



2024:DHC:4816



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Reserved on: 29 May 2024******Pronounced on: 1 July 2024***+ **W.P.(C) 4100/2023****DOBARIYA MOHIT RAMNIKAL** PetitionerThrough: **Mr. Rishabh Sharma, Adv.**

versus

DEPARTMENT OF HIGHER EDUCATION RespondentThrough: **Mr. Naveen R. Nath, Sr. Adv.**
with **Mr. Anirudh Bhat, Ms. Gayatri Virmani, Ms. Kavita Nailwal and Ms. Disha Gupta, Advs. for R-2****CORAM:****HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT****01.07.2024**

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W.P.(C) 4100/2023

1. The petitioner is vexed at the fact that, despite having obtained a M. Arch.¹ qualification from the School of Architecture, Planning and Preservation, University of Maryland, USA, he is not being allowed to enrol as an Architect in India.

2. The petitioner obtained his B. Tech qualification in Civil Engineering from the Charotar University of Science & Technology, Gujarat on 5 December 2015. He, thereafter, joined the M. Arch. course in the School of Architecture, Planning and Preservation,

¹ Masters in Architecture



2024:DHC:4816



University of Maryland, in 2016. Though the M. Arch. course in the University of Maryland is ordinarily of 2 years duration, the petitioner was made to undergo a course for 3½ years in order to study the subjects relating to architecture, which were not part of the B. Tech program undertaken by him from the Charotar University. The petitioner had, therefore, to undergo seven semesters of the M. Arch course in the University of Maryland, which he successfully cleared. He was awarded the degree of M. Arch by the University of Maryland on 17 December 2019.

3. During the tenure of his M. Arch course in the University of Maryland, the petitioner also underwent compulsory internship with XL Constructions LLC from 23 October 2017 to 23 January 2018. A certificate in that regard was also issued by XL Constructions, which has been placed on record.

4. On 17 December 2019, a certificate was issued by the Associate Dean for Development and Faculty Affairs, University of Maryland, certifying that the petitioner had successfully completed the M. Arch course and conferred the M. Arch. degree. The certificate also noted that the M. Arch. degree was accredited by the National Architecture Accrediting Board² as a professional degree in architecture in December 2019.

5. The petitioner, thereafter, returned to India and applied to the

² “NAAB” hereinafter



2024:DHC:4816



Council of Architecture³ for being enrolled as an architect, on 23 December 2019. The COA responded on 27 December 2019, requiring the petitioner to confirm that the M. Arch. degree awarded to him by the University of Maryland was either included in the Schedule of Qualifications appended to the Architects Act, 1972 or notified under Section 15⁴ thereof, in which event alone the petitioner could apply for registration as an architect under the Architects Act.

6. By a subsequent email dated 10 February 2020, the COA informed the petitioner that the petitioner could not be registered as an architect in India as the M. Arch. degree awarded to the petitioner by the University of Maryland was not recognized by the COA under Section 15 of the Architects Act. The petitioner, thereupon, wrote to the Department of Higher Education⁵, Ministry of Education on 26 June 2020, seeking to know the procedure to be followed for adding the University of Maryland in the Schedule to the Architects Act. This request was reiterated by representation dated 8 July 2020.

³ “COA”, hereinafter

⁴ 15. **Recognition of architectural qualifications granted by authorities in foreign countries. –**

(1) The Central Government may, after consultation with the Council, direct, by notification in the Official Gazette, that an architectural qualification granted by any university or other institution in any country outside India in respect of which a scheme of reciprocity for the recognition of architectural qualification is not in force, shall be a recognised qualification for the purposes of this Act or, shall be so only when granted after a specified date or before a specified date:

Provided that until the first Council is constituted the Central Government shall, before issuing any notification as aforesaid, consult that Expert Committee set up under the proviso to sub-section (2) of Section 14.

(2) The Council may enter into negotiations with the authority in any State or country outside India, which by the law of such State or country is entrusted with the maintenance of a register of architects, for settling of a scheme of reciprocity for the recognition of architectural qualifications, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette, direct that such architectural qualification as the Council has decided shall be recognised, shall be deemed to be a recognised qualification for the purposes of this Act, and any such notification may also direct that such architectural qualification shall be so recognised only when granted after a specified date or before a specified date.

⁵ “DHE” hereinafter



2024:DHC:4816



7. The DHE, thereupon, wrote to the COA on 17 July 2020, drawing attention to the petitioner's request for grant of recognition to the M. Arch. degree awarded to him by the University of Maryland. Attention was invited to Section 15 of the Architects Act, which provided, in such circumstances, for consultation between the DHE and the COA. The COA was, therefore, requested to take necessary action. The COA, in turn, wrote to the petitioner on 27 July 2020, requesting the petitioner to provide information relating to the M. Arch. qualification obtained by the petitioner from the University of Maryland. The petitioner provided the said information, as well as all documents relating to the M. Arch. course undertaken by him, under cover of response dated 8 August 2020.

