

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

**Present : Hon'ble Justice Dipankar Datta**

W.P. 1943 (W) of 2014

Mala Mukherjee

Vs

Union of India & ors.

For the petitioner : Mr. Probal Mukherjee  
Mr. Suhrid Sur

For the respondent 1 : Mr. Indrajit Dasgupta

For the respondents : Mr. Navin R. Nath  
2 to 4 Mr. Sayantan Bose  
Mr. Partha Naskar

For the respondents : None  
5 and 6

Hearing concluded on : April 7, 2014

Judgment on : November 10, 2014

1. The petitioner enrolled herself with the Indian Institute of Architects (hereafter the "IIA"), the fifth respondent, as a student in 2004. She successfully passed the examination conducted by the IIA in the year 2011 securing 1<sup>st</sup> class.

Consequently, the IIA had elected her as an associate. On the basis of the membership of the IIA, the petitioner applied on December 31, 2012 before the Council of Architecture (hereafter the "COA"), the second respondent, for registration of her name as an architect under the Architects Act, 1972 (hereafter the "Act"). On February 11, 2013, the COA informed the petitioner that its recommendation for withdrawal of recognition of membership of the IIA, which was an eligibility criterion for registration, was pending before the Central Government (hereafter the "Govt.") and that the appropriate notification by the Govt. was awaited. Ten months later, on December 12, 2013, she was again informed by the COA that it had at its 60<sup>th</sup> meeting decided to conduct an 'Architecture Competency Test' (hereafter the "test") followed by a *viva voce* on February 08, 2014 for those candidates who were enrolled by the IIA after July 01, 2002 and had now secured the associate membership of the IIA. Feeling aggrieved by such actions of the COA, the petitioner has approached this Court with the present writ petition seeking *inter alia* the following relief:

*"In view of the facts and circumstances as stated above the petitioner most humbly that Your Lordships may graciously be pleased to pass the following order:-*

- a) *A writ of/ or in the nature of Mandamus be issued commanding the respondent authorities and each of them, their servants agent and assigns to set aside and/ or rescind the letter being Ref. No. CA/28/2013/IIA-Exam dated December 12, 2013 issued by the Council of Architecture; thereby informing about a decision taken at the 60<sup>th</sup> meeting of the Council held on 27<sup>th</sup> August, 2013 for conduct of Architecture competency test on February 8, 2014 at New Delhi followed with Viva Voce for candidates enrolled by IIA after July 1, 2002 and passed Associate Membership of IIA by examination being Annexure P-5, forthwith;*

b) *A writ of/ or in the nature of Mandamus be issued commanding the respondent authorities and each of them, their servants agents and assigns to set aside and/or rescind the letter being Ref No. CO/2/2013 dated February, 2013 issued by the Council of Architecture and grant Registration to the Petitioner as Architect under the provisions of Architects Act, 1972, forthwith;*"

2. Despite the test proposed to be conducted by the COA being under challenge at the petitioner's instance, I allowed the test to be conducted by an order dated 30.01.2014 in the interest of protecting the rights of those other members who were willing to take such test. I had noted in such order the broader issue arising for decision on the writ petition, that is, whether the COA can refuse to register the petitioner, member of the IIA, only on the ground that the COA's recommendation for withdrawal of such membership as an eligibility criterion for registration under the Act is pending before the Govt.
3. On exchange of affidavits between the petitioner and the contesting respondents, that is, the second to the fourth respondents, the writ petition was heard finally. However, before calling upon them to advance arguments on the merits of the writ petition finally, I had called upon Mr. Dasgupta, learned advocate for the first respondent, Union of India, to place its version. He produced a communication dated January 31, 2014 of the Under Secretary to the Government of India, Ministry of Human Resource Development, Department of Higher Education addressed to the third respondent, the President of the COA, on the subject of issuance of notification under section 20 of the Act for de-recognizing the "Membership of Indian Institute of Architects" and submitted on

the basis thereof that the COA has no legal authority to conduct the test. He also referred to the department's communication dated April 6, 2011 addressed to the fourth respondent, the Registrar of the COA, to the effect that unless notification in exercise of power under Section 20 of the Act is issued in respect of the IIA, architectural qualification awarded by it "cannot be said to have been derecognized by any authority". I shall refer to these communications at a later part of this judgment.

