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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9382 of 2015

Mr. Harpreet Singh and ohters

Vs.

The Council of Architecture and others

Present:- Mr. Anil Malhotra, Advocate for the petitioners.

Mr. Naveen R. Nath, Advocate and
Mr. Nitin Thatai, Advocate for respondent no.1.

Mr. Brijeshwar Singh Kanwar, Senior Standing Counsel
for respondent no.2.

Mr. Vikas Suri, Advocate for respondent nos.3 and 4.

Heard.

Matter requires consideration.

Admitted.

Vide order dated 1.6.2015, respondent no.1 was put to notice regarding interim directions which were to be issued.

The dispute herein pertains to condition put in the communication dated 28.2.2014 (Annexure P/5) by respondent no.1-Council of Architecture (hereinafter referred to as "the Council"). As per impugned communication condition has been put that the petitioners will be required to pass a "competency test conducted by the Council to adjudge their competence to enter the profession of Architecture". Though, respondent no.4-College has also been put on no admission list as per the decision dated 28.2.2014 (Annexure P/5) but the petitioners are not concerned with the said controversy.

The petitioners, who were students of respondent no.4-College had joined in the year 2009 and passed out in 2014. The degrees have been awarded to the petitioners by respondent no.5-University and a photocopy of the degree pertaining to petitioner no.3 has been placed on

record as an example.

It is not disputed that respondent no.4-College was permitted a sanctioned intake of 40 students for the year 2005-08 and 2008-09 as per communications dated 16.4.2005 and 23.10.2008 (Annexures P/1 and P/2) respectively. The details of the students admitted for the session 2009-10 were sent to the Council by the respondent no.4-College in pursuance of letter dated 21.10.2008 (Annexure R-3/1-Colly) which though pertains to academic session 2008-09.

A perusal of the said letter would also gone to show that the Council was concerned about the admissions over and above the sanctioned intake and was to give a unique enrollment number so that the students passing out after completion of their Bachelor of Architect Course could be registered. The institutions were to strictly adhere the intake sanctioned by the Council. Though there was dispute interse thereafter that there was no approval to the respondent College but it is not denied that for the year 2014-15, the approval was again granted on 5.12.2014 (Annexure P/6) by the Council for 40 seats.

On the passing out of the students, the condition has been put regarding competency test on the ground that students have been admitted without approval. It is not disputed that the President of the Council himself vide letter dated 18.7.2014 wrote to the Ministry of Human Resource Development alleging that several institutions were admitting students without the approval and that is why they proposed to conduct a 'Competency Test' to adjudge the required proficiency of the students.

On 27.8.2014 (Annexure R-1/12), the said Ministry wrote back to the Council wherein it was mentioned that till statutory provision is made empowering the Council to conduct 'Competency Test', persons holding

recognized qualification have to be registered as Architects. The contents of the letter read as under:-

“I am directed to refer to your letter no. CA/1/2014/MHRD dated 18th July, 2014 on the subject mentioned above and to say that the proposed Competency Test would be violative of provisions under section 25 of the Architects Act, 1972 which provides that a person holding a recognized qualification shall be entitled to have his name entered in the register of architects. As such the Competency Test cannot be conducted so long as the Architects Act, 1972 is amended and/or requisite regulations are framed. The Council may therefore formulate necessary proposal in this regard and send it to the Central Government for consideration/approval. Till statutory provision is made empowering the Council to conduct Competency Test, persons holding recognized qualification have to be registered as architects.”

A perusal of Section 14 of the Architects Act, 1972 (hereinafter referred to as “the Act”) would also goes on to show that if the Council is to amend the Schedule to include any qualification, it has to be done by notification in the official gazette. Section 14(1) & (2) and Section 25 of the Act reads as under:-

- “14. Recognition qualifications granted by authorities in India.-
- (1) The qualifications included in the Schedule or notified under section 15 shall be recognized qualifications for the purposes of this Act.
 - (2) Any authority in India which grants an architectural qualification not included in the Schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consultation with the Council, may, by notification in the Official Gazette amend the Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the Schedule against such architectural qualification declaring that it shall be a recognized qualification only when granted after a specified date: Provided that until the first Council is constituted, the Central Government shall, before issuing any notification

as aforesaid, consult an expert committee consisting of three members to be appointed by the Central Government by notification in the Official Gazette.

