

In the High Court at Calcutta

Ordinary Original Civil Jurisdiction

Present

The Hon^{ble} Mr. Justice
Umesh Chandra Banerjee

24 July, 1989

Court

Utpal Bose And Others

vs State Of West Bengal And Others on 24 July, 1989

Equivalent citations: AIR 1991 Cal 48

Bench: U C Banerjee

The change in the socio-economic condition of the country has resulted in the building construction activity a phenomenal upward trend. To meet the growing demand in the construction of building activity, there was an upsurge of under-qualified persons describing themselves as architects and resulting in unsafe work of construction. The Architects Act, 1972 was engrafted in the Statute Book to provide for the registration of architects so as to eradicate the unqualified and under-qualified persons taking upon the responsibility in that regard as architects.

Section 25 of the Act of 1972 provides that a person shall be entitled, on payment of a fee as may be prescribed by the Rules, to have his name entered in the register, if he resides or carries on the profession of the architect in India and holds a recognised qualification. S. 29 provides that the Council established in terms of the Act is empowered to remove the name of any architect from the register to be maintained in terms of the provisions of the Act. Retention of the name in the register by payment of fees has also been engrafted in the Statute Book under S. 27 of the Act and in terms of S. 44 the Central Government has been authorised to make rules for all or the matters as specified in sub-sec. (2) of S. 44 of the Act of 1972. The Schedule to the Act provides the qualification for being registered as architects under the Act. On a perusal of the statute, it appears that the Act of 1972 is a complete Code in itself and provides for all possible situations in regard thereto.

The main controversy is this writ petition centres round the power of the Municipal Corporation of Calcutta to impose the additional fee on architects and the regulatory measures introduced thereby. Mr. Dutt appearing for the petitioners submitted that S. 414 of the Calcutta Municipal Corporation Act, 1980 purports to levy additional fee as regards architects and on this score, it was contended firstly that since there is no quid pro quo, question of levy of a fee does not and cannot arise.

The doctrine of 'quid pro quo' has received a considerable attention of our Courts but the traditional concept of the doctrine has been watered down to a great extent. In this context reference may be made to the decision of the Supreme Court in the case of City Corporation of Calicut v. Thacham Thachambalatch Sadasivam, wherein the Supreme Court observed (at p. 758 of AIR):

"It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered or the advantages conferred, such relation need not be direct a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

The earlier decision of the Supreme Court in the case of Municipal Corporation of Delhi v. Md. Yasin also observed in similar tone as the Supreme Court observed (at p. 757 of AIR 1985 SC):

"What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hall-mark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantage

conferred, such relation need not be direct, a mere casual relation may be enough. Further; neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad correlation is all that is necessary. Quid pro quo in the strict sense is not the one had only true index of a fee; nor is it necessarily absent in a tax".

Let us, therefore, now analyse as to what are the privileges enjoyed by the architects by reason of such special fee. In the affidavit-in-opposition it has been categorically stated that by reason of the special fee levied under S. 414, the architects are being allowed access as regards the records of the Municipal Corporation of Calcutta which is a privilege which is not granted to any other person, but specially ear-marked for those who are within the ambit of the provisions of S. 414 of the Calcutta Municipal Corporation Act 1980. I need not detail the special privilege or benefits or the services rendered by the Municipal Corporation of Calcutta in favour of the architects suffice it to say that there is sufficient justification for such a levy of a special fee. In that view of the matter, I am unable to accept the contention of Mr. Dutt that the fee imposed under S. 414 ought to be declared invalid on the ground of there being no quid pro quo. As such the first contention of Mr. Dutt fails.

Mr. Dutt next contended that items 49, 60 and 66 of List II of the 7th Schedule do not authorise such an imposition of tax and as such S. 414 of the Act of 1980 ultra vires the provisions of the Constitution since the State Legislature had no power or authority to legislate on a field already occupied and impose second licence fees in regard to a particular profession. Mr. Dutt submitted that there is only one class of architects and as such bifurcation in that regard is not possible. It was contended that no imposition can be had on one class of architects, whereas the others would not be so brought under the purview of the provisions under S. 414.

At this juncture S. 414 is set out hereunder for convenience sake and for better appreciation of the submissions made on behalf of the parties. S. 414 reads:

"Section 414: Licensing of Building Architects.

- (I) The Municipal Commissioner may, from time to time and in accordance with such rules regarding qualification of architects in respect of several class of buildings as may be prescribed grant licence to any architect as a licensed Building Architect for the purpose of this Chapter;
- (II) Every such licence shall be renewed every three years;
- (III) The Mayor-in-Council may from time to time prescribe a scale of fee for licenced building architects in respect of any class of buildings to be made applicable in the absence of any written contract to the contrary".

