

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF FEBRUARY, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.16114 OF 2021 (GM - RES)

BETWEEN:

SHARAN DESAI M.ARCH USA

... PETITIONER

(BY SRI SHARAN DESAI M., PARTY-IN-PERSON)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY CHIEF SECRETARY
TO GOVERNMENT,
VIDHANA SOUDHA,
AMBEDKAR BHEEDHI,
SAMPANGI RAMA NAGARA,
BENGALURU - 560 001.
2. MR.VIDYADHAR SADASHIV WODEYAR

3. THE UNION OF INDIA
MINISTRY OF EDUCATION
REPRESENTED BY ITS SECRETARY
302-C, SHASTRI BHAWAN
NEW DELHI – 110 001.
4. THE COUNCIL OF ARCHITECTURE (COA)
REPRESENTED BY ITS REGISTRAR – SECRETARY
INDIA HABITAT CENTRE, CORE – 6A
1ST FLOOR, LODHI ROAD
NEW DELHI – 110 003.

... RESPONDENTS

(BY SRI VINOD KUMAR M., AGA FOR R-1;
SRI H.SHANTHI BHUSHAN, DSGI A/W
SMT.RESHMA THAMMAIAH, CGC FOR R-3 AND R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE DIRECTIONS TO RESPONDENT TO INVITE THE PETITIONER FOR AN INTERVIEW PROCESS BEFORE MAKING A NOMINEE SELECTION AS COA COUNCIL MEMBER, VIDE ANNEXURE-C, D, E AND F AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.01.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner, in person, is knocking at the doors of this Court seeking a direction to invite him for an interview for the process of nomination/selection as Member of Council of Architecture of India ('the Council' for short) and during the

pendency of the petition, calls in question the nomination/ selection of the 2nd respondent as Member of the Council.

2. Heard the petitioner, in person, Sri M. Vinod Kumar, learned Additional Government Advocate appearing for respondent No.1 and Sri H.Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondent Nos.3 and 4.

3. Brief facts, that leads the petitioner to this Court, in the subject petition, as borne out from the pleadings are as follows:-

The petitioner is an Architect registered with the Council. The petitioner having completed bachelor degree in Architecture from an Institution in the City of Bangalore, travels to United States of America ('USA') for post graduation and is now Master of Architecture, Areas of Specialization in Architecture from the University of Oklahoma, USA. The Council has several Members in it, nominated/selected by the representatives of the State Governments who form the Council. The term of one Sri B.V.Satish ended on 26-08-2021, who was the representative in the Council from the State of Karnataka. Owing to ending of his term, the

petitioner files an application submitting his resume appended to it on 04-01-2021, seeking nomination as a Member of the Council representing the Government of Karnataka, in terms of the Architects Act, 1972 (hereinafter referred to as 'the Act' for short). On 23-06-2021, when the petitioner did not receive any reply on the application submitted, he sent a follow up letter/reminder to the application dated 04-01-2021, requesting his nomination. Again on 13.08.2021, one more reminder was sent. None of them yielded any result as no communication/reply was received by the petitioner for eight months, as to what became of his application seeking his nomination as Member of the Council. It is at that juncture, the petitioner has knocked the doors of this Court in the subject petition.

4. During the pendency of the petition, the Government nominated the 2nd respondent as Member of the Council. Then this Court passed the following order on 25.11.2021:

"ORDER ON I.A. No.1/2021

The application seeking impleadment is supported by an affidavit of the petitioner and the person to be impleaded is the beneficiary of the nomination in question; thus he is a proper and necessary party if not a necessary party in view of RAZIA BEGUM Vs. SAHEBZADI ANWAR BEGUM & OTHERS.

Petitioner has amended the cause title in the open court with its leave.

Issue emergent notice to the impleaded respondent."

This Court directed the petitioner to amend the cause title and bring in the selected/nominated person as a party respondent. Later, this Court on 21-03-2022, directed the State to place on record the procedure followed for nominating the 2nd respondent as Member of the Council. This Court on 31-05-2022, permitted the petitioner in person to file an amended petition raising a challenge to the nomination of the 2nd respondent. Thereafter, the petitioner files an application seeking to implead the Union of India and the Council as respondent Nos.3 and 4, in terms of the directions issued by this Court dated 15.09.2022. It is then, the Union of India and the Council come into the picture. On 15-12-2022, this Court directed the Deputy Solicitor General of India to take notice, assist the Court and file objections concerning nomination of a Member from each State to the Council under the Act. It is at that stage, the matter was heard.

