

In the District Court, Civil Judge, Delhi

IN THE COURT OF N.C. NIRJA BHATIA : CIVIL JUDGE, DELHI

SUIT NO. 414/89

Shri Sudesh Pal Jain
 Shri Sudesh Pal Jain
 S/o Late Sh. Tara Chand
 R/o 163, Vikas Nagar, Bhiwani (Haryana)

..... PLAINTIFF

Vs

Council of Architecture
 8-B, Shankar Market
 Connaught Circus
 New Delhi-110001
 through
 Its Chairman

..... DEFENDENT

SUIT FOR DECLARATION & INJUNCTION

JUDGEMENT

By this order I shall dispose off the suit of the pltf. The facts of the present suit for declaration and injunction are that plaintiff is claiming himself to be a diploma holder of Civil Draftsman from Rohtak in the year 1972. Pltf. claims that he has been practising as an Architect since 1968 as associate of one Sh. S.K. Jain, Architect at Rohtak and most of the building plans submitted in the municipal committee, Rohtak, during the period from 1968 to 1972 were drafted by him under the guidance and supervision of Sh. S.K. Jain. It is claimed by the pltf. that he has been regularly and continuously attending the office of Sh. S.K. Jain during this period and on that account a certificate of experience was issued by Sh. S.K. Jain as well as by the Administrator of Rohtak municipality.

Pltf. filled an application to get his name registered as Architect under the provisions of Section 25 (1) on the Architect Act of 1972 and submitted requisite documentary evidence established his practice as Architect since 1968. It is averred by the pltf. that as per the provisions contained U/s. 25 (b) of the Architects Act, 1972 any person who resides and carries on the Profession of Architect in India and is a citizen of India engaged in practice for five years prior the date of notification U/s. 24 (2) i.e. 27/04/74 has a statutory right to have his name registered as an Architect.

Pltf. claims that though he fulfilled all the essential qualifications, the deft. declined to register him as an Architect and alleged by their letter no. 002/84/7761, dt. 03/06/85 that on scrutiny of documents submitted by pltf., the pltf. was found not eligible for registration as Architect. It is alleged by the pltf. that order was against facts and record and also against the provisions on the Act as it was passed on the basis of conjectures and surmises and further no reason has been disclosed as to how and on what basis the conclusion has been arrived at.

Aggrieved by the orders Pltf. filed an appeal U/s 26 of the Architect Act before the appropriate authority. However, after the lapse of five years, the pltf. received a letter dtd. 12/01/89 requiring the pltf. to produce the attested copies of municipal licence issued to the pltf. and list of the work undertaken by the pltf. as an Architect alongwith copies of letter of appointment engaging the pltf. as an Architect and other documents as Income Tax Assessment orders. The said documents were filed by the pltf. alongwith the request for an Early hearing. However, on 10/07/89 pltf. was shocked to receive the letter by the deft's office which stating that pltf. cannot be registered as an Architect U/s. 25 (b) of the Act as counsel was not satisfied that pltf. was engaged in practice as an Architect for more than five years prior to 27/04/74. It is alleged by the pltf. that the said letter was not supported with an order. Pltf. in pursuance approached the deft. and requested for order as the letter did not give any reason on the basis on which the deft. had arrived at the above said conclusion. It is the alleged by the pltf. that the act of deft. is arbitrary against the principles of natural justice as the pltf. ought to have been given an opportunity to produce the evidence to show his genuineness and authenticity of documents showing his experience as an Architect. It is alleged that no justification has been given in ignoring the certificate of the reputed Architect Sh. S.K. Jain who has in clear terms stated that pltf. was practising as an Assistant since May, 1968 as an Architect and most of the building plans submitted in the municipal committee, Rohtak since 1969 to 1982 were

drawn by the pltf. under his guidance & control. Pltf. alleges that in view of these facts he is entitled for declaration and other relieves sought by him.

Def. has denied in totality the claim of the pltf. It is stated by the deft. that the object and the scheme of Architects Act, 1972 provides that there is a need for statutory regulation to protect the general public from unqualified persons working as Architect since large number of buildings are being constructed and as unqualified persons undertake construction which are uneconomical and unsafe. These persons being disrepute to the provision of Architecture and hence it was declared that it will be unlawful for any person to designate himself as Architect without requisite qualifications, experience and registration under the Act. It is admitted by the deft. that Section 25 of the Architect Act makes a provision for registration where applications are made after 27/04/74 and Section 25 (b) of the Act provides that in case a person does not hold the recognised qualifications but has been engaged in practice as an Architect for a period of not less than five years prior to cut-out date of 27/04/74, such person can be registered. It is admitted by the deft. that pltf. seeks to be covered under this Section.