8. Further similar communications took place, whereafter the DHE addressed the following communication to the petitioner on 13 July 2021:

“F.No.4-09/2020-TS.VI
Government of India
Ministry of Education
Department of Higher Education

New Delhi, dated the 13th July, 2021

To

Mr. Mohit Dobaiya
14. Narmad Najar SOC.
Hirabaug, Varachha Road,
Surat-395006, Gujarat

Subject: Recognition of M. Arch. Degree awarded by University of Maryland School of Architecture Planning and Preservation (USA)-regarding.

Sir,



2024:DHC:4816



I am directed to refer to your letter dated 25.06.2021 regarding grant of recognition to Master in Architecture awarded by University of Maryland - School of Architecture, Planning and Preservation (USA)

2 In this regard, it is informed that your request for grant of recognition to M. Arch awarded by University of Maryland was forwarded to Council of Architecture for Its recommendation. However the Council of Architecture, has not recommended recognition of Master in Architecture awarded by University of Maryland-School of Architecture, Planning and Preservation (USA) stating that the Institution is accredited by NAAB and not by NCARB which is the registering authority for Architects in USA It has also been stated by the Council that the M Arch Course of Maryland University is not comparable with a 5 year B. Arch Degree course of an Indian University

Yours faithfully.
Sd.

(Pawan Kumar)

Under Secretary to the Government of India”

9. The petitioner has impugned the aforesaid communication, a reading of which reveals that there are two grounds on which the petitioner’s request has been rejected. The first is that the School of Architecture Planning and Preservation, University of Maryland, from where the petitioner obtained his M. Arch. degree, was accredited by the NAAB and not by the NCARB⁶ and secondly, that the M. Arch. course of the University of Maryland is not comparable with the five year B. Arch degree course provided by Indian Universities.

10. On 29 July 2021, the COA wrote to the DHE with reference to the petitioner’s request for the recognition of the M. Arch. degree obtained by him from the University of Maryland and informing that the COA had already sent its recommendation in that regard to the



2024:DHC:4816



DHE on 2 February 2021. A copy of the recommendation was enclosed with the letter, a copy of which was also marked to the petitioner.

11. The petitioner wrote to the DHE on 16 August 2021, stating that the impugned letter dated 13 July 2021 proceeded on an erroneous premise that the accrediting body in the USA was the NCARB. The petitioner submitted that he had been informed by the Dean of the University of Maryland that it was the NAAB and not the NCARB, which was the accrediting body in the USA. It was the NAAB which evaluated the architectural programs in the US to ensure that the graduates had the requisite technical and critical thinking skills so as to succeed in the profession of architecture. Inasmuch as the University of Maryland was accredited to the NAAB, the petitioner reiterated his request that the University of Maryland be recognized under Section 15(1) of the Architects Act.

12. This was followed by a further representation dated 13 September 2021 from the petitioner to the respondents, in which, besides reiterating that the only accrediting body for architects in the US was the NAAB, the petitioner further submitted that he had also undergone the requisite training during the tenure of his M. Arch. course by working as a Junior Architecture Intern with XL Constructions.

13. This was followed by a reminder dated 4 December 2021 by the

⁶ National Council of Architectural Registration Boards



2024:DHC:4816



petitioner to the COA, to which the COA responded on 22 December 2021 pointing out that the COA had already sent its response to the DHE.

14. The petitioner, thereupon, represented to the DHE on 22 January 2022. However, the DHE, by its communication dated 7 February 2022 to the petitioner informed that the COA had reiterated its earlier view and had not recommended recognition of the petitioner's M. Arch. qualification under Section 15 of the Architects Act. The petitioner's representation was, therefore, again rejected.

15. The petitioner, thereafter, sought a clarification from the Dean of the University of Maryland who, *vide* communication dated 16 February 2022, confirmed that the University of Maryland was fully accredited by the NAAB, which was the only agency authorized to accredit professional degree programs in the US, and that the M. Arch. degree program was one of the NAAB-accredited degree programs provided by the School of Architecture Planning and Preservation, University of Maryland. Enclosing a copy thereof, the petitioner again wrote to the COA on 18 February 2022, reiterating his request that the University of Maryland be included in the list of recognized universities under Section 15 of the Architects Act, so that he could be registered and practise as an architect. The COA responded to the petitioner on 24 February 2023, stating that the petitioner's request was under consideration and had been deferred till the next meeting.

16. Understandably unwilling to wait any further, the petitioner has



2024:DHC:4816



approached this Court by means of the present writ petition, seeking issuance of an appropriate writ, setting aside the decision not to recognize the petitioner's M. Arch. qualification and, therefore, not to register the petitioner as an architect in India, as communicated to the petitioner by the replies dated 10 February 2020 of the COA and 13 July 2021 of the DHE, and for a clarification that the M. Arch. degree awarded to the petitioner by the University of Maryland is a recognized architectural qualification in India, sufficient to enrol the petitioner as an architect. Needless to say, the petition also prays that a mandamus be issued to the respondents to enrol the petitioner as an architect in India.