5. The petitioner, who made his submissions in person, would contend with vehemence that there is no procedure stipulated under the Act for nominating a Member from each State to the Council and the Council performs several functions and, therefore, the qualification and the criteria for selection ought to have been notified by the Union of India by framing Rules or any other mode for such selection. It is his case that he is the most qualified person to be nominated/selected to the position of Member of the Council and, therefore, he should be considered for nomination in place of the 2nd respondent, whose term would expire on 31-07-2024.

6. On other hand, the learned Additional Government Advocate representing the State, taking this Court through the statement of objections, would seek to justify that it is the pleasure of the State to nominate a suitable person as Member of the Council as there is neither any criteria laid down for nomination nor a provision for inviting applications from eligible candidates to be nominated to the Council as Member of respective States is made. It is the case of the State that there is no question of conducting interview for evaluation of nomination *qua* the qualification and

experience before finalizing the nomination and would seek dismissal of the petition contending that the petitioner has no right to maintain the petition. It is his submission that the petition is in the nature of public interest petition that the petitioner is seeking to espouse before this Court.

7. The petitioner at this juncture would seek to clarify that the petitioner in fact, initially registered a public interest petition before this Court in Writ Petition No.9150 of 2020 which came to be rejected reserving liberty to the petitioner to approach the appropriate forum in accordance with law, to seek redressal of his grievances and, therefore, the present petition is preferred. He would submit that long before the term of the earlier Member was nearing completion, the petitioner had sought judicial intervention at the hands of this Court.

8. The Deputy Solicitor General of India has filed his response pertaining to the Members of the Council who are representatives from every State and their qualifications and would contend that since there is no criteria stipulated either in the Act or in the Rules,

the nominations have gone on since inception and, therefore, the petition should be dismissed.

9. The nominated candidate/2nd respondent though served has remained unrepresented.

10. I have given my anxious consideration to the submissions made by the petitioner, in person and the other learned counsel representing the parties and perused the material on record.

11. The afore-narrated facts are not in dispute. The qualification of the petitioner is a matter of record and does not call for reiteration. What requires consideration is, the method of selection/nomination to the Council from the respective States who form Members of the Council. To consider the said issue, it is germane to notice the Act. The Act was promulgated on 31st May, 1972. The objects and reasons behind promulgation of the Act are as follows:

"(1) Since Independence and more particularly with the implementation of Five-Year Plans, the building construction activity in our country has expanded almost on a phenomenal scale. A large variety of buildings, many of extreme complexity and magnitude, like multi-storeyed office buildings, factory buildings, residential houses, are

being constructed each year. With this increase in building activity, many unqualified persons calling themselves as architects are undertaking the construction of buildings which are uneconomical and quite frequently unsafe, thus bringing into disrepute the profession of architects. Various organisations, including the Indian Institute of Architects, have repeatedly emphasised the need for statutory regulation to protect the general public from unqualified persons working as architects. With the passing of this legislation, it will be unlawful for any person to designate himself as "architect" unless he has the requisite qualifications and experience and is registered under the Act. The legislation is generally on the same lines as similar Acts in other countries.

(2) The main features of the Bill are—

- (a) **the creation of a body corporate by the name of "Council of Architecture";**
- (b) vesting the requisite powers for the registration of architects in the Council;
- (c) the enrolment initially of persons holding a degree or diploma in architecture recognised by the Central Government or possessing other qualifications which may be prescribed by the Central Government or of persons who are proved to the satisfaction of the Council to have been engaged in practice as architects for a period of not less than five years before the commencement of the proposed legislation;
- (d) subsequent enrolment of persons who hold degrees or diplomas in architecture recognised by the Central Government or who possess other qualifications that may be prescribed by the Central Government;
- (e) holding of enquiries into misconduct of registered architects and taking suitable action;
- (f) prescribing standards of professional conduct and etiquette and code of ethics for architects; and
- (g) assessment of the standards of education and training of architects within the country.

(3) The legislation protects the title "architects" but does not make the design, supervision and construction of buildings as an exclusive responsibility of architects. Other professionals like engineers will be free to engage themselves in their normal vocation in respect of building construction works provided that they do not style themselves as architects.