Incidentally it is to be noted at this juncture that the Calcutta Municipal Corporation on the strength of S. 414 of the Act of 1980 issues fresh licence to the architects upon payment of a fee of Rs. 900/- which has been subsequently raised to Rs. 1800/-. This imposition of the licence fee and renewal after every three years is what is being objected to as also the power of the Mayor-in-Council as regards the scale of fees for licenced building architects as envisaged under sub-section (3) of S. 414. It has been submitted that it is an unreasonable restriction on the right of the architects to practice the profession of architects. The main grounds of challenge being lack of legislative competence.

The petitioners are the architects duly qualified from the institution recognised under the Architects Act 1972. As such architects the petitioners carry on profession of architects in the country and in particular in the State of West Bengal. The petitioners upon payment of prescribed fee under the Architects Act 1972 including the renewal fee continued to have their names entered in the register maintained by the Council of Architects established under the Architects Act. The petitioners contended that by reason of such registration the petitioners are entitled to carry on the profession of architects throughout India and no further registration is called for neither there can be any such requirement of law since the Central Act of 1972 (Architect Act 1972) has already occupied the field and has prescribed the method and mode of registration of architects in the country.

Schedule 16 of the Calcutta Municipal Corporation Act 1951 which has been saved by the 1980 Act lays down the building rules within the Metropolitan city of Calcutta. Rule 50 provides that every person who intends to erect new building or add to or alter any building shall employ a licenced building architect for the purpose of erection or addition or alteration to the existing building, as the case may be. Rule 50 further provides that the name, address and the licence number of the person so employed shall be stated in the application under R. 47 of the Schedule 16 in respect of such a building. It is to be noted that the Calcutta Municipal Corporation Act 1980 came into force on 4th Jan., 1984 and S. 414 of the Act of 1980 provides for the licensing of building

architects and upon payment of a fee as noted above. Charge of special fee is being objected to on the ground that since the registration is otherwise valid under the Architects Act, question of having a further registration does not arise. Prescribed scale of fee by the Mayor-in-Council in terms of S. 414(3) also cannot be had since it seeks to discriminate the architects registered under the Architects Act 1972 wherein a scale of fee has already been prescribed for the purpose of carrying on the profession including the works contained in Chapter 22 of the Calcutta Municipal Corporation Act read with Sch. 16 of the Act of 1951. Whatever the quantum of fee, it was contended, the question of further registration under the Calcutta Municipal Corporation Act by way of a grant of licence to an architect having once registered under the provisions of Architects Act 1972 does not and cannot arise.

Though strenuous submissions have been made as regards validity of the legislation on the ground of incompetence and for declaration of the provisions of S. 414 of the Calcutta Municipal Corporation Act as ultra vires the Constitution, the Law Courts would be loath to declare it to be so on the well-settled principle of law that the validity of a statute is to be always presumed unless in clearest possible way ultra vires the provisions of the Constitution. Needless to say in this context that it is further well-settled that if a legislation can be saved, it is the Court's duty to save the legislation rather than declaring it to be invalid in law. Chapter 22 of the Calcutta Municipal Act, 1980 provides the procedural aspect for erection of building as also powers of the concerned authority in regard to certain specified buildings. Along with the general conditions of erection of buildings and the certain other specified items to regulate future construction of building or alteration of existing building etc. the statute under Head 'C' provides Licensing of Building Architects in S. 414 of the Act of 1980.

It appears that even though 1951 Act as amended by the Calcutta Municipal Amendment Act 1977 incorporate licensing of building architects in S. 378. The provision of sub-section (3) was not in the statute book under the 1951 Act even under Amendment in 1977. In 1980 the Act engrafted S. 414(3) which provides payment of a prescribed scale of fees.

The provisions of the Architects Act 1972 read with the statements of objects in not uncertain terms allow an architect to practice the profession of architects throughout the country and since the possession of a registration certificate under the Architects Act 1972 was found sufficient to the law makers of the country, question of further registration becomes wholly redundant in that regard. The legislative field is already occupied by the Architects Act 1972 and on the wake of the existing provisions of the Act of 1972, in my view, the state Legislature does not have the necessary power to legislate in relation to persons who are already registered as architects under the Act of 1972. As stated earlier, Architects Act is a complete Code in itself and caters for the needs of the Society. The powers granted previously under the Calcutta Municipal Act of 1951 cannot be taken recourse to since Architects Act of 1972 is a later legislation by the Central Government. After the incorporation of the 1972 Act, the State Legislature does not have any further competence to legislate on the same field. Powers under the 1951 Act, however, cannot be said to be contrary to any law since there existed no other central law prior to 1972. An architect having registered himself as an architect within the meaning of Architects Act 1972 cannot be restricted in propagating the profession of architects anywhere in the country and further state legislation cannot otherwise affect the right of the architects, once registered under the Central Statute, to practice the profession of architects anywhere in the country. One redeeming feature however is to be noted that the Architects Act does not restrict the practice by architects not registered under the Act. Therefore, some architects may still be free to do the work which is normally done by architects, but outside the purview of the Architects Act of 1972 and the State Legislature's right or authority to deal with those who are outside the purview of the Architects Act cannot be disputed since there are some architects who are not within the ambit or are not protected by the provisions of the Architects Act 1972 (vide L.P.A. No. 59 of 1975: Municipal Corporation of Delhi v. Ram Kumar Bharadwaj).