17. Pleadings in the writ petition have been completed and written submissions have also been filed by both sides. Oral arguments were also advanced by Mr. Rishabh Sharma, learned Counsel for the petitioner and Mr. Naveen Nath, learned Senior Counsel for the respondents, instructed by Mr. Risabh Sahu.

Analysis

18. As the issue in controversy is purely legal, it may be addressed head on, even while, in the process, noting the rival contentions of learned Counsel for the parties.

19. There can be no doubt about the position, in law, that the Court cannot, in academic matters, direct recognition of an institution or of a qualification or a degree provided by an institution. Recognition, like



2024:DHC:4816



equivalence, is a matter which has to be left to academic bodies. The Court can only examine whether the decision to recognize, or not to recognize, or to grant, or not to grant, equivalence, is in keeping with the statutory mandate. If it is, the scope of interference by the Court is next to nil. That the Court has to act with circumspection in matters involving academic policy is, by now, fossilized in the law.⁷

20. Relevant provisions of the Architects Act

20.1 Recognition of qualifications, and of institutions awarding qualifications on the basis of which one can practise as an architect in India are indisputably governed by the provisions of the Architects Act, as is apparent even from its preamble, which declares it to be “an act to provide for the registration of architects and for matters connected therewith”. “Architect” is defined in Section 2(a) of the Architects Act as a person whose name is entered in the register of architects maintained under Section 23. Section 2(d) defines “recognized qualification” as meaning any qualification in architecture included in the Schedule to the Architects Act or notified under Section 15 thereof.

20.2 Recognition of a qualification as would enable a person to practise as an architect in India is governed by Sections 14 and 15. Section 14 deals with recognition of qualifications granted by authorities in India and, therefore, has no application to the present

⁷ Refer **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth**, AIR 1984 SC 1543, **All India Council for Technical Education v. Surinder Kumar Dhawan**, (2009) 11 SCC 726



2024:DHC:4816



case, save to a limited extent, to which I would advert later.

20.3 Section 15 deals with recognition of architectural qualifications granted by authorities in foreign countries. It cannot be disputed that, as the M. Arch. qualification awarded to the petitioner was by the University of Maryland situated in the US, the recognition of the qualification would be governed by Section 15.

20.4 Section 15(1) enables the Central Government to, by notification, grant recognition to an architectural qualification granted by a university or institution in a foreign country, in respect of which there is no scheme of reciprocity for recognition of architectural qualification in force.

20.5 Section 16 empowers the Central Government to amend the Schedule to the Architects Act by adding an entry in respect of any architectural qualification, albeit after consultation with the COA. Section 17 ordains that, subject to the provision of the Architects Act, the recognition of a qualification would be sufficient for enrolment in the register of architects. Section 21 empowers the COA to prescribe the minimum standards of architectural education for granting recognized qualification by colleges or institutions in India. This provision, too, therefore, would have no application to the present case.

20.6 Chapter III deals with registration of architects. Section 23 requires the Central Government to maintain a register of architects in



2024:DHC:4816



India in the manner provided in Chapter III.

20.7 Section 25 deals with qualifications for entry in the register of architects and states that, subject to payment of requisite fees, a person would be entitled to have his name entered in the register of architects if, *inter alia*, he holds a recognized qualification.

20.8 Section 35(1) stipulates that any reference, in any law, to an architect would be deemed to be a reference to an architect registered under the Architects Act.

20.9 I return now to Section 15 which, as already observed, is the pivotal provision for interpretation in the present case. It is not in dispute that there is no scheme of reciprocity for recognition of architectural qualifications in force between the India and the US. In other words, an architectural qualification awarded by an institution in the US does not *ipso facto* become a recognized architectural qualification in India. It has to be notified under Section 15(1).

20.10 The Schedule to the Architects Act sets out a list of “foreign qualifications recognized by the Central Government under Section 15(1)” thereof. These degrees are set out country wise. Serial No. 8 (a) and 8 (b) enumerate qualifications awarded by institutions in the US. S. No. 8 (a) is headed “Bachelors Degree in Architecture awarded by the American Universities/Institutions, the curricula of which are accredited to the National Architectural Accrediting Board (USA)”. 67 institutions/universities are enumerated thereunder.



2024:DHC:4816



Similarly, S. No. 8(b) is headed “Graduate (Master’s and Doctor’s) Degree in Architecture awarded by Accredited American Universities/Institutions”, and 36 universities/institutions are enumerated thereunder.

21. Re. objection of accreditation with the NAAB, instead of the NCARB

21.1 Thus, in the case of B. Arch degrees, the Schedule to the Architects Act itself acknowledges that the universities awarding B. Arch degrees in the US are accredited to the NAAB, not to the NCARB.

21.2 In the case of M. Arch./D. Arch. Degrees, though the institution/organization with which the universities/institutions enumerated under S. No. 8 (b) are required to be accredited is not specified, it would be reasonable to interpret the accreditation even under S. No. 8 (b) to be with the NAAB, in view of the stipulation to that effect in S. No. 8 (a) and in the absence of any indication to the contrary in S. No. 8 (b).