(4) The Bill also stipulates that after the expiry of two years from the date of the Act coming into force, a person who is registered as an architect 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 Government."

(Emphasis supplied)

Since the construction activity in the country had expanded to a large extent, in the year 1972 itself, qualified Architects were to be regulated by way of the Act and the Rules framed under the Act. Likewise, the Council of Architecture Rules, 1973 (hereinafter referred to as 'the Rules' for short) was also promulgated on 20-02-1973. Chapter-II of the Act deals with Constitution of Council of Architecture. Section 3 thereof, 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 the Official Gazette, specify.*

(3) The council shall consist of the following members, namely—

- (a) five architects possessing recognised 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 recognised qualifications;*
- (d) *the Chief Architects in the Ministries of Central Government to which the Government business relating to defence and railways has been allotted and the head of the Architectural Organisation 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 (7 of 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."*
(Emphasis supplied)

Section 3 mandates that the Central Government shall constitute a Council with effect from the date as may be specified in the said notification, which is the body corporate endowed with certain

functions. The constitution of the Council is also dealt with under sub-section (3) of Section 3. The Council is to have five architects possessing recognized qualifications elected by the Indian Institute of Architects; two persons nominated by the All India Council for Technical Education; five persons elected from among themselves for imparting full time instruction for recognized qualifications; Chief Architects in the Ministries of Central Government to which the Government business relating to defence and railways has been allotted; one nominated by the Central Government; and an architect from each State nominated by the Government of that State. Section 4 deals with functions of Council. Section 9 deals with meetings of the Council and a Council is to meet at least once in six months for transaction of business at its meetings as may be prescribed under the Regulations. Section 12 deals with Officers and other employees of the Council. Section 13 deals with finances of the Council and they read as follows:

"4. President and Vice-President of Council.—(1)

The President and Vice-President of the Council shall be elected by the members of the Council from among themselves:

Provided that on the first constitution of the Council and until the President is elected, a member of the Council

nominated by the Central Government in this behalf shall discharge the functions of the President.

(2) An elected President or Vice-President of the Council shall hold office for a term of three years or till he ceases to be a member of the Council, whichever is earlier, but subject to his being a member of the Council, he shall be eligible for re-election:

Provided that—

- (a) the President or the Vice-President may, by writing under his hand addressed to the Vice-President or the President, as the case may be, resign his office;*
- (b) the President or the Vice-President shall, notwithstanding the expiry of his term of three years, continue to hold office until his successor enters upon office.*

(3) The President and the Vice-President of the Council shall exercise such powers and discharge such duties as may be prescribed by regulations.

... ..
9. Meetings of Council.—(1) *The Council shall meet at least once in every six months at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by regulations.*

(2) Unless otherwise prescribed by regulations, nine members of the Council shall form a quorum, and all the acts of the Council shall be decided by a majority of the members present and voting.

(3) In the case of an equal division of votes, the President or in his absence, the Vice-President or, in the absence of both, the member presiding over the meeting, shall have and exercise a second or casting vote.

... ..
12. Officers and other employees.—(1) *The Council shall—*

- (a) *appoint a Registrar who shall act as its Secretary and who may also act, if so decided by the Council, as its treasurer;*
- (b) *appoint such other officers and employees as the Council deems necessary to enable it to carry out its functions under this Act; and*
- (c) *with the previous sanction of the Central Government, fix the pay and allowances and other conditions of service of officers and other employees of the Council.*

(2) Notwithstanding anything contained in clause (a) of sub-section (1), for the first three years from the first constitution of the Council, the Registrar of the Council shall be a person appointed by the Central Government, who shall hold office during the pleasure of the Central Government.

(3) All the persons appointed under this section shall be the employees of the Council.

13. Finances of Council.—(1) *There shall be established a Fund under the management and control of the Council into which shall be paid all moneys received by the Council and out of which shall be met all expenses and liabilities properly incurred by the Council.*

(2) The Council may invest any money for the time being standing to the credit of the Fund in any Government security or in any other security approved by the Central Government.

(3) The Council shall keep proper accounts of the Fund distinguishing capital from revenue.

(4) The annual accounts of the Council shall be subject to audit by an auditor to be appointed annually by the Council.