4. Mr. Mukherjee, learned advocate for the petitioner (now a senior advocate) argued that the petitioner has a vested right of registration under the provisions of the Act. According to him, she is duly qualified for registration in accordance with the statute as it stands even as on the date of presentation of the writ petition and that the action of the COA in declining her prayer for registration violates her fundamental right of freedom to practice a trade, profession or calling of her choice, that is, as a consultant architect under Article 19(1)(g) of the Constitution. It has also been contended that the COA having acted illegally and in an arbitrary manner, refusal to grant her registration offends her fundamental right guaranteed under Article 14 as well.
5. To support the stance that the petitioner has been subjected to immense injustice, Mr. Mukherjee has *inter alia* relied upon section 14(1) of the Act and the notifications dated August 05, 1992 and March 30, 1998 issued from the Department of Education, Ministry of Human Resource and Development of the Govt., which recognize associate membership of the IIA (by examination) to be at

par with the Bachelor's Degree in Architecture of a recognized Indian University for the purpose of employment to posts and services under the Govt., and state that the qualification of associate membership of the IIA, already recognized for the purpose of employment to posts and services under the Govt., was considered to be recognized w.e.f. December, 1982.

6. The aforesaid communications from the Govt. to the fourth respondent, dated April 6, 2011, and to the third respondent, dated January 31, 2014, were also referred to by Mr. Mukherjee to demonstrate that the stands of the petitioner and the Govt. are not at variance and that the contesting respondents had assumed unto themselves a power that is not traceable in the Act.
7. The contesting respondents have countered the above stand of the petitioner and the concurring view of the Govt. through manifold arguments advanced by Mr. Nath, learned advocate. It has been argued that the operation of the Act is in the nature of a reasonable restriction on the petitioner's right to practice the architectural profession. He vehemently argued in support of the validity of the actions in refusing registration to the petitioner and the conduct of the test. It has been submitted that to understand the concept of 'recognized qualification' as envisioned under the Act, the statutory provisions must not be looked into merely in their literal sense but additionally the intent, objects and scheme of the legislation must also be taken into consideration.
8. It has been contended on behalf of the COA that it has been enabled and empowered to conduct an academic evaluation in the form of the test and to

refuse registration to those who fail to clear the same on grounds of maintaining qualitative academic standards through such liberal and contextual interpretation of 'recognized qualification'. Relying *inter alia* on sections 14, 15, 17, 20, 21, 25, 26, 35, 36, 45 of the Act and the *non-obstante* clause in the Minimum Standards of Architectural Education Regulations, 1983 (hereafter the 1983 Regulations) as well as the Council of Architecture Regulations, 1982, it has been argued that the validity of the impugned actions should also be considered in the light of the larger public interest.

9. According to the contesting respondents, the COA is a regulatory authority under the Act whose scope of power includes not only deciding the extent of deficiency in architectural education that is imparted but also to decide the remedial measures that must be undertaken. They argue that the power to recommend inclusion in the Schedule to the Act or recommend disqualification also includes the power to do everything to maintain the minimum standards, including conducting the test.
10. Mr. Nath contended that the decision to introduce the test was taken jointly with the institution awarding the qualification, that is, the IIA to facilitate the registration of candidates in limbo over non-registration by the COA. The test was an academic evaluation in consonance with the powers of the COA under section 21 of the Act to prescribe minimum standards of architectural education required for granting recognized qualifications by colleges or institutions in India.

It was submitted that the power to prescribe minimum standards includes the power to maintain such standards.

