2022 INSC 181

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1320 of 2022
(Arising out of SLP(C)NO.24702 of 2019)

COUNCIL OF ARCHITECTURE ... APPELLANT (S)

VERSUS

THE ACADEMIC SOCIETY OF
ARCHITECTS (TASA) & ORS. ... RESPONDENT(S)

J U D G M E N T

V. Ramasubramanian, J.

Leave granted.

2. The 1st respondent herein which is a society registered under the Tamil Nadu Societies Registration Act, 1975 and which has as its members, professional architects who claim to be teaching faculty in institutions imparting education in Architecture, filed a writ petition on the file of the High Court of Judicature at Madras, praying for quashing the "Minimum Standards of Architectural Education Regulations, 2017" circulated by the appellant herein *vide* communications dated

31.10.2018 and 03.12.2018. The main and perhaps the only ground of challenge to the Regulations was that the Regulations required the prior approval of the Central Government under Section 45 of The Architects Act, 1972, (in short referred to as 'the Act') before they are implemented and that no such prior approval was obtained before issuing the impugned communications.

3. The appellant herein took umbrage under Section 21 of the Act. The appellant also questioned the *locus standi* of the 1st respondent to challenge the impugned communications, since the communications were addressed to institutions teaching Architecture, none of which had come forward to challenge the same.

4. Taking a view that Section 21 cannot be read in isolation and that the provisions of Section 45 are mandatory, the High Court allowed the writ petition and quashed the impugned communications. Hence, the appellant is before us.

5. We have heard learned counsel appearing for the respective parties.

6. Before we consider the issue that arises for consideration, we must take note of one important subsequent development. After this Court ordered notice in the Special Leave Petition, a Notification bearing F.No.CA/193/2020/MSAER dated 11.08.2020 was published in the Government Gazette, notifying the "Council of Architecture (Minimum Standards of Architectural Education) Regulations, 2020". These Regulations were directed to come into force with effect from the 1st day of November, 2020. These Regulations have been issued, as seen from the Notification, in exercise of the powers conferred by clauses (e), (g), (h) and (j) of sub-section (2) of Section 45 read with Section 21 of the Act. They have been issued in supersession of the 1983 Regulations.

7. Due to the above subsequent development, the question relating to the inter-play between Section 21 and Section 45 of

the Act has become one of mere academic importance. However, Mr. Naveen R. Nath, learned senior counsel for the appellant contended that the question of law is of importance and advanced arguments.

8. Admittedly, the communication dated 31.10.2018 issued by the appellant herein drew the attention of the educational institutions to the revised eligibility criteria for admission to 5 year B.Arch. degree course and also to the Minimum Standards for Architectural Education prescribed by the Council to be followed for the academic session 2019-20. The second impugned communication was dated 03.12.2018 which was the "Approval Process" for 2019-20.

9. Both the communications dated 31.10.2018 and 03.12.2018, impugned before the High Court, were not part of any Regulations framed by the appellant in exercise of the power conferred by Section 45(1) of the Act. The requirements of prior approval and the notification in the official gazette in

terms of Section 45(1) of the Act, are in respect of Regulations and not in respect of communications such as the ones impugned in the writ petition. This is why an argument is advanced on the inter-play between Sections 21 and 45 of the Act. Section 21 reads as follows:-

> **"21. Minimum standard of architectural education**.- The Council may prescribe the minimum standards of architectural education required for granting recognised qualifications by colleges or institutions in India."

Section 45 reads as follows:-

> **"45. Power of Council to make regulations.**- (1) The Council may, with the approval of the Central Government, [by notification in the Official Gazette], make regulations not inconsistent with the provisions of this Act, or the rules made thereunder, to carry out the purposes of this Act.
>
> (2) In particular and without prejudice to the generalityof the foregoing power, such regulations may provide for—
>
> (a) the management of the property of the Council;
>
> (b) the powers and duties of the President and the Vice-President of the Council;
>
> (c) the summoning and holding of meetings of the Council and the Executive Committee or any other committee constituted under section 10, the times and places at which such meetings shall be held, the conductof business thereat and the number of persons necessary to constitute a quorum;

(d) the functions of the Executive Committee or of any other committee constituted under section 10;
(e) the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognised qualifications;
(f) the appointment, powers and duties of inspector;
(g) the standards of staff, equipment, accommodation, training and other facilities for architectural education;
(h) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;
(i) the standards of professional conduct and etiquette and code of ethics to be observed by architects;
(j) any other matter which is to be or may be provided by regulations under this Act and in respect of which no rules have been made.

(3) Every regulation made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

10. It may be seen from sub-section (2) of Section 45 that it gives a list of matters for which provision may be made in the Regulations,

in clauses (a) to (j). Clause (a) to (d) concern the management and administration of the Council of Architecture and its property. It is only clauses (e), (g) and (h) of sub-section(2) of Section 45 which have a bearing on the Minimum Standards of Education. Clause (f) relates to appointment of Inspectors and clause (i) relates to standards of professional conduct and etiquette. Clause (j) is a residuary clause.

11. Interestingly, the 1983 Regulations as well as the 2020 Regulations (now issued after the judgment of the Madras High Court), are issued in exercise of the powers conferred by clauses (e), (g), (h) and (j) of sub-section (2) of Section 45 read with Section 21. If the stipulation contained in Section 21 is subsumed in one of the clauses of Section 45(2), there was no necessity for invoking the power under Section 45(2) ***read with Section 21*** while issuing the Regulations. In other words, if the minimum standards of architectural education are covered by clauses (e), (g) and (h), or at least by the residuary clause (j) of sub-section (2) of Section 45, it would have been enough for the appellant to issue the regulations in exercise of the powers conferred by Section 45(2) alone without

invoking Section 21 along with it. The reason why Section 21 is also invoked along with Section 45(2) is not far to seek.