21.3 The position that results is that Serial No. 8 (a) enumerates a list of 67 universities/institutions awarding B. Arch degrees and Serial 8 (b) enumerates 36 universities/institutions awarding the M. Arch./D.Arch degrees situated in the US, and accredited to the NAAB.

21.4 I am convinced that the objection regarding non-accreditation of the University of Maryland with the NCARB, as contained in the



2024:DHC:4816



impugned letter dated 13 July 2021, cannot sustain legal scrutiny, for various reasons.

21.5 Firstly, the petitioner has stated, on oath, in the writ petition, that the accreditation of architectural qualifications in the US is always with the NAAB and not with the NCARB.

21.6 Secondly, this position is also fortified by the certificate dated 17 December 2019 and confirmation letter dated 16 February 2022 issued by the Associate Dean, University of Maryland, both of which certify, in positive terms, that the only accrediting body in the US, for architectural qualifications, is the NAAB.

21.7 Thirdly, and most importantly, S. Nos. 8 (a) and 8 (b) of the list of foreign qualifications contained in the Schedule to the Architects Act also refer to accreditation of the institutions/universities awarding B.Arch/M. Arch./D.Arch degrees by the NAAB, and there is no reference to the NCARB at any point.

21.8 The respondents have not, even during oral arguments, or in the written submissions tendered consequent on hearing, adduced any material to support their stand that the M. Arch. degree awarded by the University of Maryland should have been accredited to the NCARB. Indeed, this stand does not seem to have been seriously pursued either in the counter affidavit filed by way of response to the writ petition or in the written submissions tendered by the respondents.



2024:DHC:4816



21.9 The objection, in the impugned decision, ground that the University of Maryland is accredited with the NAAB and not with the NCARB, as a ground to reject the petitioner's request for recognition of the M. Arch. qualification obtained by him from the University of Maryland, is, therefore, held to be unsustainable in law.

22. Re. "comparability" of the M. Arch. degree held by the petitioner with the B. Arch. degree awarded by Indian universities

22.1 The second, and the only other consideration, on which the impugned decision is predicated, is that the M. Arch. degree awarded by the University of Maryland is not comparable with the five-year B. Arch. degree awarded by Indian universities. This observation, as contained in the impugned communication dated 13 July 2021, as a reason to justify rejection of the petitioner's request, is also unsustainable, for various reasons.

22.2 Firstly, it is well settled that a statutory authority can only act in the manner prescribed by the statute. If a decision to reject a representation by a citizen is based on a particular reason, that reason must be forthcoming in the law and, where the law is codified in statute, in the statute. Unfortunately, Section 15(1) of the Architects Act, while empowering the Central Government to, by consultation with the COA, notify a qualification awarded by a foreign institution as a recognized qualification under the Architects Act, does not provide any guideline or basis for grant of such recognition. Per corollary, the Act is also silent on the grounds on which a request for



2024:DHC:4816



treating a qualification awarded by a foreign university as a recognized qualification can be rejected.

22.3 What remains to be seen is, therefore, whether the ground on which the request of the petitioner for treating the M. Arch. degree awarded by the University of Maryland as a recognized architectural qualification under the Architects Act has been rejected, is sustainable in law.

22.4 As I have already noted, the only ground which merits consideration, as contained in the impugned communication dated 13 July 2021, is the observation that the M. Arch. course of the University of Maryland is not comparable with the five-year B.Arch course awarded by the Indian university.

22.5 Section 15(1) does not envisage comparison of the course awarded by the foreign university with the B. Arch course awarded by the Indian university as a consideration on the basis of which the Central Government, or the COA, could decide whether the course awarded by the foreign university is, or is not, entitled to recognition. The respondents have, therefore, proceeded to reject the petitioner's request on a ground which is foreign to the Architects Act.

22.6 The ground is, moreover, delightfully vague. What does "comparability" entail? Is the foreign course to be compared with the Indian B. Arch course with respect to duration, study pattern, syllabus, nature of examination, or any other consideration? If "comparability"



2024:DHC:4816



were to be made the test, with no defining parameters for comparison, it would provide a *carte blanche* for arbitrariness, with the authorities being free to recognize, or refuse to recognize, foreign qualifications in a completely uncanalized manner. Applying the principles that the Supreme Court has handed down from *E.P. Royappa v. State of Tamil Nadu*⁸, *Maneka Gandhi v. U.O.I.*⁹ and *Minerva Mills Ltd v. U.O.I.*¹⁰, such conferment of unguided discretion would itself strike at the root of Article 14 of the Constitution of India.

22.7 Secondly, the impugned communication dated 13 July 2021 does not clarify why the M. Arch. course of the University of Maryland is not comparable with the five-year B. Arch. course provided by Indian universities. It is well settled that any decision, which entails civil consequences on a citizen, has to be reasoned and speaking. The reasons have to be sufficient for the citizen to be made cognizant of the ground for accepting or rejecting his request, especially where the outcome is rejection. From the impugned letter dated 13 July 2021, nothing is forthcoming as to why the M. Arch. course of the University of Maryland is not regarded as “comparable with” the B. Arch. degree course of Indian universities. On what basis this “comparison” has been made, is also not set out in the impugned communication. Even on the ground of being unreasoned and non-speaking, therefore, the decision is liable to be set aside.