11. It was further argued by Mr. Nath that the definition of a 'recognized qualification' is not absolute and is subject to the context, that is, the object, scheme and other provisions of the Act. A 'recognized qualification' is one which satisfies the qualitative requirements of the educational course. It is not sufficient to look at the definition alone and section 14 of the Act. It has to be interpreted liberally. If the Legislature had intended that only a qualification mentioned in the Schedule is sufficient, sections 17 and 20 would be superfluous and redundant.
12. Mr. Nath also argued that the role of the COA is not that of a mute spectator but a pro-active player in maintenance of uniformity of minimum standards in all architectural institutions and it has the power to restrict and determine the parameters for entry of qualified persons into the profession of architecture. According to him, the Act has to be interpreted keeping its object in mind and not in a narrow and literal sense.
13. The aforesaid submissions were sought to be elaborated by the following submissions traceable in the written arguments filed by Mr. Nath:
  - (i) That there is no absolute fundamental right under Article 19(1)(g). The practice of architecture is regulated by the Act, which is a legislation relatable to Article 19(6) as well as Entry 66 of List I of the 7<sup>th</sup> Schedule of the Constitution of India. The Act is to be read as operating with the

sanction of Entry 66, List I and as a reasonable restriction envisaged under Article 19(6) on the right to practice architecture. Therefore, its scheme must also be read in such light.

- (ii) Section 17 read with sections 21, 25, 26(3), 35 and 36 supports this position and that the petitioner's contention that even if the qualification awarded may not satisfy the minimum requirements required for being regarded as a recognized qualification, her right of registration persists, is unsustainable. The petitioner cannot claim registration merely because she has been awarded a qualification mentioned in the Schedule. According to him, mere inclusion of a qualification in the Schedule to the Act does not make it automatically a recognized qualification, if it does not satisfy the minimum standards of architectural education.
- iii) Mere nomenclature of an educational qualification has no value unless it complies with minimum academic and other requirements for its grant and that laid down conditions must be satisfied by the granting institution. In support thereof, reliance was placed on the decisions in *Prof. Yashpal & Anr. v. State of Chhattisgarh*, (2005) 5 SCC 420 (¶37, 38); *Dr. Mukhtiar Chand and Ors. v. State of Punjab and Ors.*, (1998) 7 SCC 579 (¶35); *Bar Council of India v. Aparna Basu Mallik and anr.*, (1994) 2 SCC 102 (¶14); and *Baldev Raj Sharma v. Bar Council of India*, 1989 Supp (2) SCC 91 (¶3).



- iv) Assessment of the standards is a continuous exercise and does not stop by mere inclusion of the qualification in the Schedule and those qualifications are accepted under 'recognized qualification' nomenclature, which meet the minimum statutory standards. The expression 'recognized qualification' in section 2(d) of the Act is not unconditional but subject to the context; the expression wherever appearing has to be read in the context of the entire legislative provisions, intent and its scheme as it begins with '(u)nless the context otherwise requires'. In support of such contention, *Pushpa Devi v. Milkhi Ram*, (1990) 2 SCC 134 (¶18) was relied on.
- v) Validity of the impugned action has to be necessarily judged from the viewpoint whether such action is in larger public interest and in consonance with the legislative object and not from the narrow view of the petitioner. The applicable test to judge the validity of a restriction of a citizen's right under Article 19(1)(g) is not the injury it causes to the aggrieved citizen, but whether it is in larger public interest and in accordance with the legislative object. Reliance was placed on *Mohd. Hanif Quaresh and Ors. v. State of Bihar*, [1959] SCR 629 (¶21). The application of the above test implies that the test is not opposed to public interest or without authority of law. In fact, the test is in the petitioner's interest and others similarly situated. The test is not divorced from the legislative object and no such case has been pleaded.

14. The next line of argument was that inclusion of a particular qualification does not constitute a permanent certificate that the awarding institution complies with minimum standards. Standards of a 'recognized qualification' are required to be maintained by the institution upon its inclusion in the Schedule in accordance with the law as contemplated under sections 17, 21 and 45. Standards are to be evaluated independently and not by the awarding institutions. Further, section 14 merely provides a mechanism to notify 'recognized qualifications' in architecture and does not constitute a declaration of a standard. If the argument that mere inclusion in the Schedule is a sufficient declaration of compliance with the minimum standards were accepted, the Act would be rendered otiose, for, the provisions of the Act then would, instead of being followed in compliance, be resorted to in default. For eg., in a situation where an institution awarding the 'recognized qualification' admits that it does not conform to the minimum standards, the grantee cannot still contend that he/she is entitled to registration.
15. Reliance was placed by Mr. Nath on *Dr. Preeti Shrivastava and Anr. v. State of M.P.*, (1999) 7 SCC 120 (¶45 - 48) to emphasize that the Supreme Court has held that standards are not ascertained only on the basis of qualifications granted. It has been submitted that upon the point - whether standards come in at the time of admission or after passing out, it was held that the standards have to be in place undoubtedly at the time of admission. The Court therein overruled the judgments which held that even where there is lowering of standards for admission, the guarantee of compliance with minimum standards is judged at the time of passing out. Parallels, according to him, can be drawn between the procedure

