

ITEM NO.37

COURT NO.11

SECTION XVI

S U P R E M E C O U R T O F I N D I A 303584
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 1234/2016

(Arising out of impugned final judgment and order dated 05/10/2015 in MAT No. 15/2015 passed by the High Court of Calcutta)

COUNCIL OF ARCHITECTURE & ORS.

Petitioner(s)

VERSUS

MALA MUKHERJEE & ORS.
(with interim relief)

Respondent(s)

Date : 29/01/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Dr. Rajeev Dhawan, Sr.Adv.
 Mrs. L.M. Bhat, Adv.
 Ms. Malavika Prasad, Adv
 Mr. Naveen R. Nath, Adv.

Certified to be true copy
P. Nigam
Assistant Registrar (Judl.)
04/2/16
.....2016
SUPREME COURT OF INDIA

For Respondent(s) Mr. Bijan Ghosh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard learned senior counsel for the petitioners.

We find no ground to interfere.

The Special Leave Petition is dismissed.

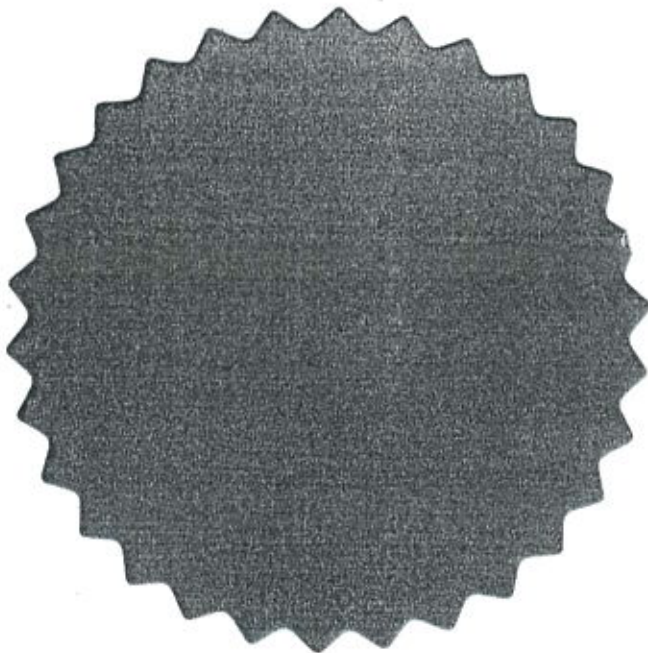
However, the question of law is left open.

Sh
(USHA BHARDWAJ)
AR-CUM-PS

Sh
(SNEH LATA SHARMA)
COURT MASTER

Signature valid

Digitally signed by
Sneha Sharma
Date: 2016.02.04 15:10:29
Reason:



3836

A1-No	
Urgent Fee	Rs 5/-
Certification Fee	Rs 10/-
No. of Folio	1
Total Cost	Rs 15/-
(a) app.	4/2/16
(b) the ca.	
(c) as	
(d) the c.	
app.	

Branch Officer
Supreme Court of India

4/2/16

RECEIVED

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble the Chief Justice
and
Hon'ble Mr. Justice Joymalya Bagchi

M.A.T. 15 of 2015
&
C.A.N. 644 of 2015

Council of Architecture & Ors.
Vs.
Mala Mukherjee & Ors.

For the appellants : Mr. Naveen R. Nath
Mr. Sayantan Bose
Mr. R. Dutta
Mr. Partha Pratim Naskar

For the Respondent No.1 : Mr. Probal Mukherjee
Mr. Suhrid Sur
Mr. Nilanjan Hazra

For the Respondent No.3 & 4 : Mr. Pushan Kar

For S.O.I. : Mr. Ashok Prasad
Mr. Indrajit Dasgupta

Heard on : 24.2.2015, 9.7.2015, 16.7.2015
11.8.2015 & 13.8.2015.

Judgment on : 5.10.2015

Cor: ~~Joymalya Bagchi, J.:~~ The question which falls for decision in this appeal is whether the appellant Council of Architecture (hereinafter referred to as 'COA') was entitled to decline registration of the petitioner as an architect under the Architects Act, 1972 (hereinafter referred to as the 'Act of 1972') in view of its decision taken in its 60th meeting to conduct an 'Architecture Competency Test' followed by a viva voce test for candidates who were enrolled by Indian Institute of Architects

(hereinafter referred to as 'IIA') after 1st July, 2002 and had secured associate membership of the said institution.

Respondent-petitioner had enrolled herself with IIA as a student in 2004 and had successfully passed the examination conducted by IIA in 2011 and had thereafter become an associate member of the said institution. Such membership to IIA being a 'recognized qualification' in Architecture under the Act of 1972, the petitioner applied to COA for registration under Section 17 of the said Act on 31st December, 2002. On February 11, 2013, COA informed the petitioner that it had recommended withdrawal of recognition of IIA to the Central Government and decision thereon was awaited. Finally on December 12, 2013, the respondent-petitioner was informed that by virtue of its 60th meeting COA had decided to conduct an 'architecture competency test' and viva voce test for registration of candidates who were enrolled with IIA after 1st July, 2002 and had thereafter secured associate membership of the said institution. Challenging the aforesaid decision of COA, the respondent-petitioner moved the instant writ petition.

Learned Single Judge by the impugned judgment and order allowed the writ petition, inter alia, holding that COA had no statutory sanction to conduct competency test and hold viva voce test for the purpose of registration of the respondent-petitioner inasmuch as she possessed a recognized qualification under the Act and was, therefore, entitled to such registration in terms of Section 17 thereof. This decision has been appealed before us.