22.8 The Supreme Court of India, as far back as in *Mohinder Singh*

⁸ (1974) 4 SCC 3

⁹ AIR 1978 SC 597

¹⁰ AIR 1978 SC 1789



2024:DHC:4816



Gill v. Chief Election Commissioner¹¹, speaking through Krishna Iyer, J. observed thus:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in **Commr. of Police, Bombay v. Gordhandas Bhanji**¹²:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

It is not permissible, therefore, for the executive authority to seek to support an executive or quasi-judicial decision on grounds which are not contained in the decision itself. Every decision, be it executive or quasi-judicial, which affects the civil rights of a citizen, has to speak for itself. The reasons must be forthcoming and discernible from the decision. If the reasons that are discernible from the decision are insufficient to support it, the decision must perish. It cannot be sought to be bulwarked by supplementary or ancillary grounds urged in Court when the decision is challenged, whether on affidavit or otherwise.

22.9 Strictly speaking, therefore, as the grounds for holding that M.

¹¹ (1978) 1 SCC 405



2024:DHC:4816



Arch. course awarded by the University of Maryland is not comparable to the B. Arch. course awarded by Indian universities, is not forthcoming in any communication issued by the respondents in the present case, the decision must be held to be unsustainable in law. It cannot be sought to be supplemented by reasons which do not find place in the decision itself, but urged in the pleadings in the Court.

22.10 Nonetheless, to be fair to the respondents and keeping in mind the fact that what hangs in the balance is the right of the petitioner to practise as an architect in India, and that architects are required to be persons of skill and ability, I have considered the grounds set out in the counter affidavit as well as in the written submissions tendered by the respondents and urged by Mr. Nath during oral arguments, to examine whether the stand that the M. Arch. degree of the University of Maryland is not comparable to the B. Arch. degree awarded in India is, or is not, tenable in law.

22.11 Both in oral arguments as well as in written submissions, the respondents have sought to rely on the Minimum Standards of Architectural Education Regulations, 2020¹³, to support the stand that the M. Arch. course conducted by the University of Maryland is not at par with the B. Arch. course conducted by Indian universities.

22.12 Though the respondents have not chosen to place the MSAER 2020 on record, the Court has accessed the said Regulations from the website of the COA itself. A bare reading of the MSAER 2020

¹² AIR 1952 SC 16



2024:DHC:4816



reveals that it prescribes the duration, conditions for admission, intake and migration, courses and period of studies, examinations and standard of staff, equipments, accommodation, training and other facilities for providing architectural education *in India*. The Regulations have no application to institutions providing architectural education outside India.

22.13 Nor, in the MSAER 2020, is there any stipulation to the effect that institutions providing architectural education outside India must also conform to the specifications contained in the MSAER 2020. No such stipulation is to be found in the Architects Act, either.

22.14 *Ex facie*, therefore, the extrapolation, by the respondents, of the standards and syllabi envisaged by the MSAER 2020 for the B. Arch. course provided in India, to the M. Arch. course provided by the University of Maryland, to assess “comparability” between the two, is misguided both on facts and in law. *In the absence of any stipulation, either in the Architects Act or in the MSAER 2020 to the effect that an architectural course provided by a foreign university/institution, in order to merit recognition under Section 15(1), must conform to the MSAER 2020, the respondents could not have rejected the plea for recognition, as urged by the petitioner, on the ground that the M. Arch. course awarded by the University of Maryland did not satisfy the standards contained in the MSAER 2020.*

22.15 This reasoning is also unsustainable on first principles. In any

¹³ “MSAER 2020”, hereinafter



2024:DHC:4816



discipline of education, the law must either provide for recognition of foreign qualifications, or refuse such recognition altogether. Where the law recognizes foreign qualifications, such recognition must be granted, or refused, only on principles which are statutorily codified. If a foreign qualification has been awarded by following the law, and the procedure, extant in the foreign country, then recognition of the foreign qualification cannot be refused on the ground that the course, which culminated in the award of the qualification in the foreign country, does not conform to, or is not “comparable” with, the course followed in India for obtaining a practising qualification, *unless the applicable statute so ordains, or prescribes*.

22.16 Ideally, the statute must stipulate the conditions to be fulfilled for a foreign qualification to be recognized in India. If equivalence is the *sine qua non*, the principles guiding grant of equivalence must also find place in the statute. Where, however, as in the present case, the statute (in the form of the Architects Act) is silent, the executive authorities cannot import considerations, which find no place in the statute, while deciding on the issue of recognition of a foreign qualification in India.

22.17 It must be remembered that persons who obtain foreign qualifications do not do so for a lark. They pursue rigorous courses of study, resulting in the awarding of the qualifications. Failing to recognize a qualification, obtained after duly pursuing the course of study which the law, in that territory, requires the student to pursue, is fundamentally opposed to public interest. While it is true that the executive authorities must be cautious and circumspect while dealing



2024:DHC:4816



with matters of recognition of qualifications, and grant of equivalence, it is equally true that qualifications which are duly awarded must not, without strong reasons which conform to legally sanctified parameters, be denied recognition, or equivalence.

