

ITEM NO.1

Court No.11

SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).8597/2007

(From the judgement and order dated 30/04/2007 in WP No.7683/2006 of The HIGH COURT OF BOMBAY)

COUNCIL OF ARCHITECTURE

Petitioner(s)

VERSUS

BHAUSAHEB GOVINDRAO JADHAV & ORS.

Respondent(s)

(With appln(s) for permission to place addl. documents on record,vacating interim order and prayer for interim relief ))

WITH SLP(C) NO. 8902 of 2007

(With appln. for permission to place addl. documents on record and vacating interim order and with prayer for interim relief and office report)

with Part-Heard

SLP(C) No. 11910-11911 of 2009

(with prayer for interim relief and office report)

SLP(C) No. 11968 of 2009

(with prayer for interim relief and office report)

SLP(C) No. 12035 of 2009

(with prayer for interim relief and office report)

Date: 10/04/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s) Mr. P.S.Narasimha, Sr. Adv.  
Mr. Naveen R. Nath,Adv.  
Ms. Amrita Sharma, Adv.  
Mr. Darpan K.M., Adv.

Mr. Raju Ramachandran, Sr. Adv.  
Mr. Sanjay Sharawat, Adv.

For Respondent(s) Mr. Naresh Kumar,Adv.

Mr. T.S.Doabia, Sr. Adv.  
Mr. Vikash Bansal, Adv.  
Ms. Sadhna Sanddhu, Adv.  
Mr. Chetan Chawla, Adv.  
Mr. D.S.Mahra, Adv.  
Mr. Shailender Saini, Adv.  
Ms. Sushma Suri ,Adv

Mr. V.K.Rao, Sr. Adv.  
Mr. Naveen Kumar, adv.  
Ms. Sangeeta Sharma, Adv.

Mr. Samanvya Dwivedi, Adv.  
MS. Ekta Sikri, Adv.  
Mr. Pranoy Day, Adv.  
Mr. Sanjay Sharawat ,Adv

Mr. Sudhanshu S.Chaudhari, Adv.  
Mr. Naresh Kumar

UPON hearing counsel the Court made the following  
O R D E R

SLP(C) No. 8597 of 2007:

Mr. P.S.Narasimhan, learned senior counsel for the petitioner submits that he has instructions to unconditionally withdraw this special leave petition. The same is, therefore, dismissed as withdrawn.

SLP(C) No. 8902 of 2007:

Mr. Raju Ramachandran, learned senior counsel for the petitioner submits that he too has instructions to unconditionally withdraw this petition. He submits that while dismissing the petition as withdrawn a factual mistake in our order dated 29.03.2012 may be suitably corrected.

3

This Court had in the said order inter alia observed as under:

"Learned counsel appearing for respondent No. 1 has drawn our attention to the additional affidavit on behalf of the said respondent and in particular paras 16.9 to 16.12 of the charge-sheet filed by the CBI against the petitioner in Special Leave Petition (Civil) No. 8902 of 2007. He submits that the CBI has upon a detailed investigation found that the said petitioner had as a one member expert committee of COA (Council of Architecture) conducted verification of his wife's institute, named Vidya Vardhan IDEA supposedly at Verna, Goa on 16.06.2005 and found that the verification was based on totally false and fictitious statements incorporated in the said report regarding the infrastructure available in the said institute."

Mr. Raju Ramachandran submits that inasmuch as the above paragraph suggests that the petitioner constituted a one member expert committee of the Council of Architecture

that conducted a verification of Vidya Vardhan IDEA at Verna, Goa, the same is not factually correct. The petitioner was not, contended the learned counsel, himself the one member committee although a one member committee comprising Mr. Avinash Vasant Dakhani was constituted under his orders for the purpose referred to in the above paragraph. He urged that the factual mistake could be corrected to put the record straight. In the circumstances, therefore, we dismiss this special leave petition as withdrawn with the correction indicated above in the extracted portion of the order of this Court dated 29.03.2012.

SLP(C) Nos. 11910-11911, 11968 and 12035 of 2009:

Leave granted.

The appeals are disposed of in terms of the signed order.

(Shashi Sareen)  
Court Master  
(Signed order is placed on the file)

(Veena Khera)  
Court Master

5

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3501-3502 OF 2012  
(Arising out of SLP(C) No. 11910-11911 of 2009)

COUNCIL OF ARCHITECTURE ... Appellant(s)  
Versus  
VIJAY GARG & OTHERS ... Respondent(s)

With  
Civil Appeal No.3504 of 2012 @ SLP(C) No. 11968 of 2009 and  
Civil Appeal No. 3503 of 2012 @ SLP(C) No. 12035 of 2009

O R D E R

Leave granted.

We have heard learned counsel for the parties at considerable length. The controversy in these petitions relates primarily to the appointment of a Returning Officer for electing five representatives from the Indian Institute of Architects as members of the Council of Architecture under the Architects Act, 1972. Section 3(3)(a) of the said Act envisages five architects possessing recognised qualifications to be elected by the Indian Institute of Architects from among its members to be the members of the council under the Act. An equal member has to be similarly elected from among heads of the Architectural Institutes in India imparting full time instruction and possessing

6

recognised qualifications in terms of Section 3(3)(C) of the said Act.