under sections 14 and 15 of the Act and section 22 of the University Grants Commission Act. Sections 14 and 15 read with section 17 necessarily subjects the qualification to comply with minimum standards framed by the COA in exercise of its powers under sections 21 and 45. The observation in *Prof. Yashpal* case (*supra*) that a mere specification of a degree is not a guarantee of its quality was emphasized.

16. Section 21 of the Act, Mr. Nath argued, is an enabling power. In the present case, the enabling power has been exercised to permit candidates acquiring the IIA membership post July 01, 2002 to be registered as architects even though a recommendation under section 20 is pending.
17. It has been Mr. Nath's argument that ordinarily, upon a recommendation under section 20 being made, the COA cannot register candidates as architects until the same is decided. The IIA continues to admit students for examinations contrary to the directives asking the institution not to make such admission. This was the backdrop against which the IIA admitted the deficiency in its course and jointly agreed to conduct the test. The relevant decision, placed on record vide the supplementary affidavit dated 30.03.2014, was referred to in this connection.
18. Inviting the Court's attention to section 20 of the Act, Mr. Nath argued that ordering withdrawal of recognition would definitely affect the right of an institution, and where the deficiency is admitted by the institution itself, the recommendation by the COA for disqualification cannot be rejected by the Govt. Thus, the petitioner cannot question the holding of the test which is a direct

consequence of the deficiency in academic standards prescribed by the COA. The test falls within the view of the object of the Act and the application of the enabling powers under section 21 to ascertain academic standards, following which the right to practice is determined.

19. Next, it has been submitted that even otherwise the test is also legally valid in view of the non-obstante clause in the 1983 Regulations. Thus, the test is independently valid and *intra vires* the delegated legislation framed *inter alia* in exercise of power conferred by section 45(2)(h) of the Act. Stress was laid on the fact that the examination has been conducted jointly by the COA and the IIA, and the non-obstante clause, which is an independent enabling power separate from the power under section 21 of the Act. The prescription of the test is a matter relating to assessment of academic standards and as such not justiciable and beyond the scope of judicial review, unless such prescription is contrary to law.
20. For the proposition that the power of academic appraisal in the form of a test is not subject to judicial review since it seeks to make an assessment of the academic standards, reliance was placed on *University Grants Commission and Anr. v. Neha Anil Bobde*, (2013) 10 SCC 519 (¶31).
21. Further, it was contended that the manner in which the COA maintains minimum standards is in exercise of powers exclusively within the realm of academicians and technical experts. Judicial review in such instance is limited only to ascertaining whether such exercise of power is illegal. No provision or law has been specified by the petitioner which prohibits the respondents to devise the test. The COA is empowered to conduct professional examination under sections

21 and 45(2)(h) of the Act as well as the non-obstante clause in the 1983 Regulations. The onus is on the petitioner to establish clear statutory violation. This, according to Mr. Nath, she has failed to discharge by not pleading and not satisfactorily explaining the statutory disentitlement of the respondents to conduct the test.

22. Finally, it has been submitted that the membership of the IIA being a non-collegiate course enabling one to obtain the title of an 'architect' through non-formal route cannot claim a right superior to a degree in architecture awarded by a University established by a Central or State legislation based on formal education. For this reason alone, the prescription of a test is a requirement in larger public interest. It was contended, referring to the example of Entry I of the Schedule (qualifications u/s 14) to the Act, that it is well settled that an Indian University established under a State or Central legislation must ensure that the institutions comply with the minimum standards prescribed by a special law like the Act. The membership awarded by the IIA is not subject to any independent statutory scrutiny. Therefore, the prescription of the test cannot be questioned.
23. Reliance has also been placed on a Division Bench decision of the Rajasthan High Court in Writ Misc. Application No.55 of 2006 (*Suresh Kumar Khemka v. J.N.V. University, Jodhpur & Ors.*) which, while rejecting the claim for continuing admissions, held that if a degree in architecture awarded by a University does not comply with the minimum standards prescribed by the Act, it would result in producing 'sub-standard product'.