The other aspect of the matter is in regard to S. 599 of the Act of 1980. Section 599 provides:

"Save as otherwise provided in this Act, nothing contained in this Act shall be construed to authorise the Corporation or any Municipal Authority or any officer or other employee of the Corporation to disregard of any law for the time being in force."

On the wake of the above provision and by reason of the express provision of the Architects Act 1972, question of further legislation by way of any restriction does not and cannot arise. Registration Certificate under the Architects Act 1972 has been thought of to be sufficient by the Parliament and question of further legislation as such does not and cannot arise. In this context the Delhi High Court's decision in the case of Municipal Corporation of Delhi v. Ram Kumar Bharadwaj (LPA No. 59 of 1975) seems to be very apposite. The Delhi High Court while dealing with S. 502 of the Delhi Municipal Corporation Act 1957 which is in pan materia with S. 599 of the Act under consideration, observed:

"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

the deal for the time being only as 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 the architects by the said Act, it became unnecessary for the corporation to do so thereafter. In view of S. 502 of the Act the provisions referred to above which could be constructed (?) as authorising the corporation to regulate the licensing of architects and draughtsman could not be constructed (?) after coming into force of the Architects Act 1972".

In that view of the matter it is declared that the provisions of Calcutta Municipal Corporation Act will not in any way affect the rights of the architects registered under the Architects Act 1972 to practise the profession of architects without any further restriction and the writ petitioners shall be free to act as architects without any fetter and without any further licence and without payment of any licence fee or amount of security. This however is restricted to the persons registered under the Architects Act and not to have general application.

In the view I have taken, I need not to go into the issue as regards the validity of the legislation as urged by Mr. Dim on behalf of the petitioners suffice it however to record that the issue involved is interesting both in fact or in law.

The other issue is in regard to the restriction as regards to the architects' status and functions under Bidhan Nagar Building Rules. It has been contended by Mr. Dutt that the preparation and maintenance of a panel of architects means a restriction on the architects and as such is violative of the Architects Act 1972. Mr. Dutt contended that no rules can be framed so as to defeat the purpose of a Central Legislation. In my view, there is substantial force in Mr. Dutta's submission. In the event, a panel is prepared by the concerned authority, there is an innate restriction for some others who are not empanelled. Can it thus be said that it is in consonance with the provisions of the Architects Act? In my view the answer is in the negative. Preparation of panel means restriction on some others and there cannot be any manner or doubt in regard thereto. In the view expressed above while dealing with the main brunt of the submissions of the parties, I am of the view that such a panel cannot be maintained or prepared. Anybody having qualification of an architect ought to be allowed to submit a plan provided of course he is registered under the Architects Act. As such the rules in regard to such a panel being maintained ought to be and it is hereby declared to be invalid and bad in law. As regards the counter signature of an Engineer, in my view, however, the appropriate authority is within its right considering the safety of the building to ask for an Engineering Certification as regards the structural designs and the work of construction. It is a safety device which cannot and ought not to be interfered with by the law Courts. The authority concerned considering the situation of the land in all its prospective have thought it fit to ask for a certification by an Engineer. The same in my view cannot be termed to be unreasonable restriction. This is no restriction as such but for the purpose of effecting proper and beneficial user of land and the building thereon, this device has been adopted. As such the contention of Mr. Dutt in regard thereto fails.

The last contention of Mr. Dutt is in regard to the restriction imposed by the Bidhan Nagar Authorities on the scale of fees of the architects. As long as it is not inconsistent with the Architects Act, there cannot be any complaint in my view in that regard. Apparently it cannot be said to be inconsistent or in conflict with the Architects Act. As such, I am not inclined to make any observation in regard thereto.

22. The writ petition is disposed of accordingly. There will be no order as to costs.

23. A prayer for stay is made. The prayer is allowed. Stay is granted for 10 (ten) days.

I hereby certify that this is true copy of the original in my custody.

Dated this 11th day of November 1989.

The Registrar of the High Court at Calcutta

Umesh Chandra Banerjee, J.