(5) As soon as may be practicable at the end of each year, but not later than the thirtieth day of September of the year following next, the Council shall cause to be published in the Official Gazette a copy of the audited accounts and the

report of the Council for that year and copies of the said accounts and report shall be forwarded to the Central Government.

(6) The Fund shall consist of—

- (a) all moneys received from the Central Government by way of grant, gift or deposit;*
- (b) any sums received under this Act whether by way of fee or otherwise.*

(7) All moneys standing at the credit of the Council which cannot immediately be applied shall be deposited in the State Bank of India or in any other bank specified in Column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970)."

Section 19 empowers the Council for inspection of examinations and withdrawal of recognition of any Institute. Section 21 deals with prescription of minimum standard of architectural education. Section 44 empowers the Union Government to make Rules in furtherance thereof the Act and the Council of Architecture Rules, 1973 are accordingly made. Section 45 empowers the Council to make Regulations with the approval of the Central Government, which would not be inconsistent with the provisions of the Act or the Rules to carry out the purposes of the Act. The Council has notified certain Regulations which are the Council of Architecture Regulations, 1982 (hereinafter referred to as 'the Regulations' for

short). The functions of the Council are regulated under the Regulations.

12. It is necessary to notice the Rules as well. Chapter III of the Rules deals with election of the Council. Rule 5 deals with persons entitled to vote and to stand for election and reads as follows:

"5. Persons entitled to vote and to stand for election.—All persons who are the heads of architectural institutions in India imparting full-time instruction for recognised qualifications shall be entitled to vote at or to stand for the election of a member under clause (c) of sub-section (3) of Section 3."

(Emphasis supplied)

The Members are entitled to contest in the election for several positions as indicated in the Rules. The Members have a role to play in the election of President and Vice-President of the Council in terms of Rules 23 and 24 of the Rules, again in the election of a Member to the Executive Committee of the Council under sub-section (2) of Section 10 of the Act and are also endowed with certain disciplinary powers in the event they would become Members of the Committee constituted in relation to complaints relating to professional misconduct of an architect.

13. The Regulations are also necessary to be noticed. Regulation 2 which deals with definitions, defines who is a 'Member'. A 'Member' is the 'Member' of the Council as defined under clause (e). There are various functions enumerated in the Regulations for the Members of the Council. Regulation 8 deals with business agenda for meetings of the Council. Regulation 12 deals with matters which may be discussed at the time of discussion of a motion. Regulation 22 deals with constitution and conduct of business of the committees of the Council. Regulation 26 deals with Finances and Accounts. Regulation 29 deals with inspection of educational institutions and their examinations by the Inspectors appointed under the Regulations. Regulations 8, 12, 22, 26 and 29 read as follows:

- "8. Business agenda for meetings of Council.—**
1. *The Secretary shall issue with the notice of the meeting a preliminary agenda showing the business to be brought before the meeting, the terms of all motions to be moved of which notice in writing has previously reached him and the names of the movers.*
 2. *A member who wishes to move any motion not included in the preliminary agenda or an amendment to any item so included shall give notice thereof to the Secretary not less than 20 clear days before the date fixed for the meeting.*
 3. *The Secretary shall not less than 10 clear days before the date fixed for the meeting, and in case of special meeting, with the notice of the meeting, issue a complete*

agenda paper showing the business to be brought before the meeting.

4. A member who wishes to move an amendment to any item included in the complete agenda paper, but not included in the preliminary agenda paper shall give notice thereof to the Secretary not less than 3 clear days before the date fixed for the meeting.

5. The Secretary shall, if time permits, cause a list of amendments of which notice has been given under sub-regulation (4) to be made available for the use of every member before the meeting.

6. President may, if the Council agrees, allow a motion to be discussed at a meeting notwithstanding the fact that notice was received too late to admit of compliance with these regulations.

7. Nothing in these regulations shall operate to prevent the reference by the Executive Committee of any matter to the Council at a meeting following immediately or too soon after the meeting of the Executive Committee.

8. An amendment to a resolution or a motion can be moved when it is under discussion and no time limit of notice shall be necessary.

