

Shri Suhas Naik Vs. Planning and Development Authority

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Court : Mumbai

Decided On : Aug-16-1988

Reported in : (1988)90BOMLR506; 1989MhLJ245

Judge : G.F. Couto and G.D. Kamat, JJ.

Appeal No. : Writ Petition No. 250 of 1987

Appellant : Shri Suhas Naik

Respondent : Planning and Development Authority

Disposition : Petition allowed

Judgement :

G.F. Couto, J.

1. The petitioner, a holder of Diploma in Engineering recognized by the State Board of Technical Education of the Maharashtra State, challenges by this Writ Petition under Article 226 of the Constitution of India, the refusal of the respondent to entertain the plans for the construction of a building with a plinth area of 255 square metres, signed by him, and further prays for the withdrawal of the restriction imposed on the engineers in Regulation 5(1) of the Draft Regulations, 1984, framed by the respondent.

2. Petitioner is a Licentiate in Civil Engineering from the Victoria Jubilee Technical Institute, which is a Central Technical Institute of the Maharashtra State, being also a holder of a Diploma in Civil Engineering recognized by the State Board of Technical Education of the Maharashtra State. It seems that he had been working as a Section Officer (Junior Engineer) in the Mapusa Municipality from 1972 to 1974, including one year as full-fledged engineer, and thereafter, for the Omani and the European Construction Companies upto the year 1981, in which he returned to Goa and began his professional activities as a Consulting Engineer at Mapusa. He got himself registered as an engineer with the Public Works Department and various Municipalities in Goa, as well as with the respondent on August 6, 1988, after having satisfied the requirements under the Rules for the registration as a qualified engineer. This registration was renewed upto December, 1987.

3. One Andrew Francisce de Sousa submitted to the respondent an application dated August 26, 1986, alongwith plans for a building with a plinth area of 255 square metres signed by the petitioner. The said building was proposed to be erected in Chalta No. 2 of P.T. Sheet No. 64 at Mapusa, Respondent, however, by its letter No. PDA/PT/20/1479/86 dated September 10, 1986 called the said Andrew for a site inspection, and further informed him that an engineer can sign a plan only when the area is of 80 square metres or less. The application was not, therefore, entertained on that ground despite the petitioner's protest.

4. Subsequently, by a Notification dated February 12, 1987, published in the Government Gazette, Second Series, dated February 27, 1987, the Government made public that the Outline Development Plan prepared by the Chief Town Planner would be open to public inspection alongwith the Regulations and the report, and

further, that objections, if any, within 60 days from the said publication could be filed. Petitioner, by his letter dated April 27, 1987 raised objections in respect of the Draft Rules and suggested some modifications, but apparently without any success.

5. Petitioner, therefore, challenges in this Writ Petition the restriction imposed on the engineers in the said Draft Regulation No. 5. Mr. M.S. Usgaonkar, the learned Counsel appearing for the petitioner, indeed contends that the said restriction is liable to be struck down on two counts, namely, that (a) it is ultra vires-s. 44 of the Goa, Daman and Diu Town and Country Planning Act, 1974, and (b) it is arbitrary, unreasonable and discriminatory, being as such, violative of Article 14 of the Constitution. He further contends that the ruling of this Court in *Smt. Meghana A.P. Desai v. Union of India* (1986) Panaji Bench (Goa) Writ Petition No. 123 of 1985 decided on August 12, 1986 by Goa Bench [1987] Mah. L.J. 93 and *Shri Vikas Vithal Desai v. Union of India* (1986) W.P. N. 125 (Goa) decided on August 12, 1986 by Goa Bench (Unrep.) although in respect of the Note to Rule 13 of the Goa, Daman and Diu Town and Country Planning (Planning and Development) Rules, 1977, fully applies to this case, as Regulation 5 of the Draft Regulation, 1984, incorporates the; same restriction which has been imposed on the engineers by the aforesaid Note to Rule 13.

