

HTK (A) (129)

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IN THE HIGH COURT MADHYA PRADESH : JABALPUR
Writ Petition No. 3817 of 2003

PETITIONERS

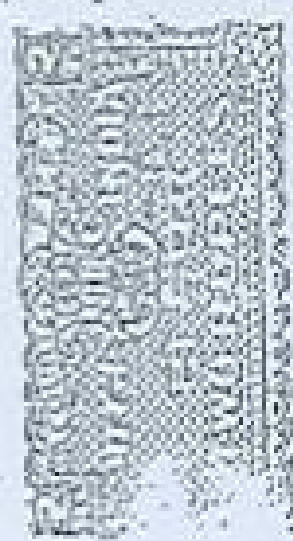
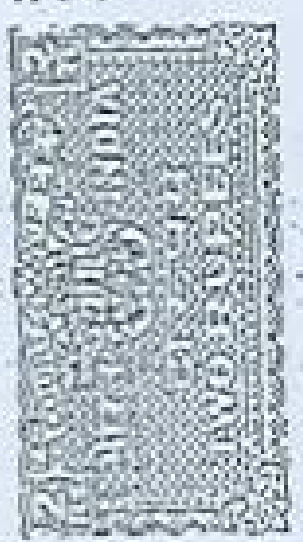
1. Mukesh Kumar Manhar S/o, Sri Ram Singh Ahirwar, aged about 29 years, working as Draftsman in the O/o the Chief Architect-cum-Chief Engineer (RDD), Public Works Department, Jawahar Chowk, Bhopal, R/o 24 Old Nariyal Kheda Bhopal.
2. Devendra Kumar Medekar S/o Sri Ganesh Medekar, aged about 30 years, working as Head Draftsman in the O/o the Chief Architect-cum-Chief Engineer (RDD), Public Works Department, Jawahar Chowk, Bhopal, R/o EWS 554 Kotra Sulianabad, Bhopal.

Versus

RESPONDENTS

1. State of Madhya Pradesh Through : Principal Secretary, Public Works Department, Mantralaya, Vallabh Bhavan, Bhopal.
2. The Chief Architect-cum- Chief Engineer (RDD), Public Works Department, Jawahar Chowk, Bhopal.
3. Shri S.D.Hatwar, working as Assistant Architect in the O/o the Chief Architect-cum-Chief Engineer (RDD), Public Works Department, Jawahar Chowk, Bhopal.
4. Shri V.V.Joshi, working as Assistant Architect in the O/o The Chief Architect-cum-Chief Engineer (RDD), Public Works Department, Jawahar Chowk, Bhopal.
5. Kum. Gayatri Bhandari working as Assistant Architect in the O/o the Chief Architect-cum-Chief Engineer (RDD), Public Works Department, Jawahar Chowk, Bhopal.

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- 6- Council of Architecture
Through : President, India Habitat
Centre, Zone 6, 1st Floor, Lodhi
Road, New Delhi 110 003.
- 7- M.P.Public Service Commission
Through : the Secretary, Radio
Colony, Indore (MP).

PRESENT :

Hon'ble Mr. Justice R.V.Raveendran, Chief Justice.
Hon'ble Mr. Justice Shantanu Kemkar, Judge.

Shri Vivek Agrawal, Advocate, for Petitioners.

Shri Vivek Awasthy, Govt. Advocate, for
Respondents No.1, 2 & 7.

Shri V.S.Shrotri, Senior Advocate, with
Shri A.Shrotri, advocate, for Respondent No.6.

(Respondents 3, 4 & 5 served and unrepresented)

ORDER
(2.8.2005)

PER : R.V.RAVEENDRAN, CHIEF JUSTICE.—

The petitioners are registered Architects possessing Degree in Architecture (B.Arch). They are presently employed respectively as Draughtsman and Head Draughtsman in the office of the Chief Architect-cum- Chief Engineer (RDD) ^{State} Public Works Department. They belong to the Madhya Pradesh Public Works Engineering (Gazette) Service constituted under the M.P.Public Works Engineering (Gazetted) Service Recruitment Rules 1969 (for short the 'Recruitment Rules'). Their next promotional post is Assistant Architect- Class II.