9. A motion shall not be admissible,

- (a) if the matter to which it relates is not within the scope of the Council's functions;*
- (b) if it raises substantially the same question as a motion or amendment which has been moved or withdrawn with the leave of the Council within one year of the date of the meeting at which it is designed to be moved:*

Provided that such a motion may be admitted at a special meeting of the Council convened for the purpose under clause (ii) of the proviso to regulation 3 on the requisition of not less than two-thirds of the total strength of the Council:

Provided further that nothing in these regulations shall operate to prohibit further discussion of any matter referred to the Council by the Central

Government in the exercise of any of its functions under the Act;

- (c) unless it is clearly and precisely expressed and raised substantially a definite issue;*
- (d) if it contains arguments, inferences, ironical expressions of defamatory statements.*

10. The President shall disallow any motion which in his opinion, is inadmissible under sub-regulation (9): Provided that if a motion can be rendered admissible by amendment, the President may in lieu of disallowing the motion admit it in amended form.

11. When the President disallows or accepts an amendment to a motion, the Secretary shall inform the members who gave notice of the motion of the order of disallowance or as the case may be, of the form in which the motion has been admitted."

... ..

12. Matters which may be discussed at the time of discussion of a motion.— *1. At a meeting of the Council when a motion or amendment is under debate no proposal with reference thereto shall be made other than—*

- (a) an amendment of the motion or the amendment, as the case may be as proposed in regulation 10;*
- (b) a motion for the adjournment of the debate on the motion or amendment either to a specified date and hour or sine die;*
- (c) a motion for the closure, namely a motion that the question be now put;*
- (d) a motion that the Council instead of proceeding to deal with the motion do pass to the next item in the agenda.*

Provided that no such motion or amendment shall be moved so as to interrupt a speech:

Provided further that no motion of the nature referred to in clauses (b), (c) and (d) shall be moved or seconded by a member who has already spoken on the question at the meeting.

2. Unless the Presiding officer of the meeting is of opinion that a motion for closure is an abuse of the right of reasonable debate, he shall forthwith put a motion that the question be now put and if that motion is carried the substantive motion or amendment under debate shall be put forthwith:

Provided that the Presiding officer of the meeting may allow the mover of the substantive motion to exercise his right of reply before the substantive motion under the debate is put:

Provided further that it shall not interrupt a speech, a proposal to adjourn the Council to a specified date and hour may be made at any time, but it shall be at the discretion of the Presiding officer of the meeting to put or refuse to put such a proposal to the Council.

3. A motion or an amendment which has been moved and seconded shall not be withdrawn save with the leave of the Council which shall not be granted, if any member dissent from the granting of such leave.

4. When a motion has been moved and seconded, members other than the mover and the seconder may speak on the motion in such order as the Presiding officer of the meeting may direct:

Provided that the seconder of a motion or of an amendment may, with the permission of the Presiding officer of the meeting confine himself to seconding the motion or amendment, as the case may be and speak thereon at any subsequent stage of the debate.

5. During the meeting, the Presiding officer of the meeting may, at any time, make any objection or suggestion or give information to elucidate any point to help the members in the discussion.

6. The mover of an original motion, and if permitted by the Presiding officer of the meeting, the mover of any amendment, shall be entitled to a right of final reply; and no other member shall speak more than once in the debate except with the permission of the Presiding officer of the meeting for the purpose of making a personal explanation or

putting a question to the members then addressing the Council:

Provided that any member at any stage of the debate may arise to a point of order, but no speech shall be allowed on that point:

Provided further that a member who has spoken on a motion may speak again on an amendment to the motion subsequently moved.

7. A speech shall be strictly confined to the subject matter of the motion or amendment on which it is made.

8. Any motion or amendment standing in the name of a member who is absent from the meeting or unwilling to move it, may be brought forward by another member with the permission of the Presiding officer of the meeting.

9. If at any time the presiding officer of the meeting rises, any member speaking shall immediately resume his seat.

... ..

22. Constitution and conduct of business of committees. – 1. The council may, at any time on the adoption of a motion to this effect constitute a committee or committees consisting of any number of its members or resolve itself into a committee for the consideration of any business.

2. The Council shall define the functions of the Committee and the number of members to be appointed or elected.

3. The said committees shall have the powers to co-opt additional member or members not exceeding three in each case with prior approval of the President.

4.

(a) If the number of members proposed as members of the committee does not exceed the total number of members to form the committee, the members so proposed shall be appointed as members of the committee.

(b) If the number of members so proposed exceeds the total number of members to form the committee, ballot shall be held and the requisite number of members who obtain the largest number of votes shall be appointed.

