

In the High Court of Uttaranchal, at Nainital.

W.P. No. 256 (S/B) of 2004

Smt. Bharti Jindal W/o Pawan Jain
R/o 161/2, Rajpur Road, Dehradun

..... Petitioner

Versus

1. State of Uttaranchal through Secretary
Department of Human Resource,
Development, Dehradun.
2. Mr. Jai Ratan Bhalla, No.5, Sundar Nagar,
New Delhi- 110002.
3. Registrar, Council of the Architecture,
Core-A, First Floor, India Habitat Centre,
Lodhi Road, New Delhi-11003
.....Respondents.

Smt. Beena Pande, learned counsel for the petitioner.
Sri K.P. Upadhyaya, learned S.C. for the respondent-State.
Sri Chetan Joshi, Advocate for respondent No.3.

**Coram: Hon'ble P.C.Verma, J.
Hon'ble B.C. Kandpal, J.**

Dated: April 20, 2006

By way of this writ petition the relief has been sought for issuing a writ in the nature of certiorari quashing the impugned notification dated 17-6-2004 (Annexure-1 to the writ petition) issued by the State of Uttaranchal (respondent No.1).

2- Brief facts of the case, as per the petition, are that the petitioner is a registered Architect U/s 25 of the Architects Act, 1972 (hereinafter referred to as the 'Act'). The petitioner is a bonafide resident of the State of Uttaranchal and she has a grievance against the impugned notification dated 17-6-2004, by which the State of Uttaranchal has nominated respondent No.2 Jai

Ratan Bhalla as an Architect to the Council of Architecture to represent the State of Uttaranchal.

3- Counter affidavits have been filed by the respondent No.1 and respondent No.3 and it has been pleaded that the Government of Uttaranchal has nominated respondent No.2 in accordance and in consonance to the provision of Section -3 (3) (f) of Indian Architects Act, 1972 as respondent No.2 has an extraordinary career and is found to be the best person for nomination as an Architect in the Council of Architecture.

4- We have heard learned counsel for the parties and perused the record.

5- The petitioner is represented by Smt. Beena Pandey and the Respondent No.1 is represented by Shri K.P. Upadhyaya learned standing counsel while Respondent No.3 is represented by Shri Chetan Joshi, Advocate. But none appeared and no response was filed on behalf of Respondent No.2 despite the sufficient service upon him.

6- The short controversy in this case is - "whether a person, who does not belong to the State of Uttaranchal, can be nominated an Architect to represent the State, by the Government of Uttaranchal"

7- The provisions of Section-3 of the Architect Act, 1972 reads as follows: -

"3. Constitution of Council of Architecture- (1) *The Central Government shall by notification in the Official Gazette constitute with effect from such date as may be*

specified in the notification, a Council to be known as the Council of Architecture, which shall be a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property both movable and immovable, and to contract, and may by that name sue or be sued.

(2) The Head Office of the Council shall be at Delhi or at such other place as the Central Government may, by notification in Official Gazette, specify.

(3) The Council shall consist of the following members namely:-

(a) five architects possessing recognized qualifications elected by the Indian Institute of Architects from among its members;

(b) two persons nominated by the All India Council for Technical Education established by the Resolution of the Government of India in the late Ministry of Education No. F. 16-10/44 E-III, dated the 30th November, 1945;

(c) five persons elected from among themselves by heads of architectural institutions in India imparting full-time instruction for recognized qualifications;

(d) the Chief Architects in the Ministries of the Central Government to which the Government business relating to defence and railways has been allotted and the head of the Architectural Organization in the Central Public Works Department, ex officio;

(e) one person nominated by the Central Government;

(f) an architect from each State nominated by the Government of that State;

(g) two persons nominated by the Institution of Engineers (India) from among its members; and

(h) one person nominated by the Institution of Surveyors of India from among its members.

Explanation. - For the purposes of this sub-section, -

(a) "Institution of Engineers (India)" means the Institution of Engineers (India) first registered in 1920 under the Indian Companies Act, 1913 and subsequently incorporated by a Royal Charter in

1935.

(b) "Institution of Surveyors of India" means the Institution of Surveyors registered under the Societies Registration Act, 1860.

(4) Notwithstanding anything contained in clause (a) of sub-section (3), the Central Government may, pending the preparation of the register, nominate to the first Council, in consultation with the Indian Institute of Architects, persons referred to in the said clause (a) who are qualified for registration under Section 25, and the persons so nominated shall hold office for such period as the Central Government may, by notification in the

Official Gazette, specify.

(5) Notwithstanding anything contained in clause (f) of sub-section (3), the Central Government may, pending the preparation of the register, nominate to the first Council, in consultation with the State Governments concerned, persons referred to in the said clause (f), who are qualified for registration under Section 25, and the persons so nominated shall hold office for such period as the Central Government may, by notification in the Official Gazette, specify."

8- The aforesaid provision shows that the constitution of the Council of Architecture is intended by the Legislation to comprise expert Architects of different branches to the Architecture with a spirit to ensure the representation of the Architects of all the States in India as well as respective departments which are connected

Therefore, in order to care the interests of every State, the Parliament framed the composition of Council of Architecture among other things that a power be given to each State Government to nominate an Architecture from their respective States.

9- The words used in clause (f) of Section 3 (3) of the Act "*an Architect from each State nominated by the Government of that State*", mean that the Architect nominated by the Government of the respective State should be from that State and not from outside, otherwise the provision of Section 3 (3) (f) of the Act would be meaningless. The words used in the aforesaid sub-clause "*From Each State*" denotes that the person nominated as a member in the Council of Architecture should be a person from that very State and in this case that person would be a person from the State of Uttaranchal. Had there been the words used "*by the State*", then the position would have been different.

10- The impugned notification has been issued in utter disregard of the provisions of Section 3-(3) (f) of the Architects Act, 1972. There are numerous architects including the petitioner, qualified to be nominated as a member of the council and Government ought to have recommended the architect from its own State. The impugned notification is not only violative of Article 14 of the Constitution of India but is also arbitrary in view of the provisions of Section 3-(3)(f) of the Architect Act, 1972 as in the instant case, it appears that the pick and choose policy has been adopted ignoring the eligible candidates of Uttaranchal and nominating the person from Delhi i.e. outside the State. Thus, the impugned notification cannot be sustained and is liable to be quashed.

11- Therefore, a writ of certiorari is issued quashing the impugned notification dated 17.06.2004 by which the Respondent No.2, who is a resident of Delhi, has been nominated to represent the State of Uttaranchal. _____

12- Accordingly, the writ petition is allowed. No order as to costs. _____

Sd/-
(B.C. Kandpal, J.)

Sd/-
(P.C. Verma, J.)

ISB

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J.P.P.