

In the High Court of Delhi

IN THE HIGH COURT OF DELHI AT NEW DELHI
L.P.A. No.59 of 1975

1. Municipal Corporation of Delhi, through the Commissioner, Town Hall, Delhi.
2. The Commissioner the Municipal Corporation of Delhi, Town Hall, Delhi.
3. The Executive Engineer (Bld), Building Department (HQ), Town Hall, Delhi.PETITIONERS

VERSUS

1. Shri Ram Kumar Bhardwaj, S/o. Shri Ram Chandra Sharma, 25/149 Shaktinagar, Delhi-7
2. Shri Kasturi Lal, S/o. Shri Panju Ram, 76-A, East Azad Nagar, Shahdara Delhi.
3. Shri Miri Lal Sanoriya, S/o. Shri Nanak Chand Sanoriya, 2/44 Roop Nagar, Delhi-7
4. Shri R.G. Sanoria, S/o Shri Niader Mal Sanoria, 243, Ajmeri Gate, Delhi-6
5. Shri C.L. Ghai, S/o. Jiwand Lal, 1/32 B, Poorvi Marg, New Delhi-6.
6. Shri Radha Lal Saxena, S/o. Shri Brij Basi Lal Saxena, C-1/444, S.J.D.A., New Delhi.7
7. Shri Chanan Ram Sharma, S/o. Sh. Manak Chand Sharma. 4/60, Roop Nagar, Delhi-7.
8. Shri P.S. Jain, S/o. Sh. Bansari Das Jain, 2153, Gali Hanuman Pershad, Masjid Khajoor, Delhi-6.
.....RESPONDENTS

LETTERS PATENT UNDER X OF THE LETTERS PATENT AGAINST THE JUDGEMENT DATED 23.5.1975 BY HON'BLE MR. JUSTICE S. RANGARAJAN IN C.W.P. NO. 509/75 and 515/75.

This the 2nd day of April, 1980.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE B.N. KIRPAL.

FOR THE PETITIONER:

SHRI MAHARAJ KISWAN WITH SHRI P.R MONGA, ADVOCATE.

FOR THE RESPONDENT:

SHRI D.D CHAWLA, SR. ADVOCATE WITH SHRI C.L CHAUDHERY, ADVOCATE

ORDER

V.S. DESHPANDE C.J. (ORAL):

The respondents are registered as architects under the Architects Act, 1972 and practice as such in the Union Territory of Delhi. They filed two writ petitions : challenging the power of the Delhi Municipal Corporation to impose restrictions on their right to practice as architects. The restrictions and the basis on which the restriction was imposed may be described as below :-

Section 2 (25) of the Delhi Municipal Corporation Act, 1957 (the Act) is as below:

"Licensed architect" "licensed draughtsman" "licensed engineer, "licensed plumber, "licensed surveyor" and "licensed

town planner' mean respectively a person licensed under the provisions of this act as an architect, draughtsman, engineer, plumber, surveyor and town planner." .

Since the definition of section 2(25) contemplates that a licensed architect or a licensed draughtsman, it is necessary to know the provisions which empower the Corporation to license an architect or a draughtsman under the Act. Section 430 (1) of the Act states that whenever it is provided in this Act or any bye-law made there under that a license or a "written permission may be granted for any purpose, such license or a written permission shall be signed by the Commissioner or by the officer empowered to grant the same under this Act or the bye laws made there under". There is no specific provision in the Act itself empowering the Corporation to issue license to an architect or a draughtsman. Section 481 (1) of the Act empowered the Corporation to make bye- laws for various matters. Part F thereof empowers the making of bye-laws relating to buildings. Part L thereof empowers the making of bye-laws relating to miscellaneous matters. Clause 97 of Part L is .as follows :-

"(7) Any other matter which is to be or may be prescribed by bye-laws made under this Act or in respect of which this Act makes no provisions or makes insufficient provision and provision is, in the opinion of the Corporation, necessary for the efficient municipal government of Delhi."

This is a residuary power to make bye-laws given to the Corporation, if the making of such bye-laws is necessary "for the efficient municipal government of Delhi".

Whatever may have been the position before the coming into force of the Architects Act, 1972, what we have to consider is whether after the coming into force of the said Act the Delhi Municipal Corporation has any power to regulate the practice of architects by the insistence that they must possess a license issued by the Corporation. The Architects Act, 1972 sets out the qualification to be possessed by the persons to be registered as architects under the said Act. It also prohibits persons who do not have such registration from describing themselves as architects and also deals with disciplinary action for misconduct of architects. It is, therefore, a complete enactment the effect of which is that a person cannot call himself an architect unless he is registered under the said Act. Of course, unlike the Advocates Act, which restricts there under, the Architects Act does not restrict the practice by architects to persons registered under the said Act. Therefore, some persons who cannot call themselves architects may still be free to do the work which is ordinarily done by architects and they are not dealt with by the Architects Act, whether the Corporation can deal with such persons is not a question which arises before us. Our considerations is limited to the question whether the corporation can regulate the profession and practice of architects registered under the Architects Act, 1972 by insisting that the architects practicing in Delhi and submitting plans for construction of buildings for the approval of the corporation must possess licenses issued by the Corporation.