24. The submissions were concluded by Mr. Nath with the prayer to dismiss the writ petition.
25. I did not consider it necessary to call upon Mr. Dasgupta to respond further or Mr. Mukherjee to reply.
26. The issue arising for decision on this writ petition is whether the contesting respondents are justified in requiring the petitioner to clear the test to be conducted by them as a pre-condition for entry of her name in the register, maintained as per Section 23 of the Act on the terms of Section 25 thereof.
27. The rival arguments would obviously require one to look at the relevant enactment and the provisions in question meticulously, since reported decisions relating to the same seem to be scarce. My research has not resulted in tracing any decision of the Supreme Court or this Court interpreting the provisions of the Act.
28. The Act was enacted by the Parliament in the twenty-third year of the Republic of India and published in the Official Gazette of India on 31.05.1972. Thereafter, it came into force from 01.09.1972 vide notification issued by the Govt. on the same date. It was enacted to provide for the registration of architects and for matters concerned therewith. Summarily, it is a Central legislation dealing with architects extending to the whole of India.
29. Section 2(d) of the Act provides that unless the context otherwise requires, 'recognized qualification' means any qualification in architecture for the time being included in the Schedule or notified under section 15. Thereafter, section 14(1) of the Act iterates that the qualifications included in the Schedule or

notified under section 15 shall be recognized qualifications for the purposes thereof. The Schedule appended to the Act lists the qualifications referred to as recognized under section 14(1). At serial no. 11 is mentioned 'Membership of the Indian Institute of Architects'. Section 15 speaks about powers of granting of recognition to an architectural qualification by the Govt. after consultation with the COA in respect of foreign qualifications. Section 17 relating to 'effect of recognition' ordains that "*(n)otwithstanding anything contained in any other law, but subject to the provisions of this Act, any recognized qualification shall be a sufficient qualification for enrolment in the register*". The procedure for withdrawal of recognition is spelt out in section 20, which would come up for discussion shortly. Under section 21, the COA may prescribe the minimum standards of architectural education required for granting recognized qualifications by colleges or institutions in India. Sub-section (1) of section 23 mandates the Govt. to prepare, in the manner thereafter provided in the Act, a register of architects for India. Sub-section (2) thereof requires the COA, upon its constitution, to assume the duty of maintaining the register in accordance with the provisions of the Act. According to Section 25(a), a person *inter alia* shall be entitled on payment of such fee as may be prescribed by the rules to have his name entered in the register if he resides or carries on the profession of an architect in India and holds a recognized qualification. Sections 26, 35 and 36 not being relevant for a decision here, are not discussed. Section 45 is the provision empowering the COA to make regulations.

30. These are the relevant provisions in the Act for comprehending what a recognized qualification under the Act is, what is its effect, how a register is to be maintained, who shall maintain it and how does one have his name entered in such register, etc.
31. The 1983 Regulations framed by the COA in exercise of power conferred by Section 45 lays down provisions for maintaining standards of architectural education, but does not even remotely relate to any authority assumed by the COA, de hors the Act, to conduct the test.
32. There can be no dispute on the score that in view of the relevant statute as it presently stands, the petitioner holds a "recognized qualification" within the meaning of section 2(d) of the Act, when read in conjunction with the Schedule thereto. The narrow compass of the dispute is as to whether in view of the reservations of the COA in regard to the membership of the IIA being treated as a "recognized qualification" under the Act, the petitioner can be denied registration without her clearing the test which she was called upon to take by the contesting respondents.
33. Turning attention to the aspect of the COA having reservations with regard to the standards of education imparted by the concerned colleges and institutions and the steps that it could lawfully take, section 20 has to be noticed first. It provides for withdrawal of recognition by a three-tiered process containing checks and balances. At the first tier, if upon the report of the Executive Committee it appears to the COA that a course of study and an examination to be undergone qualitatively do not conform to the standards prescribed by the regulations, the