12. Clause (i) of sub-section (2) of Section 45 relates to standards of professional conduct and code of ethics to be observed by architects. The substantive power to prescribe the code of professional conduct for architects, flows out of Section 22. It reads as follows:-

> **"22. Professional conduct.-**(1) The Council may by regulations prescribe standards of professional conduct and etiquette and a code of ethics for architects.
> (2) Regulations made by the Council under sub-section (1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and such provision shall have effect notwithstanding anything contained in any law for the time being in force."

13. Apparently, Section 22 confers substantive power upon the Council to prescribe standards of professional conduct and Section 45(2)(i) deals with the procedural power. But Section 22 itself makes it clear that the prescription of standards of professional conduct and code of ethics for architects could be done only by way of regulations. This is in contrast to Section 21.

14. To put it differently, Section 22(1) confers power upon the Council of Architecture to prescribe standards of professional conduct and a code of ethics, only by way of regulations, though Section 45(2)(i) takes care of the procedural requirement. But Section 21 which confers substantive power upon the Council to prescribe minimum standards of architectural education, is not couched in the same language as Section 22(1). In other words, Section 21 does not contain a stipulation that, "the Council may by regulation prescribe minimum standards of architectural education". The words "may by regulation", found in Section 22, are conspicuous by their absence in Section 21. This is a clear indication of the fact, ***(i)*** that the Council is empowered to prescribe minimum standards of architectural education, not necessarily by taking recourse to Section 45(2); and ***(ii)*** that if at all, such minimum standards are issued otherwise than through Regulations, they should not be in conflict with those found in the Regulations.

15. It is thus clear from the scheme of the Act that the Council of Architecture may prescribe minimum standards of architectural education, either by way of regulations issued under Section 45(2) or even otherwise. It is only in cases where the Council chooses to prescribe standards in the form of regulations that the requirement of approval of the Central Government under Section 45(1) would become necessary.

16. It is interesting to see that the communications dated 31.10.2018 and 03.12.2018 issued by the appellant which were put to challenge before the High Court, were primarily aimed at streamlining the institutions imparting architectural education. The 1st respondent herein who challenged the communications, was admittedly a society, which has as its members, the teaching faculty. This can be seen from paragraph 2 of the writ petition filed by the 1st respondent herein before the High Court, the relevant portion of which reads as follows:-

> "The members of the Society are professionalArchitects who have engaged themselves as teaching faculty and the society recognises four kinds of members, namely (1) Life Member– Professor registered with COA and being heads of institutions with Ten years of teaching experience, (2) Associate /Affiliate Member–Teachers

> registered with COA having less than Ten years of teaching experience, (3) Patron/Donor Member – Accomplished Academicians and Renowned Teachers registered with COA involved in Architectural Education with Twenty years of experience and (4) Institutional Member –representing a college or school or institute of Architecture".

17. In the counter affidavit filed by the appellant before the High Court, a specific objection was taken to the maintainability of the writ petition on the ground that the communications impugned in the writ petition were addressed to the institutions imparting architectural education and that individuals who claim to be teaching faculty cannot challenge the same. It was also contended in the counter affidavit that the 1st respondent (writ petitioner) was attempting to espouse the cause of some defaulting educational institutions which did not meet the minimum standards. Another important issue raised in the counter affidavit filed by the appellant herein before the High Court was that one of the members of the 1st respondent Society was a member of the appellant Council which approved the 2015 norms and that some of the members of the 1st respondent Society even acted as Inspectors and inspected the

educational institutions to find out whether minimum standards are put in place.

18. But the above objections were not even considered by the High Court. The High Court addressed itself merely to the question of the requirement of approval of the Central Government under Section 45(1) and did not go into the question of *locus standi* of the 1st respondent. The High Court even overlooked the fact that none of the educational institutions imparting architectural education ever chose to challenge the communications impugned before the High Court. In fact, the appellant has furnished a chart extracting the provisions of the 1983 Regulations in Column No.1, the 2017 Prescriptions in Column No.2, and the area of difference between the two, in Column No.3. It is seen from the said chart that many of the changes brought forthwith in 2018 were in relation to, ***(i)*** duration of the architecture programme; ***(ii)*** admission to architecture course; ***(iii)*** intake and migration; ***(iv)*** courses and periods of study; ***(v)*** professional examination, standards of proficiency and conditions of admissions and qualifications of

examiners; and ***(vi)*** standards of staff, equipment, accommodation, training and other facilities.

19. If at all, the 1st respondent-society (writ petitioner), due to the nature of its membership, could have been aggrieved only by the prescriptions affecting the teaching faculty. The 1st respondent could not have challenged the prescriptions with which they are not in any way concerned. Unfortunately, the High Court did not address itself to these important issues.

20. Therefore, the appeal is liable to be allowed and the impugned order is bound to be set aside. Accordingly, the appeal is allowed, the impugned order of the High Court is set aside and the writ petition filed by the 1st respondent before the High Court shall stand dismissed. No costs.

.....J.
(Hemant Gupta)

.....J.
(V. Ramasubramanian)

New Delhi
February 14, 2022