The provisions in the Act on which such authority could be claimed by the corporation have been discussed above and it has been found that there is no specific provision in the Delhi Municipal Corporation Act itself authorising the corporation to issues licenses to architects. We have, therefore, to seek for such provisions in the bye-laws, 69 bye-laws 6, 9 and 10(2) of the Building Bye-laws, 1959 refer to the licensed architects as being persons who can submit building plans. In view of the definition of "licensed architects" in section 2(25) the licensed architects referred to in the bye-laws have to be persons who are licensed under the provisions of the Act. The result is that on a consideration of these bye-laws the Commissioner, Delhi Municipal Corporation, issued the letter, dated 7th May, 1974 which is Annexure A to writ petition. In this letter it was proposed that the corporation may frame bye-laws for licensing and registration, inter alia, of draughtsman and architects as required by virtue of powers under 2(25) read with sections 430 and 431 of the Act, and Bye-laws 6 and 9 of the Building bye-laws, 1959. In the bye-laws proposed in this letter, provision is sought to be made to prescribe qualifications to be held by architects and draughtsman before licenses could be issued to them, for payment of license fees, deposit of security amounts by them and certain penalties to be imposed on them for contravention of these bye-laws. The whole scheme of such regulation was challenged by the respondents.

The writ petitions of the respondents are allowed by the learned Single Judge. who granted reliefs prayed for, namely to declare that this regulatory scheme was contrary to the Architects Act, 1972 and superseded by the said Act and, therefore, the purported action of the Corporation was ultra vires the Delhi Municipal Corporation Act, 1957. The resolution No.690, dated 3.9.1974, and the orders dated 2.4.1975 and 15.4.1975 were also apparently quashed by, allowing the writ petitions as a whole. These appeals have been preferred by the Corporation against the said decisions of learned Single Judge.

Two considerations are relevant to determine the authority of the Corporation to regulate the practice of the architects in submitting building plans to the Corporation for approval. Firstly, whether the Act and bye-laws framed validly there under authorise the Corporation to do so, and secondly, what is the effect on the authority of the Corporation, if any, of the passing of Architects Act, 1972.

CONSIDERATION NO.1

Presumably, section 2(25) of the Act contemplated issue of licenses to architects and draughtsman because at the time the Act was framed and enacted there was no Act providing for the registration of architects and issuing of registration certificates to them and thus regulating the profession and practice of Architects. Further, there may be other persons who cannot be registered as architects under the Architects Act, 1972 and in respect of such persons it is arguable that the Corporation had to make some provision because the building plans submitted to the Corporation have to be by persons who are qualified to the satisfaction of the Corporation. It is necessary for the Corporation to ensure that building plans are made by qualified persons and since the Corporation authorities cannot be expected to scrutinise the building plans with a view to redrafting them in each and every case, some preliminary safeguard that the plans have been prepared by qualified persons could be insisted up in by corporation. The authority for making bye-laws for this purpose is somewhat tenuous, but it may be spelt out from the provision of section 481 part F and Part L, particularly sub section (i) of part L containing the words necessary for the efficient municipal Government of Delhi. In so far as the building plans submitted to the Corporation made by persons who are not architects under the Architect's Act, 1972 are concerned, we need not say anything as to the power of the Corporation to insist on such to the persons possessing licenses to be issued by the Corporation under the bye-laws framed by the Corporation. In our view, therefore, the authority of the Corporation, if any, is restricted to the licensing and making other related provisions to govern the qualifications and conduct of persons other than the registered architects while submitting building plans to the Corporation. But as will be shown under the second consideration below, the Corporation does not possess any such power after the coming into force of the Architects Act, 1972 in relation to persons who are registered as architects there under.

CONSIDERATION NO.2

Section 502 of the Act is as follows :

"Save as: provided in this Act, nothing contained in this Act shall be constructed as authorising the disregard by the corporation or any municipal authority or any municipal officer or other municipal employees of any law for the time being enforce."

This salutary provision recognises that the Delhi Municipal Corporation Act being a general measure relating to the functioning of the Corporation is not expected to provide for the details of the various related questions with which the Corporation may have to deal for the time being only or in the absence of special law dealing with such matters. The Architects Act, 1972 is a special law dealing with the qualifications to be possessed by persons for being registered as architects and restricting the terms "architect" or "registered architect" to such persons only. Since the possession of a registration certificate under the Architects Act, 1972 regarded by Parliament as sufficient qualification for the practice of architects and since all related questions have been dealt with in respect of architects by the said Act, It became unnecessary for the Corporation to do so thereafter. In view of section 502 of the Act, the provisions referred to above which could be constructed authorising the corporation to regulate the licensing of architects and draughtsman could not be so constructed after coming into force of the Architects Act, 1972.

We accordingly declare that the judgements under appeal by the learned single Judge are not to be understood to mean that the impugned actions of the Corporation including the bye-laws and the resolutions or orders referred to in relief(s) asked for in the writ petitions are quashed for all purposes. It is sufficient for us to declare that none of these provisions will affect in any way the status and practice of persons. including the possession of license and payment of license fee or amounts or security. etc. and the respondents shall be free to act as architects and submit building plans to the Municipal Corporation of Delhi without having to comply with any of these provisions.

Subject to these observations. the appeals are dismissed without any order as to costs.

Sd/-

B.N. Kirpal

Judge

Sd/-

V .S. Despande

Chief Justice

Seal High Court of Delhi