COA shall make a representation to that effect to the "appropriate Government" [what the expression means is explained in sub-section (5)]. At the second tier, the appropriate Government after considering the representation will seek an explanation from the concerned college or institution and subsequently, shall make its recommendations to the Govt. Finally, at the third tier, the Govt. may make further enquiries and thereafter, by notification in the Official Gazette, direct withdrawal of recognition from a specified date and the Schedule shall be deemed to be amended accordingly.

34. A cohesive and plain reading of the above provisions would indicate that subscribing to the minimum standards of architectural education for those qualifications acquired upon completing courses connoted as 'recognized qualifications' in architecture under the statute is a drawn statutory conclusion, by virtue of the same being included in the Schedule. The enumeration of a qualification in the Schedule is an effect of legislative intent engrained in section 14.
35. There cannot be any doubt that words of a statute are to be understood first in their natural, ordinary or popular sense and phrases and sentences have to be construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.
36. The maxim *verbis legis non est recedendum* which means 'from the words of law, there must be no departure' may be kept in mind here. The Supreme Court has time and again held that the Court cannot proceed assuming that the legislature

enacting the statute has committed a mistake, and where the language of the statute is plain and unambiguous, the Court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or a wise counsel to the legislature. Reference may be made to the decisions in *Hardeep Singh v. State of Punjab and Ors.*, (2014) 3 SCC 92 and *Rohitash Kumar and Ors. v. Om Prakash Sharma and Ors.*, AIR 2013 SC 30. The Court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others than the Court to remedy that defect. The Act being a Central legislation and should there be a requirement for any amendment to it, it can only be done by the Parliament.

37. Applying the principle *unius est exclusion alterius*, meaning 'whatever has not been included has by implication been excluded', it is plain and clear that section 14 has made a specific reference to those qualifications, which can be understood to be 'recognized qualifications' for the purposes of the Act. They are only the ones included in the Schedule or notified under section 15. Any person possessing any of the qualifications, in the absence of any contra intention expressed in the statute, would seem entitled to have his name entered in the register of architects.
38. The effect of recognition is provided in section 17, which the contesting respondents appear to have misconstrued. The phrase "subject to the provisions of this Act" necessarily means that if in the Act there is any other provision specifically dealing with the topic of a recognized qualification not being a sufficient qualification for enrolment in the register, then section 17 would be .

subject to the same. The other provisions in the Act do not derogate from it and the conclusion is irresistible that acquiring a qualification out of several qualifications finding place in the Schedule is sufficient qualification for the petitioner to lay claim for enrolment in the register.

39. At this juncture, it would be convenient to note the version of the Govt., as communicated to the third respondent by the departmental secretary. The former was sought to be informed *inter alia* that the issuance of a notification under section 20 of the Act is required for de-recognizing the 'Membership of Indian Institute of Architects' and the Govt. had not taken any decision on the representation made by the COA in this regard, since the appropriate Government being the State Government of Maharashtra had not given its views on the representation of the COA. It further iterates that section 25 of the Act entails a person holding a recognized qualification to have his/her name entered in the register of architects on payment of such fee as may be prescribed by rules and that recognized qualifications for the purposes of the Act have been notified in the Schedule in terms of section 14(1) of the Act. It concludes that as of January 31, 2014, students' holding membership of the IIA are treated as possessing a recognized qualification (as appearing under serial no. 11 of the Schedule appended to the Act) and a request was made to cancel the proposed test till a view is taken by the Govt. on the said representation.

40. In view of such communication, it is abundantly clear that the Govt. views the action of the contesting respondents in conducting the test to be a patent violation of the power conferred on the contesting respondents and exercisable by.

them. The power that the COA has been conferred under section 21 of the Act is of delegated legislation limited to the area specified in the statute. The COA cannot confer on itself a unilateral decision making power for disqualification of a course of architectural education from being regarded as a 'recognized qualification' when a specific and unambiguous process of decision making hierarchy in this regard has already been specifically detailed in the statute by the Parliament. It is an admitted fact that despite the COA having initiated a process under section 20, its recommendation is yet to be accepted by the Govt. Therefore, no disqualification has as yet occurred. Full effect, therefore, must be given to the statutory mandate and the qualification acquired by the petitioner allowed full play.