It is stated by the deft. that deft. has been visited with discretionary power of being satisfied about the eligibility of a person for registration as an Architect and the deft. is highly professionally skilled body and the decisions are based on material evidence produced before it. It is stated that deft. has to take into consideration a variety of factors for registering a person as an Architect in the light of rules and regulations and objects and reasons of the Act. It is admitted by the deft. that the essential reasons for incorporating the present section and fixing the date of 27/04/74 is to enable such of the unqualified persons having aesthetic and practical abilities and skill and technical knowledge who are actually engaged in practice as an Architect to get themselves registered for the purpose of continuing their profession. It is stated by the deft. that the Architect is the creator of building who conceives it and prepares the plan and superintends work and design as a creator. The skill necessarily involves a highly imaginative and creative mind and proficiency and ability to translate these ideas & concepts into drawings and thereafter to construct the building. It is stated by the deft. that the profession requires specialised knowledge of art, science, technology, general knowledge, latest trends, fashion, applied science, engineering, technology, construction, sanitation, heating, lighting, ventilation, accoustics etc. and other connected ancillary subjects. It is averred that an Architect all so be versed with the socio-economic laws of the Authority's rules and regulations, the building bye-laws, the financial statistics, labour working, etc. Apart from this an Architect must have the necessary skill to proficiently integrate all this knowledge, experience and create a building which has its own identity and hence the knowledge of such diverse fields and the job involved while practising as an Architect requires lot of devotion in terms of time and energy. It is stated by the deft. that being a highly professional body deft. determines the eligibility of a person after careful consideration, scrutiny of the above things and after going through the above process, the application and appeal was rejected since the pltf. was not covered under the requirements.

Def. has denied that pltf. had been practising as an Architect since 1968, as alleged by the pltf. It is denied by the deft. that pltf. was regularly and continuously attending the office of Sh. S.K. Jain and was looking after his work including drafting of the site plan, as per full satisfaction, as alleged. Deft. has denied that the documents placed by the pltf. conclusively establish that pltf. was practising as an Architect from January, 1996 to August, 1972. Deft. further denies that other certificates produced by the pltf. establish that pltf. was practising as an Architect for the period of 1972 to 1982 and was a registered Architect for want of knowledge. Deft. further denies that the certificate of Sh. S.K. Jain is a conclusive proof of evidence towards the experience of pltf. It is stated that the certificate of Sh. S.K. Jain in clear terms state that the pltf. was practising as his Assistant since May, 1968 and most of the building plans submitted in the municipal committee, Rohtak were drawn by pltf. under his guidance and control, as alleged. Deft. denies that certificate was corroborated by the other certificates issued by the Municipal Committee of Bhiwani. It is averred that the certificate issued by Sh. S.K. Jain certifies only that pltf. is his cousin brother and is staying in his premises and is assisting him as Trainee as a Draftsman on a part-time basis. It is stated by deft. that on the basis of appreciation of these documents, it was found that pltf. did not qualify the eligibility criteria set-up by the counsel as per suit U/s. 25 (b) and after giving an opp. of being heard and personal appearance his appeal was rejected.

In view of the facts, it is stated by deft. that pltf. is not entitled to any declaration, as alleged. Pltf. filed the replication and reiterated the facts narrated by him in the plaint. As the pleadings were complete, parties appeared for AD of documents and framing of issues which were framed on 02/05/91 to the following effect :

ISSUES :

1. Whether the suit of the pltf. is not maintainable as per provisions of S.R.C. and Architects Act, 1972 ? OPD
2. Whether the pltf. is entitled to the relief claimed ? OPP.
3. Relief.

ISSUE NO 1

Issue No.1 was treated as preliminary issue and was disposed off by the orders of Lt. Sh. Jai Prakash Narain, the then Sub Judge, First Class, Delhi on 11/11/93. In view of the disposal of this issue, issue is now not taken up.

ISSUE NO 2 & 3

Onus of proving this issue was upon the pltf. To discharge the bonus, pltf. brought into witness box, PW1 Sh. M.P. Jain, Engineer from Municipal Committee, Bhiwani, PW2 Sh. Subhash Sindhvani, Clerk from Municipal council, Haryana, PW3 Sh. S.K. Jain, Architect, PW4 Sh. K.K. Jain, Executive Officer, Municipal Council, Jagadhari, Haryana, PW5 Sh. Rajinder Singh, Clerk, Municipal Council, Bhiwani. He deposed Himself as PW6.

The deft. in rebuttal brought only Sh. Vinod Kumar, Registrar for deft. as DW1.