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2- The recruitment to the post of Assistant Architect is governed by the Recruitment Rules. Schedule I to the said Recruitment Rules describes the post of Assistant Architects as a Class II post. Schedule II to the Rules prescribes the mode of recruitment. Earlier the posts of Assistant Architects were required to be filled 50% by direct recruitment and 50% by promotion. Senior Architectural Draughtsman in the Chief Architect's Office having the requisite minimum educational qualification (Bachelor's Degree in Architecture or the prescribed equivalents) alone were to be considered for promotion as Assistant Architect. The Rules underwent an amendment in the year 1991 and the mode of recruitment was altered as follows: "40% by direct recruitment and 60% by promotion" and the promotion was from the posts of Draughtsman/Architect Officers. Significantly, the qualification earlier prescribed for promotion, that is Degree in Architecture, was omitted by the 1991 Amendment Rules. Before the amendment in 1991, it is stated that promotion from the posts of Head Draughtsman/Draughtsman was to the posts of 'Assistant Engineer' and not 'Assistant Architects'.

3- In view of the 1991 Amendment to the Recruitment Rules, all draughtsmen and Architect Officers became eligible for promotion as Assistant Architects, even if they did not possess a degree in Architecture. As a consequence, respondents No.3 to 5 who were Head Draughtsmen, were promoted as 'Assistant Architects' by order dated 20.2.2003 though they were not possessing degree in Architecture. If the requirement of degree in Architecture which had been prescribed as a condition for promotion to the post of Assistant Architect, had continued in the Recruitment Rules, respondents 3 to 5 though seniors to petitioners in the cadre of Draughtsmen, would have been ineligible

and petitioners would have stood a chance of being promoted as Assistant Architects.

4- Petitioners submits that having regard to the provision of Architects Act, 1972, only persons possessing a degree in Architecture (or Diplomas recognised as equivalent and enumerated in the Schedule to the said Act) and registered as Architects with the council of Architecture are entitled to practice as 'Architects' and use the title 'Architect'. As a consequence, it is contended that only 'Registered Architects' can be appointed as promoted to the post of 'Assistant Architects'. It is contended that having regard to the provision of Architects Act, the provision for promotion to the post of 'Assistant Architect' under the Rules has to necessarily provide "persons registered as Architects possessing any of the degrees/diplomas in Architecture enumerated in the Schedule to the Architects Act" as an eligibility criterion for promotion. It is submitted that the Recruitment Rules to the extent they fail to prescribe such minimum qualification will be repugnant to Architects Act, 1972, and will be invalid. The petitioners have therefore filed this petition for the following reliefs :

- (i) to declare the Recruitment Rules to the extent they relate to promotion to the cadre of Assistant Architect-Class II, to be null and void as not being in conformity with the provisions of the Architect Act, 1972.
- (ii) to quash the order dated 20.2.2003 by which the respondents No. 3 to 5 were promoted as 'Assistant Architect-Class II' and direct the respondents 1 and 2 to consider them for promotion to the post of Assistant Architect.

5- On the contentions raised, ¹⁰² two following questions arise for consideration :

- (i) Whether the provision prescribing the mode of recruitment by promotion to the post of 'Assistant Architect' is invalid as being repugnant to the provisions of Architects Act, 1972?
- (ii) Whether the promotion of respondents 3 to 5 as 'Assistant Architect Class-II' requires interference with a direction to consider ^{posts} ~~positions~~ for the said posts?

Re Question (i) :

6. It is now well settled that the validity of any sub-ordinate legislation can be challenged on the following four grounds: (vide INDIAN EXPRESS NEWSPAPERS (BOMBAY) P. Ltd. Vs. UNION OF INDIA - AIR 1986 SC 515 at page 542) :

- (i) that the Rule making authority lacked the legislative competent to make the rules.
- (ii) that the Rule violated any provision of the Constitution of India, in particular the fundamental rights guaranteed under chapter III of the Constitution.
- (iii) that the Rule does not conform to or is repugnant to the Statute under which it is made or any other Statute.
- (iv) that the Rule is manifestly arbitrary (as contrasted from mere unreasonableness).