41. The earlier notifications dated August 5, 1992 and March 30, 1998 from the Department of Education, Ministry of Human Resource and Development of the Govt., which recognize Associate Membership of the IIA (by examination) to be at par with the Bachelor's Degree in Architecture of a recognized Indian University for the purpose of employment to posts and services under the Govt. and recognize the qualification of Associate Membership of the IIA as a 'recognized qualification' with effect from December, 1982, and the letter dated April 6, 2011 addressed to the fourth respondent are clear indications of the understanding of the provisions of the Act by the Govt., with which I have no reason not to concur.
42. I am inclined to the view that unless the Govt. in pursuance of the power conferred by section 20 orders a disqualification of the IIA and such order is

published in the Official Gazette, and consequently the Schedule of the Act pertaining to sl. no. 11 is deemed to be amended accordingly, conducting of the test (notwithstanding that the IIA may have agreed thereto) has to be held *ultra vires* the provisions of the Act for the reasons that follow.

43. The COA, without doubt, is a creature of the Act. Subservience of the COA to the Govt. follows from the scheme of the Act. A power to order disqualification that has been conferred on the Govt. by section 20 of the Act cannot be usurped by the COA. A creature of a statute cannot act in a manner to bring about a result desired by it unless the subject statute empowers it to do so. Also, if power is given under a statute to do a certain thing in certain way, the thing must be done in that way or not at all. These propositions are too well-settled to require reference to any authority. If indeed what the COA recommends has substance, it is for the Govt. to remedy the malaise in the manner ordained by section 20 but not otherwise. Introduction of the concept of the test to test the ability of the petitioner to have her name registered is foreign insofar as the statute is concerned. It seems, the COA has made an attempt to rise higher than its source and that is impermissible for a creature of a statute.
44. The decisions cited by Mr. Nath have been perused. Having regard to the facts presented before the respective Benches of the Supreme Court, Their Lordships applied the relevant law. There can be no dispute in regard to the principles of law laid down therein, but I have not been able to apply those principles to the facts at hand which are singularly singular.

45. The decision of the Supreme Court in *Yash Ahuja v. Medical Council of India*, (2009) 10 SCC 313, which neutralizes Mr. Nath's contentions, is worthy of being noted. The question to be decided was whether the Medical Council was justified in asking the appellants who had obtained MBBS qualification from a college affiliated to the Kathmandu University to pass the screening test prescribed by the Regulations. Considering the amendments effected in the Indian Medical Council Act, 1956 in 2001 empowering the Medical Council to conduct screening test for medical graduates obtaining medical qualifications granted by any medical institution in any country outside India prior to enrolment, the Court held that the Medical Council was justified in insisting that the appellants qualify the screening test. It is, thus, clear that wherever the need to conduct screening test was felt, the Parliament rose to the occasion and introduced necessary amendments. Similar amendment of the Act empowering the COA to conduct the test is yet to be effected. In such circumstances, the issue has to be answered in favour of the petitioners.
46. A word or two about the misadventure of the COA has to be said before I part. Howsoever, pious and laudable the intention of the COA in maintaining basic standards of architectural education might be, it ought to realize that in the guise of larger public interest it cannot bypass or overlook the statute by which it was created.
47. For the reasons aforesaid, I have no hesitation in overruling the contentions of Mr. Nath which unnecessarily have flown off at a tangent on the legal issue involved herein.

48. The relief claimed by the petitioner is moulded. It is declared that she is not under any obligation to clear the test. The contesting respondents are directed to register the petitioner as an architect upon compliance with all other formalities as early as possible but not later than 1 (one) month from date of receipt of a copy of this judgment and order.
49. The writ petition thus, stands allowed. However, the parties shall bear their own costs.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant at an early date.

**(Dipankar Datta, J.)**