6. The respondent filed its return and, inter alia, stated that the petitioner, on his own showing, does not hold a Diploma in Engineering, but merely a Certificate with the title of Licenciante of Civil and Sanitary Engineering, and therefore, in any event, the ruling of this Court in the aforesaid Writ Petitions Nos. 123 and 125, both of 1985, is not attracted as it was only held therein that persons holding degree of Bachelor in Engineering become eligible to sign plans to accompany applications for development under Rule 13 of the Planning and Development Rules, 1977. That apart, it appears that what was taught in the subjects of building, drawing and designing in the petitioner's course is at a much lower level and standard as compared to the education received in such subjects by architects. It is also contended that Regulation 5(1) of the P.P.D.A. (Development Plans) Regulations, 1984, is entirely valid. The said regulation is aimed at ensuring planned development of the planning area which basically involves urban design and architectural control of all building activities in the planning area. The architects receive intensive and extensive education in all these aspects and urban development and are, therefore, eminently suited to comply with the Regulations and to countersign plans for development. On the other hand, it is further contended, the education received by engineers in subjects like planning, design, etc., is of a lower standard, and moreover, engineers do not receive education in other vital aspects of planning such as aesthetics, landscape, climatology, humanities (Town Planning would appear to be optional). Therefore, according to the respondent, it would appear that it is not safe to entrust engineers with designing and preparation of perspective drawings of buildings in harmony with the surrounding landscape and social and physical environment. But, there may not be much risk in allowing them to countersign plans in respect of small structures or houses upto 80 sq. meters of plinth area. It is, therefore, submitted, that the petition is liable to be dismissed.

7. There is however great merit and force in this petition as we will presently show. But before, we may observe that Mr. Usgaonkar is right in his submission that it does not any more lie in the mouth of the respondent to say that the petitioner, having merely produced a document to prove that he holds a Certificate of title of Licenciante of Civil and Sanitary Engineering, cannot claim to hold a Diploma in Engineering, as Annexures 'I' and 'P' to the petition clearly show that the petitioner was registered as an Engineer with the respondent. Annexure 'I' is a letter addressed by the Member Secretary of the respondent to the petitioner communicating that his name has been entered in the Register of Engineers under No. PDA/ENG/1/86 and that such registration was valid upto December, 1986. In turn, Annexure 'P' is another letter addressed by the same Member Secretary to the petitioner informing him that he has been 'registered in this Authority as an Engineer (Civil)/Diploma Holder under No. PDA/ENG/D/1/87 dated 13-4-1987 and valid upto December 1987'. That the petitioner was recognized by the respondent as holding a Diploma in Engineering cannot thus be disputed by it. That apart, the learned Counsel for the Petitioner produced today the originals of the documents and such documents prove that the Petitioner holds a Diploma in Engineering recognized by the State Board of Technical Education of Maharashtra State, and hence, it is conclusively

established that the Petitioner is a Diploma holder in Engineering.

8. Coming now to the challenges made by the Petitioner Mr. Usgaonkar first contends that Regulation 5(1) of the 1984 Regulation is ultra vires Goa, Daman and Diu Town and Country Planning Act, inasmuch as its Section 44 does not justify the exclusion of an engineer from signing plans for the development of land. The power conferred by the Act on the Government to frame Rules is, he urges, for the furtherance of the object and aims of the Act, and therefore, the exercise of the enabling powers under Section 140 is necessarily controlled by the said objects and aims with the result that the Rules framed cannot go beyond them. Those objects and aims are proper development of the land by persons who are technically qualified therefor. Engineers and architects as well are qualified for such purpose, he further contends, placing reliance in the ruling of this Court in *Meghana A.P. Desai v. Union of India*. [1987] Mah. L.J. 93.

9. Mr. Kakodkar, the learned Counsel appearing for the Respondent, however counters by submitting that, in the first place, the above ruling of this Court is not applicable as it has been made as regards the Note to Rule 13 of the Goa, Daman and Diu Town and Country Planning (Planning and Development Authorities) Rules, 1977, and that too in respect of engineers holding a Bachelor's degree and not to those merely holding a Diploma. Secondly, Regulation 5(1) of the 1984 Regulations is aimed at ensuring planned development which is the very object of the Act. The planned development involves basically urban design and architectural control of all building activities in the planning area. This can be done properly only by architects who, unlike the engineers, receive intensive ;and extensive education in all aspects of planning and urban development.

10. We are not at all impressed by the above reasoning of the learned Counsel for the Respondent, as on one hand, in *Smt. Meghana Desai's* case (above), this Court has not made any distinction between Engineers holding a Degree and those holding only a Diploma, distinction which otherwise would have no relevance in view of the definition of 'engineer' given in Regulation 2(14) of the 1984 Regulations, and on the other, because dealing with the very same submission, the Division Bench held in the aforesaid case that the restriction put on the engineers prohibiting them to sign plans of building constructions was not justified, 'being arbitrary and discriminatory, and therefore, struck down the Note to Rule 13 of the 1977 Rules.

11. Regulation 2(14) indeed defines 'engineer' as meaning a person who holds a 'Degree of Engineering recognized by the All India Board of Technical Education or a Diploma in Engineering recognized by the State Board of Technical Education of a State or a Union Territory, provided the latter has, at least 5 years of professional experience. It is not disputed that the petitioner has more than 5 years of professional experience, and thus, though merely holding a Diploma in Engineering, he must be held to be an engineer within its meaning in the 1984 'Regulations. In addition, since in the above mentioned Writ Petitions this Court did not make a distinction between Degree or Diploma holders Engineers, it is manifest that the ruling made in these petitions is not distinguishable on that count and is fully attracted to this case.