In this case, the challenge is on ground (iii), that is, the Rule providing for promotion to the post of Assistant Architect (Class II) from the posts of 'Draftsman/ Architect Officers' without prescribing the qualification of 'Registered Architect', is repugnant to the provisions of a central enactment, that is Section 37 (1) and Section 35 (2) of the Architects Act, 1972.

7. It is also equally well settled that the scope of interference by Courts in matters relating to prescription of qualifications for posts is very limited. In P.U.

JOSHI Vs. ACCOUNTANT GENERAL, AHMEDABAD
 [2003(2) SCC 632], the Supreme Court has held :

Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory Tribunals, at any rate, to direct the Government to have a particular method or recruitment or eligibility criteria or avenues of promotion, or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction, the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate..... There is no right in any employee of the State to claim that Rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(Emphasis supplied)

Normally, in view of the above clear cut limitations, it is not possible to interfere with the prescription of qualification for promotion to any post under the Rules unless such prescription is shown to be opposed to the provisions of any Statute, or manifestly arbitrary.

8. We will now refer to the relevant provision of Architects Act, 1972.

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"S.37. Prohibition against use of title.—

- (1) After the expiry of one year from the date appointed under sub-section (2) of Section 23, no person other than a registered architect, or a firm of architects shall use the title and style of architect :
- (2) If any person contravenes the provisions of sub-section (1), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both."

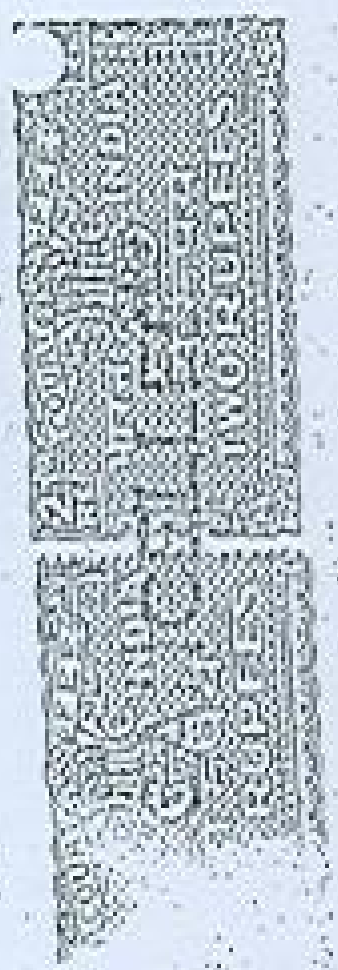
(Emphasis supplied)

Section 23 provides for preparation and maintenance of a register of architects for India. Section 25 prescribes the qualification for entry in the register of Architects. Section 25 makes it clear that only those who are possessing any of the recognised qualifications (enumerated in the Schedule of the Act) are entitled to have name entered in the register of Architects. Section 35 relates to effect of registration and it is extracted below :

"S.35. Effect of registration....

- (1) Any reference in any law for the time being in force to an architect shall be deemed to be a reference to an architect registered under this Act.
- (2) After the expiry of two years from the date appointed under sub-section (2) of Section 24, a person who is registered in the register shall get preference for appointment as an architect under the Central or State Government or in any other local body or institution which is supported or aided from the public or local funds or in any institution recognised by the Central or State Government".

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9. It is clear from Section 37 of the Architects Act, no person other than a registered Architect (possessing the degree of B.Arch. granted by an Indian University or the qualifications enumerated in schedule to that Act) can use the title of 'Architect'. But the question is whether the State Government is prohibited from having posts called as 'Architect' or 'Assistant Architect' and provide for non-Architects (that is persons not registered as Architects and possessing any the qualifications mentioned in the Architects Act, 1972) to be promoted or recruited to such posts.