22.18 At the end of the day, the matter undoubtedly rests with the concerned executive authorities, empowered to decide on the aspects of recognition and equivalence. Any decision, taken by such authorities in accordance with the law, would not ordinarily brook judicial interference, following the principle of restraint in academic matters. Where, however, the decision is predicated on a basis which is not to be found in the law – as, in my opinion, is the case in the present instance – the Court has no option but to strike it down.

22.19 In this context, it is also necessary to note that there is no averment, in the counter affidavit, or in the written submissions or even during the oral arguments by the respondents, that the M. Arch. course provided by all the 36 universities enlisted in S. No. 8 (b) of the list of recognized foreign qualifications as contained in the Schedule to the Architects Act conform to the standards set out in the MSAER 2020, or that they are comparable with the five-year B. Arch. degree course of an Indian university. In these circumstances, it is difficult to understand how the respondents can seek to justify their decision to refuse recognition to the M. Arch. course provided by the University of Maryland, even while recognizing the M. Arch. course provided by 36 other universities in the US.

22.20 There is no justification for this distinction, to be found in any



2024:DHC:4816



of the communications from the respondents to the petitioner, or in the counter affidavit, or in the written submissions filed by the respondents, or even in the oral arguments advanced by Mr. Nath. In the absence thereof, if one were to deny the M. Arch. degree awarded by the University of Maryland recognition, even while the M. Arch. degrees provided by 36 other universities enlisted in S. No. 8(b) in the Schedule to the Architects Act are granted recognition, it would result in invidious discrimination to holders of M. Arch. degrees awarded by the University of Maryland such as the petitioner, vis-à-vis holders of M. Arch. degrees awarded by one or the other of the 36 universities/institutions enlisted in Serial No. 8(b). This may also, in its train, violate Article 14 of the Constitution of India.

22.21 While the impugned communication dated 13 July 2021 does not precisely state *why* the M Arch degree awarded to the petitioner by the University of Maryland is not comparable to B Arch degrees awarded by Indian universities, the respondents have, before this Court, solely relied on the MSAER 2020 in this regard. The MSAER 2020, as already noted, is inapplicable. Neither does the MSAER 2020 purport to apply to qualifications awarded by foreign universities or institutions, nor is there any other statutory provision, to which my attention has been drawn, which requires a foreign qualification, duly awarded in accordance with the law as it exists in the foreign country, to be “comparable” with the B Arch qualification awarded in India, in order for it to merit recognition under Section 15(1) of the Architects Act. As no other ground is forthcoming in the pleadings of the respondents, the stand that the M. Arch. course of the University of Maryland is not comparable to the B. Arch. course of Indian



2024:DHC:4816



university must be regarded as misconceived.

22.22 Other submissions addressed by Mr. Nath

22.22.1 Mr. Nath further sought to contend that the petitioner is also not entitled to practise as an Architect in India as he does not possess any qualification equivalent to the B. Arch. degree awarded by Indian institutions and universities.

22.22.2 In the first place, no such ground has been cited, in the impugned communication dated 13 July 2021, for rejecting the petitioner's request for recognition of the M. Arch. degree obtained by him from the University of Maryland and for allowing him to practise as an architect in India. This ground is, therefore, not available to the respondent, applying *Mohinder Singh Gill*.

22.22.3 Secondly, even on merits, Mr. Nath has not shown by any statutory provision or any other administrative guideline, rule or regulation which makes the possession of a qualification equivalent to the B. Arch. degree awarded by Indian universities a necessary prerequisite for a person holding an architectural qualification validly obtained from a foreign university to practice in India, or to have the said qualification recognised.

22.22.4 Thirdly, Mr. Nath has not elucidated as to how the petitioner, despite being admittedly the holder of a valid M. Arch. degree awarded by the University of Maryland, is additionally



2024:DHC:4816



required to hold a B. Arch. degree from India in order to be able to practise as an architect in this country. It merits reiteration, here, that Section 14 of the Architects Act, and the MSAER 2020, *do not* apply to architectural qualifications awarded by foreign institutions or universities.

22.22.5 Mr. Nath also cited the judgment of a coordinate bench of this Court in *Siddhartha Thomas v. Council of Architecture*¹⁴ in his support. The reliance is, with respect, completely misplaced. The petitioner Siddhartha Thomas, in that case, had been awarded a degree of Master of Arts with Honours in Architecture by the University of Edinburgh, UK. Degrees of Architecture awarded by the University of Edinburgh were among the degrees which were recognised by notification issued by the Central Government under Section 15(1) of the Architects Act. The controversy before this Court was whether the degree of Master of Arts with Honours in Architecture could be treated as a “Degree in Architecture”. Inasmuch as the controversy before this Court was itself completely distinct from the controversy at hand in the present case, it is not necessary to dwell on the outcome of *Siddhartha Thomas*. What is relevant, in the said decision is, however, para 7, which reads thus:

“7. The submission of Mr. Nath is appealing. The Coordinate Bench has held that Degree in Architecture to be a Bachelor's Degree or Master's Degree. Thus, *so long as a student is awarded a Degree in Architecture from any of the specified universities in United Kingdom, the qualification as required for being registered as an Architect in India would be met*. It is on such ground that this Court had allowed the petition. Whereas in this case, the petitioner has obtained a degree of Master of Arts with Honours in Architecture, being a course with a duration of four years. Whether

¹⁴ 2022 SCC OnLine Del 640



2024:DHC:4816



it can be construed to be a Degree in Architecture in conformity with Clause 6 as reproduced above, shall be an issue.”