A Single Bench of the High Court while disposing of two writ petitions filed by two architects directed the Central Government to appoint a Returning Officer for conducting election of five persons in terms of Section 3(3)(a) of the Act aforementioned. This direction was issued on the basis of a letter said to have been addressed by the Government of India stating that the Government was ready and willing to make the appointment of a Returning Officer for holding of the elections. In an appeal before a Division Bench of that court, it was contended that the power to appoint the Returning Officer for purposes of election of five architects in terms of Section 3(3)(a) of the Act was vested with the Indian Institute of Architects alone and that the Government of India had no role to play in the matter. That contention found favour with the Division Bench which held that the election of five architects in terms of Section 3(3)(a) of the Act was to be conducted by the Institute and that the Returning Officer could also be appointed by the Institute alone. These appeals assail the said judgment and order of the Division Bench.

It is common ground that the writ petitions out of which these proceedings arise were filed in the year 2007 and related to elections of members of the Council of Architects for the term 2007-2010. It is also common ground that the said election was conducted and five members said to have

7

been elected unopposed were sent up to the Council who have since completed their respective terms. The controversy relating to the said election is in that view wholly academic

except that the question whether a Returning Officer for an election under Section 3(3)(a) is to be appointed by the Central Government or by the Indian Institute of Architects may remain relevant for the future also.

The question is whether we ought to answer these questions authoritatively in these appeals or permit the elections to be held in accordance with the past practice and procedure and the order passed by the Division Bench of the High Court. The fact that the elections to the Council as also the office bearers of the Council have been considerably delayed is not in dispute. As noticed above, the term of the

members elected to the Council has expired in the year 2010.

The elected office bearers of the Council of Architects completed their term of office as early as in the year 2007.

But since no fresh election of office bearers in the Council was conducted from the year 2007 onwards, the outgoing office bearers continued to hold their office by reason of Section 4(2)(b) and Section 6(1) of the Act. Certain proceedings were also pending before the Bombay High Court in relation to the holding of the election. The result was that

office bearers, who ought to have demitted their offices in the year 2007 have by default continued to hold the said offices long after the expiry of their respective term.

This

8

is by no means a happy situation regardless of who is

responsible for the failure to hold elections whenever the same fell due. The only redeeming feature is that learned counsel for the parties were unanimous in their submission that the election to the council need to be held expeditiously.

Mr. P.P.Malhotra, learned Additional Solicitor General made a candid admission of the fact that although there has been delay in holding the election and appointing the Returning Officer, yet the Government have now formalised the notification required for the conduct of election in terms of Section 3(3)(C) of the Act. He submitted that the requisite notification shall be issued within one week from today. He further submits that insofar as election under Section 3(3)(a) of the Act is concerned, the same could be left to be held by the the Indian Institute of Architects in accordance with its bye laws and as the Government of India has no role or responsibility in the matter of appointing the Returning Officer for elections under Section 3(3)(a) of the Act.

M/s. P.S.Narasimhan and Raju Ramachandran appearing for the petitioners, submit that the question whether the Government of India is required to appoint the Returning Officer even for purposes of elections under Section (3)(3)(a) of the Act may be left open by this Court and the Institute allowed to go on with the conduct of election in accordance with the past practice and procedure subject to

9

the right of any one aggrieved of the elections to question the validity of any such election before the Statutory Tribunal constituted under Section 5 of the Act after the electoral process is completed and results declared. That

appears to us also be the most appropriate course to follow. While the issue whether the Central Government has any role in the matter of appointment of the Returning Officer could be left open to be considered at an appropriate stage in an

appropriate case, the urgency of the situation and the fact that the elections have already been long delayed persuades us to permit the Institute to go on with the elections for sending up five persons duly qualified as members of the Council of Architects.

Learned counsel appearing for the respondent-the Indian Institute of Architects submits that the elections shall be held by the Institute without any delay and no sooner the Government of India issue a direction to it in terms of Rule 3(1) of the Council of Architects Rules, 1973.

Mr. P.P.Malhotra, learned Additional Solicitor General submits that the requisite directions shall be issued to the Institute within seven day from today. In the circumstances, therefore, we dispose of these appeals with the following directions:

1) The Indian Institute of Architects shall take immediate and urgent steps for holding of elections in terms of Section 3(3)(a) of the Act within the period stipulated under the Rules

10

immediately after the requisite instructions are issued to it by the Government of India under Rule 3 of the Rules mentioned above.

2) The Government of India shall appoint the Returning Officer for holding of elections in terms of Section 3(3)(c) of the Act by issuing the requisite Notification in that regard within one week from today.

3) The Government of India shall also take all necessary steps to complete the composition of the electoral college under Section 3 of the Act and to ensure that elections to the office bearers of the Council is undertaken as expeditiously as possible.

4) At the joint request of the learned counsel for the parties, we further direct that no court shall issue any order of stay in relation to the holding of the elections or making of nominations required in terms of the provisions of the Act to complete the electoral college for the council. This will not, however, prevent any aggrieved party from seeking appropriate redressal before the Statutory Tribunal established under the Act and the Rules in connection with any grievance relating to the elections after the electoral

process is complete.

5) The question whether the Government has any role in the appointment of Returning Office for conduct of election in terms of Section 3(3)(a) is left open.

6) The parties are left to bear their own costs.

11

.....J.  
(T.S.THAKUR)

.....J.  
(GYAN SUDHA MISRA)

New Delhi,  
April 10, 2012