The witnesses supported the documents filed on record by the pltf. At the first instance, it may be appropriate that the perusal of evidence produced by the parties is started from the certificate issued by Sh. S.K. Jain, PW3 dtd. 30/12, Exhibited as PW3/A. The said certificate reads "To whom so ever it may concern, Certified that Sh. Suresh Pal Jain S/o Sh. Tara Chand Jain is my cousin brother. He has stayed with me in my house from 18/05/68 to 30/08/72." It further reads that "In this period he worked with me as a part time trainee in Draftsman Civil. He also assisted me in supervision of building, detailing for estimate and making drawings, etc. During this period his work and conduct found satisfactory."

I would like to take a pause here and scrutinise this piece of evidence again. It is pertinent to mention that nowhere Sh. S.K. Jain, Architect certifies that pltf. was working with him as an Architect.

The word 'Architect' gains immense importance in view of these statements made by deft. in the written statement to the effect that the work in the Architecture and the job of an Architect is a cumulative job requiring multi-dimensional approach to the subjects concerning mankind. The present certificate clearly mentions that the pltf. was working with Sh. S.K. Jain as a part-time Trainee in Draftsman (Civil). It nowhere specifies that his experience even if stretched from 18/05/68 to 30/08/72 during the stay with Sh. S.K. Jain was in the capacity of an Architect touching the various aspects of Architecture and imparting comprehensive knowledge of the subject and further showing the approach of pltf. towards all the dimension enumerated above. The other documents/certificates placed on record by the pltf. which are not disputed are of the period after 1972. If the period of 1972 is calculated up to the cut-out date i.e. 27/04/1974 it nowhere reaches to the experience of five years as set-out as an eligibility condition for the grant of registration. The certificates Ex. PW2/A issued by the Administrator as bearing a date of 1985. This certificate is based on Ex. PW3/A and hence cannot be placed over and above Ex. PW3/A and hence cannot be given more value. The other certificates such as Ex. PW4/1, Ex. PW4/2 are also belonging to the period after the year 1972 and hence taken into consideration does not help pltf. fulfilling the condition of five years experience.

The Pltf. has further placed on record his matriculation examination certificate of his application for registration alongwith another certificate dtd. 17/8/78, same are exhibited by him as PW6/D1, Ex. PW6/1 and PW6/2. Again Ex. PW6/2 certifies that pltf. has been working as Draftsman (Civil) since 10/05/74 with one R.C. Aggarwal & Associates. This document is also in league with other certificates and also does not give any value to the experience as Architect of pltf. for the period prior to 1972. Pltf. has exhibited the order dtd. 30/05/85 issued by council of Architect which specifies that claim of pltf. cannot be allowed as at the time of pltf.'s allegedly started working as Architect was in the year 1968 and at that time pltf. was merely 16 years of age and on the basis of documents the contention of the pltf. that he was looking after the office of Hissar and Rohtak cannot be upheld and hence claim for registration was declined.

At this stage, before I take-up the other documents placed on record by the pltf., I propose to deal with the counter-evidence placed on record by the defts. the registrar of the deft. who appeared as DW1 completely supported the claim of the deft. and rebutted that of pltf. It was categorically averred by the said witness in the sequence of events that the claim of the pltf. was admittedly taken-up for consideration on his application U/s. 25 (b). It was duly considered and was rejected. The appeal against the order was filed and was placed before the Advisory Committee consisting of various reputed persons from the field of Architecture, the said report is exhibited as DW1/3. It would be appropriate that few instances concerning the claim of the pltf. are reproduced. Under Item No.7 on page 6 resolution no. 136 specifies that appeals of the candidates such like pltf. in totality 71 appellants were taken-up for consideration. The names of persons whose appeals were not accepted are given on page 3 of Appendix C wherein the report of Advisory Committee is given. It says that personal hearing was imparted to 42 appellants who appeared out of 74 appeals, the remaining persons did not appear though the opportunity was given, however, pltf. appeared before the Advisory Committee and was granted a personal hearing. Clause 4, 6 clearly mentions the intention of the Committee and the objects while dealing with such persons wherein it says, "The Committee strongly feels on considering the appeals either in person or in absentia that many of the appellants being fully aware of the prescribed conditions for registration under the Architecture Act, 1972 are trying to seek registration somehow or other". The Committee, therefore, recommends that administration are in the initial stages itself clarify to the applicants on their eligibility or otherwise. The Committee further discussed the scope of Section 25 (b) in detail in Point 5 at page 2 in its report. It is pertinent that the finding on page 3 point 5.1 be produced

