with his name or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable with fine which may extend to one thousand rupees.

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 the purpose 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."

10. A plain reading of Sections 36 and 37 would show that the same prohibit and penalize any person falsely representing to anyone that he is an architect registered with the Council of Architecture and using the title and style of architect unless he is registered architect or a firm of architects. Apparently, these provisions are aimed at preventing any person to designate himself as architect unless he has the requisite qualifications and experience and is registered under the Act.

11. Coming to the Regulations, Section 45 of the Act empowers the Council, with the approval of the Central Government, to make regulations to carry out the purpose of the Act. As per Section 45(3), every regulation made by the Council shall be laid before each House of Parliament as specified thereunder.

12. Regulation 2(1)(xii) and (xiv) relied upon by the Petitioner may be reproduced hereunder for ready reference:

"2 (1) Every architect, either in practice or employment, subject to the provision of the Central Civil Services (Conduct) Rules, 1964, or any other similar rules applicable to an architect, he shall:

... ..

... ..

(xii) observe and uphold the Council's conditions of engagement and scale of charges.

... ..

(xiv) not prepare designs in competition with other Architects for a Client without payment or for a reduced

fee (except in a competition conducted in accordance with the Architectural competition guidelines approved by the Council)."

13. The specific case of the Petitioner is that the scope of the work for which the tenders were invited under the impugned NIT being "architectural and consultancy services", bids should have been invited only from architectural consultants and the NBCC ought not to have allowed the engineering consultants to participate.

14. On a perusal of the impugned NIT, it appears to us that the plea of the petitioner has no factual basis. We found that though under the column "Brief Scope of Work", it was mentioned as architectural and consultancy services, it is clear from para-1 of the NIT that NBCC required both architectural and engineering consultancy services. Paragraph 1 of impugned NIT may be reproduced hereunder in this regard:

"1. NBCC invites online tender from Architectural and Engineering Constants for providing Comprehensive Architectural Services i.e Architectural and Engineering Consultancy Service for Re-development of Pragati Maidan Complex into Integrated Exhibition-cum-Convention Centre (IECC) on behalf of ITPO at New Delhi. The estimated Project Cost of this work is Rs.1765 Crore as per scope given below:

....."

15. We also do not find any substance in the contention that as per the definition of the term "comprehensive architectural services" under the Regulations made by the Council, it includes only 'architectural services' and therefore, NBCC should not have allowed engineering consultants to participate. We do not find any such prohibition either under Sections 36 and 37 of the Act or any other provision of the Act and the Regulations

made thereunder. According to us, neither the Act nor the Regulations contained any such provision which either expressly or by necessary implication prohibited NBCC from allowing the engineering consultants to participate.

16. On a careful reading of the provisions of the Act and the Regulations, what we found is that all the architects are bound to observe and uphold the conditions of engagement and scale of charges as prescribed by the Council. It is also apparent from the object of the Architects Act, 1972 that the said enactment is aimed at protecting the general public from unqualified persons working as architects and, therefore, while prescribing the requisite qualifications and experience, the registration under the Act is made mandatory.

17. Hence, the contention of the petitioner that the NBCC should not have invited the bids from the engineering consultants is wholly misconceived and without any substance. The writ petition appears to be based on irrelevant and erroneous assumptions of facts and law.

18. It may also be added that the law is well settled with regard to the scope of judicial review of contractual transactions by the Government bodies. In *Tata Cellular vs. Union of India* (supra), it is explained:

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing

a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review."

19. It was reiterated in *Asia Foundation and Construction Limited vs. Trafalgar House Construction Limited* (1997) 1 SCC 738, that the judicial review of contractual transactions by Government bodies is permissible to prevent arbitrariness, favouritism or use of power of collateral purposes. In *Michigan Rubber (India) Ltd. vs. State of Karnataka*, (2012) 8 SCC 2016, it was held:

"Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached? and
- (ii) Whether the public interest is affected?"

If the answers to the above questions are in negative, then there should be no interference under Article 226."

20. It was further made clear in ***Raunaq International Limited vs. IVR Construction Limited and Others*** **AIR 1999 SC 393**, that the Court must be satisfied that there is some element of public interest involved in entertaining a writ petition challenging the award of a contract by a public authority. In the present case, absolutely no case is made out by the petitioner to show infraction of any right of public at large by the impugned action of NBCC. There is not even an allegation that the impugned action of NBCC was actuated with *mala fides*.

21. Therefore, the interference by this Court is not warranted on any ground whatsoever.

W.P.(C) No.9702/2016

22. It is alleged by the petitioner that the impugned approval granted by the respondent No.1 for engaging the services of foreign architects is in contravention of the provisions of Section 37(1) of the Architects Act, 1972. The petitioner, therefore, seeks a direction to the respondent No.4 to establish an institutionalized system and lay down guidelines and/or establish processes on the basis of which the application made by foreign architects under Section 37(1) of the Act be examined.

23. We do not find any substance in the above contention. We found that in the letter dated 26.02.2014, it was made clear that the specific approval in terms of Section 37(1)(b) of the Act would be accorded to the foreign architects as and when they are shortlisted by the Indian Trade Promotion Organization (ITPO)/respondent No.2 and an application is made to the Central Government for prior permission. Even according to the petitioner, the permission under Section 37(1) has to be sought by a person who is carrying out profession of an architect in any country outside India.

Therefore, the 'in principle approval' conveyed to ITPO under the impugned letter, in our considered opinion, cannot be held to be in violation of the provisions of the Architects Act, 1972.

24. We have already held that the scope of interference by this Court in matters relating to tenders is very limited. For the same reasons, this petition is also liable to be dismissed.

25. Both the writ petitions are accordingly dismissed.

C.M.No.39372/2016 (impleadment)

Dismissed as having become infructuous.

CHIEF JUSTICE

FEBRUARY 08, 2017/pk/pmc

SANGITA DHINGRA SEHGAL, J