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25. Qualification for entry in register

A person shall be entitled on payment of such fee as may be prescribed by rules to have his name entered in the register, if he resides or carries on the profession of architect in India and-

- (a) holds a recognised qualification; or”

In the written statement filed by the Union of India also doubt has been expressed as to the action of the Council and reliance has been placed upon 1st entry in the Schedule under Section 14 whereby Bachelor Degree of Architecture can be granted by Indian Universities established by an Act of the Centre or State Legislature. There is no dispute that the Panjab University is in such category who had issued the degree in question. The power of Executive Committee of the Council has also been questioned itself by the Union of India in para 2.6 of its written statement which reads as under:-

“2.6 Until or unless notification is issued by the Central Government in the official Gazette indicating the date before which an architectural qualification awarded by a College/institute shall be recognized, registration cannot be refused. The date is to be specified by the Central Government and not by the Executive Committee. The action taken by the Executive Committee in asking the Registrar not to register candidates, who were admitted and trained at Chandigarh College of Architecture, Chandigarh is illegal *ab-initio* as the procedure given in sub-section (1) of Section 20 is not followed. It is clear that the Executive Committee is out stepping its power and that such an action has no force of law as per provisions of Architects Act, 1972.”

It is also further to be noticed that the similar issue arose before this Court in **Civil Writ Petition No.14688 of 2013-Lala Khushi Ram Gupta Charitable Society Karnal Vs. Union of India and others**

decided on 5.9.2014. The issue wherein was the direction issued to facilitate transfer of Bachelor of Architecture students. After examining the provisions of the Act, it was categorically held that if the Council finds any deficiency, it is to be forwarded to the University and recommendations made to the Central Government and the State Government for withdrawal of the recognition by an appropriate notification. The orders were thereafter quashed on the ground that the recommendations have to be made to the University and the Central/State Government. It was further held that if there is any breach the Council did not have any power to act in the manner in which it did. Admittedly the Letters Patent Appeal No.1789 of 2014 is pending against the said decision.

In such circumstances, this Court is of the opinion that once a degree has been awarded to the petitioners in June, 2014, a prima-facie case is made out for them to pursue their profession. If any dispute has arisen between the Council and the College they cannot be prejudiced in any manner. As noticed, there is nothing on record to show that after the list was sent on 9.10.2009 (Annexure P/3) to the Council whether the Council wrote to the College that the admissions made are without any basis. Infact vide letter dated 5.12.2014 (Annexure P/6) approval was granted for the year 2014-15. In such circumstances, the petitioners being students having spent their valuable five years in the College cannot become victims of the battle between the respondent-College and the Council. Their lives cannot be put to lurch. A prima-facie case is made out for them to be registered as Architects with the Council.

Counsel for respondent no.1 has placed reliance upon the judgment of the Apex Court in **Deoraj Vs. State of Maharashtra and others (2004) 4 Supreme Court Cases 697** to contend that it would

amount to granting the main relief and could not be done. The said judgment rather does not support the case of the Council. It has been categorically held that power of the Court to grant interim relief is only if it is satisfied that withholding of it would prick the conscience of the Court where the injury complained of is immediate and pressing and would cause extreme hardship, the Court can always exercise its jurisdiction. The relevant paragraph reads as under:-

“Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.”

In such circumstances, once the Council had been put to notice regarding interim directions and there is a judgment in favour of the petitioners, the operation of the impugned condition whereby the petitioners have to undergo 'Competency Test' for being registered as Architects is stayed qua them. The Council shall provisionally register

them as Architects in accordance with law. The petitioners shall apply for the same and the needful be done by the Council within a period of two months from the date of receipt of the applications.

It is, however, made clear that this order is purely provisional and the petitioners shall not be entitled to claim equity at a subsequent point of time in case their writ petition is dismissed.

Keeping in view the urgency of the matter, the writ petition be listed for actual date of hearing on 18.11.2015.

12.08.2015
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(G.S.Sandhawalia)
Judge