10. There is a significant difference between the Architects Act 1972 dealing with the profession of Architects and enactments dealing with Medical and Legal professions. Section 15(2) of The Indian Medical Council Act, 1956 bars any person other than medical practitioners enrolled on the State Medical Registers from practicing Medicine or holding the office as 'physician' or 'surgeon' in any Government Institution or other Institution maintained by any local or other Authority. Similarly, Section 29 of the Advocates Act, 1961, provides that only one class of persons are entitled to practice the profession of law, namely, advocates entered in the Roll of any Bar Council under the provisions of Advocates Act. Thus there is a clear bar on persons who are not enrolled with the State Medical Council or State Bar Council, from practising as a Medical Practitioner or Advocate.

11. In contrast, the Architects Act 1972 does not prohibit persons other than those who are registered as Architects from practising the profession. As noticed above, Section 37 only prohibits any person other than a registered architect using the title and style of Architect. It does not prohibits a person, who is not a registered as

an Architect with the Council of Architecture from carrying on or discharging any function that can be carried on by a registered Architect. The functions normally associated with Architects are : (i) taking instructions from clients and preparing designs; (ii) site evaluation, (iii) design and site development, (iv) design of structure, (v) design of sanitary, plumbing, drainage, water supply and sewage, (vi) design of electrification, communications, (vii) incorporation of appropriate heating, ventilation, air-conditioning and other mechanical systems, fire detection & fire protection systems and security systems, and (viii) periodic inspection and evaluation of the construction work.

12.

The statement of objects and reasons of the Architects Act states that the legislation is intended to protect the title of 'architects', but does not intend to make the design, supervision and construction of buildings as an exclusive responsibility of architects. It clarifies that other professions like engineers will be free to engage themselves in their normal vocation in respect of building construction work provided that they do not style themselves as 'Architects'. Thus, as contrasted ^{from} the Advocates Act and the Medical Council Act, the Architects Act merely provides for registration of 'architects' and matters connected therewith, and does not contain any prohibition against those who are not registered or enrolled performing the duties of Architects. The provisions of the Architects Act makes it clear that persons who are not registered as Architects, can carry on and discharge the functions which the Architects normally discharge, provided they do not call themselves as Architects.

If that is so, there can be no objection for a rule providing for non-architects being promoted to a particular Class II post, which may involve planning.

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designing and supervision of Building constructions. What is prohibited and what is objectionable in law is calling the persons discharging such functions related to architecture, as 'Architects' when they are not registered as Architects. As the law now stands, the petitioners cannot contend that only persons qualified and registered as Architects can be promoted to Class II posts dealing with general Architectural functions. Even Engineers, who do not have a degree of Architecture (and who are not registered Architects) but having qualifications in Engineering and experience in design and supervision, may perform the functions which are normally performed by an Architect. But such Engineers who are not registered Architects and posted to the Class-I or II posts, dealing with architectural aspects and designs, cannot be called as 'Architects' or 'Assistant Architects' unless they are registered Architects under the Architects Act. Therefore, any draughtsman who is not a registered Architect, when promoted to the Class II post will have to be called by 'title' other than 'Assistant Architect'. A draughtsman who is a registered Architect, when promoted to Class II post, can however be called as 'Assistant Architect'.

14- We recognise the freedom and choice, vested in the executive, to prescribe the qualifications for various posts. But the qualifications prescribed, should not violate any statutory provision, nor suffer from the vice of arbitrariness or malafides. Statutory preferences should not be ignored. Architecture is a specialised technical field dealing with design and execution of buildings and structures. Qualified Architects have specialised knowledge in (i) designing of various types of buildings with reference to utility, safety, aesthetics, comfort and economics, (ii) methods of building construction, (iii) the nature, strength and behaviour of building materials and their uses; and effect of climate

on them; (iv) designing of water supply, drainage, sewage disposal, electricity supply and lighting; (v) techniques of urban development, integrated development and infra-structural development; (vi) landscaping with use of elements such as trees, plants, water, rocks; (vii) structural concepts and behaviour of structural elements; and (viii) estimating and costing of structures. Public interest requires that any post requiring design and supervision of buildings should, therefore, be filled by qualified Architects. If unqualified persons are ^{placed} in charge of design and construction, buildings may become uneconomical and unsafe. With manifold increase in building activity, it is not advisable to have non-architects manning important posts of Architects involving design and execution of huge and complex structures/buildings.