5. The President and Vice-President shall be ex-officio members of the committees constituted by the Council and shall act as Chairman and Vice-Chairman of these committees.

6. The quorum for a committee constituted by the Council shall not be less than one-third of the total number of the members of the committee.

7. Proceedings of the said committees shall be in accordance with this regulation, provided that it may at any time be relaxed at the discretion of the Chairman of the committee.

8. The committee shall submit its report to the Executive Committee.

... ..

26. Finances and Accounts.— 1. The Council may receive, for the purpose of its expenses, registration fee, renewal fees and such other fees and money made admissible under the Act and the rules framed thereunder, and the proceeds of the sale of register of architects, reports and other publications:

Provided that the Council may accept grant, gift or deposit and such other financial assistance from the Central Government.

2. The Bankers of the Council shall be the State Bank of India or any other bank specified in column 2 of the First Schedule, to the Banking companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

3.

(a) All the funds of the Council shall be paid into the Council's accounts with any of the said banks and

shall be withdrawn by means of cheques signed by the Registrar and countersigned by the President or any other officer authorized by him in this behalf.

- (b) *The Cheque books shall remain in the personal custody of the Registrar.*

4. The funds of the Council, surplus to current requirements may, on the recommendations of the Registrar and with the sanction of the Executive Committee, be invested in fixed deposits with any of the said banks or in any Government security or in any other security approved by the Central Government.

5. *An investment of the funds of the Council shall be made in the name of the Council.*

6. *The safe custody of receipts shall remain in the personal charge of the Registrar and shall be verified once in the six months with the Register of Investments referred to in regulation 27 and a certificate or verification shall be recorded by the Registrar and countersigned by the President.*

7. *The Registrar shall prepare detailed estimates of the receipts and expenditure for the next financial year, and shall submit the same for the sanction of the Executive Committee.*

8. *The funds of the Council shall not be appropriated for expenditure on any item which has not been duly sanctioned by the Council or by the President or the Registrar; as the case may be.*

9.

- (a) *The President shall have full powers to re-appropriate funds from one unit of appropriation to another subject to the conditions that the total budget provision is not exceeded and the President's action does not lead to any future financial commitment for the Central Government.*

- (b) Copies of orders sanctioning such re-appropriation shall be communicated to the Executive Committee.

10. The Registrar shall have power to sanction expenditure of miscellaneous and contingent nature upto an amount not exceeding Rs. 200/- in each case and the expenditure in excess of this amount shall require the sanction of the President.

11. A permanent advance of Rs. 200/- as imprest amount shall be made to the Registrar to meet day to day expenses.

12. The Registrar shall be the certifying officers for travelling and other allowances to members, inspectors and employees of the Council, and the President for those of Registrar.

... ..

29. Inspection of educational institutions and their examinations.— The inspection of architectural institutions and the attendance at the time of training and examination under section 19 shall be carried out in accordance with the following manner, namely:—

1. each institution imparting instruction in architecture shall be inspected by the inspectors once in five years:

2. the Registrar shall fix the date of inspection in consultation with the inspector or inspectors and the institution;

3. the Executive Committee shall appoint such number of inspectors as may be deemed necessary to inspect an institution or to attend any examinations and to report thereon:

Provided that the minimum number of inspectors for such inspection shall be two.

4.

- (a) every inspector shall receive from the Chairman, Executive Committee, a formal commission in writing under the seal of the Council;

- (b) *the instructions of the Chairman shall specify the institution or institutions, courses of studies and scheme of examination or examinations or training programme or educational standards including staff, equipments, accommodation, training and other facilities which are required to be inspected or attended;*
- (c) *the Chairman shall inform the inspector that he is to report to the Executive Committee who shall submit their final report with recommendations to the Council in accordance with these regulations;*
- (d) *the Registrar shall provide the inspector with a copy of the documents and of the recommendations of the Council in regard to recognition of the qualifications or educational standards and improvements to be made thereon and of the resolutions with regard to architectural education."*

What would unmistakably emerge from the Regulations is, the Council has manifold functions so regulated by the afore-quoted Regulations and for such manifold functions, the meetings of the Council become imperative. The Members of the Council have a major role to play in the business agenda of the meetings of the Council. The Members have a say in the finance and accounts as dealt in Regulation 26 and have the power of inspection of educational institutions. Though these are Committees constituted under the Regulations, the Committees are constituted from out of the Members of the Council. Therefore, the Member of the Council

is an integral part of any function of the Council and not merely a ceremonial person to be a rubber stamp of what the office bearers would decide. This is the broad frame work of the Act, Rules and the Regulations, all of which would depict manifold functions of Members, who could become the office bearers for performance of manifold activities to achieve the purposes under the Act.