(Emphasis supplied)

Applying the principle recognised in para 7 of *Siddhartha Thomas*, therefore, if the University of Maryland were to be a notified University under Section 15(1), the degree of M Arch., awarded by it to the petitioner, would entitle the petitioner to registration as an architect in India.

23. Relief

23.1 Though the inevitable sequitur of the foregoing discussion is that the impugned communication dated 13 July 2021, and the decision to reject the petitioner’s representation, as contained in the said communication, has necessarily to be set aside, the relief to which the petitioner would, thereby, become entitled, requires consideration.

23.2 Mr. Rishab Sharma, learned Counsel for the petitioner, submits that the court is well within its jurisdiction in directing recognition of the M. Arch. Degree awarded to the petitioner by the University of Maryland. He relies, for this proposition, on the judgment of a coordinate bench of this Court in *Nirupa Puliyel v. Council of Architecture*¹⁵.

23.3 In my opinion, the decision in *Nirupa Puliyel* cannot be cited as a precedent for the proposition that, in every case, the Court can directly order grant of recognition to the foreign architectural



2024:DHC:4816



qualification obtained by the petitioner. Section 15(1) of the Architects Act requires an official notification by the Central Government, in consultation with the COA, in order for a foreign degree to be recognised as an architectural qualification under the Architects Act, thereby enabling the holder of the degree to be registered as an architect in India. Where no such notification exists, the Court cannot direct the Central Government to issue a notification to the effect. In other words, the Court cannot don the mantle of the Central Government or exercise, for itself, the discretion which vests in the Central Government under Section 15(1).

23.4 *Nirupa Puliye* was a case in which the Degree of Bachelor of Architecture, awarded by the University of Edinburgh in the UK, was already included in the schedule to the Architects Act. The petitioner before this Court in that case was the holder of a Degree of Master of Architecture. The COA sought to contend that, as the Degree of Master of Architecture was not enumerated in the Schedule to the Architects Act, she was not entitled to be registered as an architect in India. This Court found that the notification issued under Section 15(1) by the Central Government merely referred to a “Degree in architecture” awarded by, *inter alia*, the University of Edinburgh. There was no reference either to a Bachelor’s, or to a Master’s, Degree. Inasmuch as the official notification under Section 15(1) did not specify the character of the Degree of Architecture, this Court held *Nirupa Puliye* to be entitled for registration as an Architect in India. Further, the Court observed that it would be incongruous to recognise

¹⁵ 2017 SCC OnLine Del 9383



2024:DHC:4816



a lesser qualification of Bachelor of Architecture and refuse to recognise the higher qualification of Master of Architecture.

23.5 In *Nirupa Puliyeel*, therefore, the requisite Notification under Section 15(1) of the Architects Act was already in place. This Court was only required to interpret the Notification. In fact, even that exercise was not necessary, as the concerned Notification, in that case, recognised all Degrees of Architecture awarded by the University of Edinburgh. The entire case was, therefore, premised on a misconception, harboured by the COA, that Bachelor's Degrees awarded by the University of Edinburgh alone were recognised under Section 15(1). Thus, in that case, no notification under Section 15(1) was required to be issued by the Central Government.

23.6 *Nirupa Puliyeel* cannot, therefore, be cited by the petitioner as an authority, in the facts of the present case, for the proposition that this Court can straightaway direct recognition of the M. Arch. degree awarded to the petitioner by the University of Maryland under the Architects Act.

23.7 *De hors*, and without reference to *Nirupa Puliyeel*, however, I am of the opinion that, in the present case, this Court *is* empowered to so direct. The issuance of a notification under Section 15(1) of the Architects Act is a ministerial, and not a legislative, act. Once two specific grounds have been cited, in the impugned communication dated 13 July 2021, as the basis for refusing the petitioner's plea for recognition of the M. Arch. degree possessed by him under Section



2024:DHC:4816



15(1) and, in fact, other grounds raised by the respondents even beyond the impugned communication have also been found to be without substance, the inexorable sequitur is that the petitioner is entitled to recognition of the M. Arch. degree awarded to him, under Section 15(1).

23.8 Relegating the matter once again to the Central Government under Section 15(1) would serve no purpose, and would also subvert, rather than subserve, the cause of justice, as the Central Government has no further discretion in the matter.