15- Section 35 provides that a person who is registered as an Architect shall get preference for appointment as an Architect under the Central or State Government, (and in any other local and other authorities). This statutory preference given to architects is obviously because of their specialised knowledge. To ignore such specialised knowledge and to ignore the statutory preference and appoint non-Architects to perform architectural functions, ~~was~~ to repeat, will not be in public interest.

16- We may in this context refer to the decision of the Division Bench of Gauhati High Court in TULYA GOGAI Vs. ASSOCIATION OF ARCHITECTS (WP no. 114/1996, decided on 3.7.1999). In that case, the appellants were Architectural Draughtsmen, who did not possess degree in Architecture. By the order impugned, the post of Architectural draughtsman was redesignated as 'Junior Architects'. That was challenged by the Association of Architects. The learned Single Judge held

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that the Government cannot use the title of 'Architect' in respect of persons, who are not qualified and registered under Architects Act. It was further directed that while giving promotion to those persons, name and style of 'Architect' cannot be used. That was challenged on the ground that provisions of Architects Act will not apply to those in Government employment and there can be no prohibition for Government terming any post as 'Junior Architect' or 'Architect' even if the incumbents of such posts were not registered Architects. While rejecting the appeal, the Division Bench observed :

" We do not think it is possible to draw any distinction, as vehemently canvassed before us, between the architects carrying on their private profession as such and the architects, who may be in the employment of the Government or in the employment of any other statutory body or local authority or for that purpose any other establishment. The job of architect is provided, controlled and maintained by the provisions of the Act.... The same standard of efficiency is required, may be the building activities are carried on by the State or by private individual. In these circumstances, the prohibition as contained in Section 37 of the Act cannot be confined only to the private professionals."

17- We do hope that the above aspects will be kept in view by the State Government while taking a decision as to whether it should prescribe the qualification of Registered Architect (as earlier in vogue) for the posts of Assistant Architects and Architects.

Re Question (iii) :

18- The challenge to the promotion of respondents 3 to 5 as Assistant Architects and the claim that the petitioners should be considered for the post of Assistant Architects superseding senior Head Draughtsman and Draughtsman who are not registered as Architects, will

merit acceptance only if the Rule providing for promotion of Draughtsmen/Architect Officers to the class II posts titled 'Assistant Architects' being found to be invalid. As we have upheld the validity of the Rules, but have only found that use of the nomenclature "Assistant Architect" is illegal and barred by Section 37, the second question does not survive for consideration.

CONCLUSION :

19- In the result, this petition is allowed in part as follows :

- (i) The State Government (first respondent) shall cease using the nomenclature "Assistant Architects" or 'Architects' in regard to posts for which the qualification of 'Registered Architect' is not prescribed. It shall also cease designating those who are not registered Architects under the Architects Act, 1972, as 'Architects' or 'Assistant Architects'.
- (ii) If the State Government wants to continue the nomenclature of 'Assistant Architect' or 'Architects', then while prescribing the qualification for appointment or promotion to such posts, the requirement that they shall be 'Registered Architects' under the Architects Act, 1972, shall be added.
- (iii) The State shall give preference to Registered Architects (under the Architects Act, 1972) for appointment to any post of Architect (that is post involving architectural functions) as provided in Section 35(2) of the Architects Act, 1972.
- (iv) The State shall comply with the aforesaid directions within four months from the date of receipt of this order.

S/ (R.V. Raveendran)
Chief Justice.
D.A. 2005.

S/ (Shantanu Kemkar)
Judge.
D.A. 2005.

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