which says, "On a careful reading of this provision, the committee came to the conclusion that the appellants should prove to the satisfaction of the Council that they have been engaged in practice as an Architect for a period of not less than five years prior to 27/04/74. Point 5.2, 5.3, 5.4 further defined the terms as Architect and phrase practising as an Architect. It would be interesting to note the finding on point 5.6 which says, "If a person is practising as a Draftsman, he is merely assisting the Architect in carrying-out his instructions and translating his ideas into drawings. This does not mean that a person is practising as an architect". Further annexure of this report at issue no. 31 details the case of the pltf. which says that "Sh. S.P. Jain of Bhiwani (Haryana) appeared before the Committee on Friday, the 17th February, 1989 in connection with his appeal against the decision of the Registrar of the Council for registration of his name under the Architects Act, 1972. The Committee noted that he obtained the Civil Draftsman Certificate in 1972 from Industrial Training Institute, Rohtak and also noted his claim that he was working on part-time basis with his cousin, Sh. S.K. Jain when he was studying for the Civil Draftsman Certificate Course. Shri Jain also made a plea before the committee for relaxation of the prescribed conditions for registration and taking into consideration his practice after 1972 to register him. The Committee, however, made clear to Sh. Jain that no relaxation is permissible."

In totality, the perusal of report shows no infirmity whatsoever alleged by the pltf. It is patently clear from the perusal that the case of pltf. was duly considered at all the stages by the appropriate, concerned authorities. The details were discussed and in view of the objects and intentions of the Architecture Act and in furtherance of the guidelines required for the provision enumerated above it was found that the case of pltf. was not covered under the definition of Architect as he was looking after the field of Draftsman (Civil). It is also clear that the pltf. himself was aware of such fact and asked for the relaxation which was declined.

On the basis of this, the pltf. has taken the other Argument to the fact that his case was at par with some other persons namely M. Kumar, K.K. Jaitley, S. Ram Kakkar and Sh. Gulzaar Singh. It is stated by the pltf. that though his case was at par in view of the facts & circumstances of the other's case he was discriminated upon and his registration was not considered wherein the other above named persons were registered by the defts. The reports concerning these persons are exhibited by the pltf. as Ex. PW6/5, Ex. PW6/6, Ex. PW6/7, and Ex. PW6/8. At the outset in the evidence given on oath by the deft., deft. denied that these orders were passed by the deft. It is stated by the Registrar DW1 that these are the orders of appellate authorities U/s. 24 Clause 4. It is stated by the deft. that the deft. has no jurisdiction with respect to these cases as they are dealt directly by the Govt. of India, Ministry of Education and Social Welfare and Department of Education. This contention was neither denied nor disputed by the pltf. It remains to be admitted. Apparently Ex. PW6/7 clearly shows that these are the appeals considered by the Govt. of India and not by the deft. in isolation. Pltf. did not bring any argument in support of the contentions that these orders were passed by the deft. The pltf. also did not bring any argument to the effect that he also approached or exhausted the remedy exhausted by the persons above named. Apparently, after the orders of the deft., pltf. came to the court for the grant of declaration without exhausting this remedy.

The appreciation of the documents admitted by the pltf. as PW5 to PW8 and the reading there of also shows that the certificates filed by the concerned persons were with respect to their experience in the field of Architecture and not in the field of Draftsman. Two of the persons above named were holding more than 8-10 years of experience. In view of these facts, the contention of the pltf. that he has been discriminated upon is also meritless. Heard, at this stage, I propose to take-up the objection furthered by the deft. that has held by the Hon. Justice, Sh. S.P. Wad in his orders dtd. 17/09/82 corroborated again by the orders dtd. 17/09/1982 on the same issue, it is held by Hon. Justice Sh. S.P. Wad that the courts which are not trained in the technical discipline of engineering and Architecture cannot claim any technical knowledge to the experts in the field. It is well recognised principles of law that the court shall not substitute its own Judgement to that of an expert particularly in highly technical fields. Scope of enquiry by the court is limited only to find-out whether the technical requirements of law in arriving at a decision are followed or not or whether the decision is vitiated by malafide, fraud, etc. I am in full confirmity and respectfully accept the opinion of Justice Sh. S.P. Wad. It is a well settled principal of law upheld by various courts of law that the pronouncements of the authorities having due diligence and knowledge shall not be disturbed unless it smacks of malafide or fraud, etc. The perusal of the above discussion leaves me with no doubt that the procedure was completely followed in its intent and sole at every stage by the deft. The pltf. also has not alleged any fraud. No malafide is also alleged by the pltf. The only contention raised by the pltf. were with respect to the declining, an opportunity and not following the principles of natural justice, arbitrariness on behalf of the deft. and discrimination which are properly met-out in the detailed discussions above. I see no ground to disturb the findings of the Advisory Committee. In view of this discussion, I am of the opinion that no wrong is committed and hence the issue sets at rest in favour of the deft. and agst. the pltf. In view of this observation, pltf. is not entitled to any relief, as prayed. The suit of the pltf. is dismissed with no orders as to costs.

Decree sheet be prepared accordingly.

Ele be consigned to Record Room after completing necessary formalities.

ANNOUNCED IN THE OPEN COURT ON 18/01/2001.

Sd/-
(Nirja Bhatia)
Civil Judge, Delhi