Mr. Nath, learned counsel appearing for COA strenuously argued that COA was a statutory body vested with the duty of maintaining the standards of architectural education and professional standards under

the Act of 1972. Accordingly, COA had powers to conduct competency and viva voce test in order to prescribe minimum standards of architectural education in the country. The course conducted by the IIA was below par and did not satisfy the minimum standards of education as prescribed in Minimum Standards of Architectural Education Regulations, 1993 (hereinafter referred to as the 'Regulations') and accordingly, COA had recommended for cancellation of the qualification awarded by IIA to be cancelled as a 'recognized qualification' for registration under the Act of 1972. Such recommendation was hanging fire before the Central Government for a long time. Under such circumstances, they maintain minimum standard of architectural education, COA with concurrence of IIA had taken the impugned decision to hold the competency and viva voce test as aforesaid. Such decision, therefore, cannot be said to be in violation of the provision of Act of 1972 or contrary to public interest. On the other hand, COA, being vested with the duty to maintain minimum standards of architectural education must be held to possess incidental powers of prescribing competency test in exercise of Section 21 of the Act of 1972. He further argued that power under Section 21 of the Act of 1972 overrode the right of registration of a candidate under Section 17 of the Act. He also argued that such power is independent to the powers of COA to make regulations as envisaged under Section 45 of the said Act.

Mr. Mukherjee, senior counsel supported the decision of the First Court. He argued that till date membership to IIA is a recognized qualification as defined under Section 2(d) read with Section 14 of the Act of 1972. Respondent-petitioner having obtained such recognized qualification had a vested right to be registered as an architect. Such

right could not be taken away the retrospective operation of the impugned decision dated December 12, 2013. He further submitted that as the recommendation of COA had not yet been accepted by the Central Government and the 'recognized qualification' had not been cancelled, COA cannot be permitted to derecognize such qualification indirectly which it had failed to do directly by proposing to conduct competency/viva voce test for the purpose of registration, as aforesaid. He submitted that 1983 Regulations did not empower COA to hold competency/viva voce test for registration as architect of candidates having recognized qualifications and, therefore, the impugned decision is ultra vires the aforesaid Act. He also submitted that the degree of COA has been recognized by the Department of Education, Ministry of Human Resource Development, Government of India vide its memo dated 5th August, 1992, and 30th March, 1998, to be at par with a Bachelor's degree of Architecture of a recognized Indian university for the purpose of employment to posts and services under the Government of India. He relied on the communications of Government of India with COA dated 6th April, 2011, and 31st January, 2014, wherein the Government had in unequivocal terms stated that till steps were taken under Section 20 of the Act architectural qualification issued by IIA cannot be said to be derecognized by any authority. He accordingly prayed for dismissal of the appeal.

For a better appreciation of the contentions of the parties let us refer to various relevant provisions of the Act of 1972.

"2. In this Act, unless the context otherwise requires,-

.....

(d) "recognized qualification" means any qualification in architecture for the time being included in the Schedule or notified under section 15;

(e) "register" means the register of architects maintained under section 23."

"14. (1) The qualifications included in the schedule or notified under section 15 shall be recognized qualifications for the purposes of this Act.

(2) Any authority in India which grants an architectural qualification not included in the schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the schedule against such architectural qualification declaring that it shall be a recognized qualification only when granted after a specified date.

Provided that until the first Council is constituted, the Central Government shall, before, issuing any notification as aforesaid, consult an expert committee consisting of three members to be appointed by the Central Government by notification in the Official Gazette.

15. (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 recognized 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 the 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 should be recognized, shall be deemed to be a recognized qualification for the purposes of this Act, and any such notification may also direct that such architectural qualification shall be so recognized only when granted after a specified date or before a specified date.

.....

17. Notwithstanding anything contained in any other law, but subject to the provisions of this Act, any recognized qualification shall be a sufficient qualification for enrolment in the register.

.....

20. (1) When upon report by the Executive Committee it appears to the Council-

(a) that the courses of study and examination to be undergone in, or the proficiency required from the candidates at any examination held by, any college or institution, or

(b) that the staff, equipment, accommodation, training and other facilities for staff and training provided in such college or institution, do not conform to the standards prescribed by regulations, the council shall make a representation to that effect to the appropriate Government.

(2) After considering such representation the appropriate Government shall forward it along with such remarks as it may choose to make to the college or institution concerned, with an intimation of the period within which the college or institution, as the case may be, may submit its explanation to the appropriate Government.

(3) On receipt of the explanation or where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government, in respect of the college or institution referred to in clause (b) of sub-section (5), shall make its recommendations to the Central Government.

(4) The Central Government-

(a) after making such further enquiry, if any, as it may think fit, in respect of the college or institution referred to in sub-section (3), or

(b) on receipt of the explanation from a college or institution referred to in clause (a) of sub-section (5), or where no explanation is submitted within the period fixed, then on the expiry of that period, may, by notification in the Official Gazette, direct that an entry shall be made in the Schedule against the architectural qualification awarded by such college or institution, as the case may be, declaring that it shall be a recognized qualification only when granted before a specified date and the Schedule shall be deemed to be amended accordingly.

(5) For the purposes of this section, "appropriate government" means-

(a) in relation to any college or institution established by an Act of Parliament or managed, controlled or financed by the Central Government, the Central Government, and

(b) in any other case, the State Government.

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

.....

44. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-