24. Is the court legislating?

- a. Before parting ways, it is necessary to examine an important aspect which touches on the jurisdiction of this Court to grant relief in a case such as this. There is, no doubt, in the Schedule annexed to the Architects Act, a list of “foreign qualifications recognized by the Central Government under Section 15(1) of the Architects Act, 1972”. Serial Nos. 8 (a) and 8(b) thereunder deal with Bachelor’s and Master’s/Doctor’s degrees in architecture awarded by institutions and universities situated in the US, as already noted.
- b. Significantly, however, the substantive body of the Architects Act does not refer to any such Schedule, enlisting the list of foreign universities/institutions, degrees awarded by which would be entitled to be treated



2024:DHC:4816



as recognized qualifications under the Architects Act. Insofar as the recognition of qualifications is concerned, the only reference to the Schedule is to be found in Section 14 (1) which stipulates that “qualifications included in the Schedule or notified under Section 15 shall be recognized qualifications for the purposes of this Act”. Section 14, however, deals with “recognition of qualifications granted by authorities in India”. In fact, therefore, the reference to notification under Section 15, in Section 14 (1), appears a trifle incongruous and misplaced, as Section 15 deals with recognition of qualifications granted by foreign universities/institutions.

- c. Even if, however, Section 14(1) were to be given its widest meaning, and were deemed to cover both qualifications awarded by Indian universities/institutions as well as qualifications awarded by foreign universities/institutions, still, in the case of foreign universities/institutions, it is not enumeration in the Schedule to the Architects Act which grants them recognition, but notification in the official gazette by the Central Government in consultation with the COA under Section 15(1). Insofar as foreign institutions/universities are concerned, therefore, the reference to such institutions/universities in the Schedule to the Architects Act is therefore, merely an enlistment of the notified foreign institutions/universities, the B.Arch/M. Arch./D.Arch degrees awarded by which would be



2024:DHC:4816



treated as recognized qualifications.

d. This distinction is subtle, and it is necessary to explain why I deem it appropriate to note it. If the Act were, for example, to state, in Section 15, that qualifications awarded by foreign institutions/universities, *as enlisted in the Schedule to the Architects Act*, would be recognized qualifications, then, perhaps, the Court would have to act with greater circumspection, as the Court can neither legislate nor amend legislation, much less plenary parliamentary legislation. Were recognition of a foreign qualification under Section 15(1) to be made dependent on enlistment in the Schedule to the Architects Act, it may not be even possible for the Court to direct that the M. Arch. degree awarded by the University of Maryland should be included in the Schedule to the Architects Act, as that would amount to directing the Parliament to legislate in a particular manner, or, worse, to judicial legislation. Courts can neither legislate, nor direct the legislature to legislate in a particular manner.¹⁶ Legislation is the exclusive fiefdom of the legislature, and it is necessary that the Court respects the separation of powers between the judiciary and the legislature, in our democratic framework.

e. Section 15(1), however, does not state that the

¹⁶ Refer **State of Himachal Pradesh v. Yogendra Mohan Sengupta**, AIR 2024 SC 859, which considers several earlier authorities on the point.



2024:DHC:4816



qualification awarded by foreign institutes/universities *as enumerated in the Schedule to the Architects Act*, would be recognized qualifications. What it states is that *the Central Government has the power by notification*, in consultation with the COA to recognize any degree/qualification awarded by a foreign institution/university. A foreign qualification does not, therefore, become recognized, under Section 15(1), *because it is enumerated in the Schedule to the Architects Act*, but *because it is notified by the Central Government under Section 15(1)*. Recognition, therefore, follows, not from the legislative act of inclusion of the qualification in the Schedule to the Architects Act, but by the executive act of issuance of a notification by the Central Government under Section 15(1). Once such a notification is issued, no doubt, the Schedule to the Architects Act would have to be amended to include, in it, the foreign qualification mentioned in the notification. That, however, is merely a reflection/representation, in the Schedule to the Architects Act, of the fact that a particular foreign architectural qualification stands recognized by the Central Government by notification.

- f. If, therefore, the Court were to arrive at a conclusion that a particular qualification is entitled to recognition under Section 15(1) – as it has, in this case – the Court would not, thereby, be entrenching on the legislative domain, as



2024:DHC:4816



recognition of a foreign qualification is an executive, and not a legislative, act. It is for this reason that I deem it appropriate to pen this clarification, so as to disabuse any notion that, in holding that the M Arch degree awarded to the petitioner by the University of Maryland is entitled to recognition under Section 15(1), and in directing the Central Government to issue the necessary notification to that effect, I am breaching the principle of separation of powers.

Conclusion

25. Resultantly, the impugned communication dated 13 July 2021 is quashed and set aside. It is declared that the petitioner is entitled to recognition of the M. Arch. degree awarded to him by the University of Maryland, so as to enable him to practise as an architect in India. The Central Government is also directed to issue the necessary notification, for the said purpose, under Section 15(1) of the Architects Act.

26. The writ petition is accordingly allowed with no orders as to costs.

C.HARI SHANKAR, J

JULY 1, 2024

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