12. As regards the second contention of Mr. Kakodkar, it clearly flows from the Judgment delivered in the same Writ Petitions that the very same contention now raised by the respondent has been made. It is indeed apparent that it has been contended that the restriction put on the engineers in the Note to Rule 13 of 1977 Rules (which is similar to that imposed by Regulation 5(1) of the 1984 Regulations) was fully justified as engineers, unlike architects, were not adequately qualified in the subjects of urban development. This contention was negated by the Division Bench, and hence it is not correct to say that on this count also, the ruling of this Court in the above mentioned Writ Petitions is not applicable.

13. It was seen that Mr. Usgaonkar's first contention is that Regulation 5(1) is ultra vires the Act, for, according to him, it goes beyond the aims and objects of the Act. There is some force in this contention. The preamble to the Act indeed makes it clear that the object in enacting that piece of legislation was to have a proper, disciplined and adequate development of the land and it flows from the scheme of the same Act that such development is sought to be guided by the requirements of the public health, ecology and aesthetics. Section 2(10) defines 'development' with its grammatical variations and cognate expressions, as meaning the carrying

out of building, engineering, mining, quarrying or other operations in, on, over or under, land, the cutting of a hill or any portion thereof or the making of any material change in any building or land, and includes subdivision of any land. Development involves, therefore, a vast field of activities and is not merely restricted to building constructions. It is, as such, indisputable-that although Section 44 states that any person intending to carry any development should make an application therefor accompanied by the plans, such plans have to be prepared by persons who are technically qualified and who can fully appreciate that, while developing the land, public health, ecology and aesthetics have to be borne in mind and safeguarded. Thus, it is entirely permissible to the Government to make rules therefor.

14. But, as observed in Smt. Meghana Desai's case, the rule-making power given' in Section 140 is restricted by the Act itself and cannot go beyond it, as such power is not to legislate afresh, but merely to regulate what is already legislated. Thus, the question arises as to whether engineers are qualified for signing plans for the development of land. Addressing to this question, the Division Bench, after considering the Statement of Objects and Reasons for the Bill of the Architects Act, and the subjects taught in the Engineering Course, held that engineers are fully qualified for that purpose. This view, which otherwise is binding on us, does not require re-consideration, and therefore, we hold that the restriction imposed on the engineers in Regulation 5(1) of the 1984 Regulations, going beyond the very objects and aims of the Act, is not justified and is liable to be struck down.

15. We turn now to the second challenge of the petitioner, which need not detain us long, in view of the above discussion. We held that the restriction imposed on the engineering in Regulation 5(1) goes beyond the objects and the aims of the Act and we further observed that engineers are fully qualified to undertake the-land development work, and hence, to sign plans therefor. It necessarily follows, in the circumstances, that there is no intelligible differentia distinguishing engineers from architects as regards the objective of the development to be achieved and equally, there is no nexus between the classification made and the said objective to be achieved. The classification made distinguishing architects from engineers for the aforesaid purpose is thus unreasonable, discriminatory and arbitrary, being as such, violative of Article 14 of the Constitution.

16. Mr. Kakodkar, however, relying in *Murthy Match Works v. Asst. Collector of Central Excise* : 1978(2)ELT429(SC) and in *Ajay Kumar v. Union of India* A.I.R. [1984] S.C. 1130 contended that, since the reasons for the classification were given in the affidavit-in-reply, it is not open to the High Court to interfere with it. In our view the authorities cited by Mr. Kakodkar do not advance the case of the Respondent. In fact, in *Murthy Match Works'* case, the Supreme Court merely observed that unconstitutionality and not unwisdom of a legislation is the narrow area of the judicial review, and in *Ajay Kumar's* case, it has been laid down that it is well settled that Courts will not sit as superlegislature and strike down a particular classification on the ground that any under-inclusion, namely, that some others have been untouched so long as there is no violation of constitutional restraints. But we may quote with advantage the observations made by the Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth* : [1985]1SCR29 . Their Lordships observed as under 437 (86) Bom. L.R. 428:--

The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

(Emphasis supplied) [herein indicated in italics -- Ed.]

In our view, Regulation 5(1) being beyond the objects and the aims of the Act and violative of the Article 14 of the Constitution, the case before us clearly comes under the exception mentioned by the Supreme Court in Maharashtra State Board's case, and hence, our interference with the aforesaid Regulation is permissible.

17. The result is that this petition succeeds and the Rule is accordingly made absolute in terms of prayers (a) and (b). There will be no order as to costs, in the circumstances of the case.

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