14. The seat of a Member is neither ceremonial nor the person, who occupies the said seat becomes a ceremonial or a Member only to lay his rubber stamp on the decisions that are taken. Every Member has an important role to play and every Member attending the meetings whenever called for at the seat, which is in the capital is paid from the funds of the Council. The funds of the Council in terms of Regulation 26 come from the Government of India *inter alia*. Therefore, a part of public money is granted to the Council, by the Government of India as grants. Therefore, a Member for such Council of Architect has to be nominated *qua* certain criteria. The Act, the Rules or the Regulations contain certain criteria for appointment to the post of President, Vice-President, Executive Members and Members of the

Committee but they are all from among the Members of the Council.

15. For nomination or selection of a Member, there is no criteria indicated. In that light, the very nomination would become a tool to pick and choose at the hands of each State Government with qualification or no qualification; experience or no experience. Accordingly, the petition is brought before this Court contending that the petitioner is a highly qualified Architect and had submitted his application or expression of interest to become a Member of the Council. Though there is no response to the application so submitted by the petitioner, the objections by the State clearly indicate that it is the pleasure of the Government to nominate any person. Paragraphs 8, 9, 10 and 11 of the objections of the State would read as follows:

"8. The Respondent submits that it is pertinent to mention here that there is no provision in the Architects Act, 1972, for inviting applications from Architects in the State for the nomination as representative member of the State in the Council of Architecture. Hence, Government has not issued any notification inviting application from Architects in state of Karnataka to submit proposals. Hence, the question of conducting interview and evaluation of nomination as per the

qualification, experience and interview before finalizing the selection does not arise as stated in the petition.

9. *The Respondent submits that there is no specific guideline issued as per the Architects Act, 1972 regarding the selection of State representative to the Council of Architecture. This respondent is not competent authority to make any amendments to the Architects Act, 1972.*

10. The Respondent submits that the Council of Architecture has been constituted by the Government of India under Section 3 of the Architects Act, 1972. As per Section 3(3)(f) of the said Act, an architect from each State nominated by the Government of that State is one of the member of the Council of Architecture, New Delhi.

11. The respondent submits that discretionary powers vested with the Government to nominate representative member to the Council of Member, New Delhi as per Section 3(3)(f) of the Architects Act, 1972."

(Emphasis added)

According to the State, it is a discretionary power vested with the Government to nominate a representative Member to the Council under Section 3(3)(f) of the Act. Since the Council performs such manifold functions, which touch upon the interest of public in one manner or the other, the Members being nominated to the said Council without any criteria or even without assessment of the qualification of those nominees *qua* other candidates would become an unguided and uncanalised power of the State. Though the

criteria is not laid down under the Act, to make the action of the State become free of any arbitrariness or a pick and choose, it is in the least necessary to notify the vacancy and call for applications from eligible candidates, who would be qualified to be nominated/selected in terms of the Act. Since the Rules are silent with regard to such nomination, State Government should now explore the possibility of issuance of Government Order prescribing the criteria for selection/nomination to be a Member of the Council and throw it open to the public to submit their applications for selection to be done, at least on the scrutiny of applications. If no qualified citizens comes to know about the vacancy or the nomination that can be done under the Act, and the nomination happens in the four corners of the powers that be, such action would become arbitrary. Though the petitioner would not get the relief that his nomination to be considered, since time has passed by, he is entitled to, only a direction for consideration of his case in future when the nomination of the 2nd respondent comes to an end.

16. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is disposed of.
- (ii) The case of the petitioner shall be considered by the State in the ensuing nomination/selection once the term of the 2nd respondent would come to an end.
- (iii) The Union of India shall take steps to notify certain criteria for nomination of Members of the Council *qua* the qualification and experience under the Rules, which would become binding on every State Government, as expeditiously as possible.
- (iv) Pending compliance with clause (iii), the State Government shall notify the criteria for nomination / selection of a member to the Council for the ensuing vacancy.

**Sd/-
JUDGE**

nvj
CT: MJ