

ARIYARATNE

v.

SRI LANKA INSTITUTE OF ARCHITECTS

COURT OF APPEAL

J. A. N. DE SILVA, J. (P/CA)

C.A. 296/2000

JANUARY 19, 2001

FEBRUARY 01, 2001

Sri Lanka Institute of Architects - S.4A(1)(a), S.4(f), Act 1 of 1976 - Amended by 14 of 1996 - S.3, S.3(c) Is the statute which incorporated the Sri Lanka Institute of Architects a Public enactment or a private one? Distinction between Private Acts and Public Acts - Application for membership not approved by Council - Does a Writ lie?

Held :

- (i) The Sri Lanka Institute of Architects has been conferred with very clear statutory functions. The powers of the Institute are exercised in terms of the incorporating statute and they are clearly of Public character. Thus, the Institute of Architects exercise a public function rendering it amenable to writ jurisdiction.
- (ii) Once a member satisfied the criteria laid down in the 2nd schedule in terms of S.8(1) of Law No. 1 of 1976 as amended the Council of the Sri Lanka Architects Institute has no discretion but to admit such a person as an Associate. *Fernando v. Sri Lanka Institute of Architects*⁽¹⁾ - not followed.

APPLICATION for a Writ of Mandamus.

Cases referred to :

1. *Fernando v. Sri Lanka Institute of Architects* - CA 709/94 -C. A. M. 13. 02. 1996
2. *Nanayakkara v. Institute of Chartered Architects* - 1981 2 SLR 52
3. *Abeydeera v. Wijesundera*- 1983 2 SLR 267
4. *Jayalingam v. University of Colombo* - CA 415/01 - CAM 14. 08. 87

Faiz Musthapa P.C., with *H. Withanachchi* and *Dr. Sivagi Felix* for Petitioner.

Shibly Aziz P.C., with *S. Sriskantha* for Respondent.

Cur. adv. vult.

May 11, 2001.

J. A. N. DE SILVA, J. (P/CA)

The petitioner in this application seeks a mandate in the nature of a writ of mandamus directing the respondents to admit/enroll the petitioner as a Corporate Member in the category of Association of the Sri Lanka Institute of Architects. (1st respondent) which is a body incorporated under and by virtue of the Sri Lanka Institute of Architects Law No. 1 of 1976.

The facts as set out by the petitioner in the petition are briefly as follows. The petitioner passed the part 1 and part 11 examinations of the Sri Lanka Institute of Architects held in the year 1992 and 1996 respectively. Thereafter the petitioner sat for the part 111 examination of the said institute so as to obtain the necessary qualifications to be admitted to the category of "Chartered Architect" with the Architects Registration Board.

By letter dated 12. 02. 1998 the petitioner had been informed by the Chairman, Board of Architectural Education, on the instructions of the Sri Lanka Institute of Architects that his results had been withheld "pending clarification of certain matters pertaining to his conduct." Further the petitioner had been requested to answer a questionnaire which was attached to the above mentioned letter. The petitioner answered the questionnaire and forwarded the same to the Chairman, Board of Architectural Education with a covering letter dated 23. 02. 1998. As the Institute was silent the petitioner sent a reminder dated 04. 03. 1998 requesting his results be released early. After a delay of almost 10 months the Sri Lanka Institute of Architects by letter dated 05. 09. 1998 released the results of the examination to the petitioner. In terms of the said letter or notification the petitioner had successfully completed the part 111 examination of the said Institute held on 12. 11. 1997.

Thereafter the petitioner on 17. 09. 1998 made an application to be enrolled as a Corporate Member in the category of Associate of the Sri Lanka Institute of Architects. This

application was sponsored by three Corporate Members of whom one was a Fellow as required by the relevant Regulations.

Here too the petitioner experienced inordinate delay and by letter dated 04. 06. 1999 he made a request to expedite the matter. The petitioner was then informed by letter dated 11. 10. 1999 that is one year since his original application for membership, that his application had been referred to a committee for an "investigation". The petitioner by letter dated 07. 02. 2000 informed the President of the Sri Lanka Institute of Architects that the delay in processing his application was unprecedented and that he had been discriminated. He attributed delay due to malice on the part of some Members of the Council.

By letter dated 15. 02. 2000 the petitioner was informed that his application for membership, was not approved by the Council pending a report by a Special Committee.

The petitioner's contention is that he is duly qualified to be enrolled as a Corporate Member in the category of Associate and the respondents have failed and/or refused to admit him due to malice, ill will or for some extraneous and inexplicable reasons. He further contends that such long delay without a valid reason is capricious, arbitrary, mala fide and in excess of authority. The present application for a writ of mandamus is to direct the Authority concerned to admit/enroll the petitioner as a Corporate Member.

At the hearing of this application the learned President's Counsel Mr. Shibly Aziz who appeared for the respondents submitted that the application of the petitioner is misconceived as the relief prayed for cannot be granted in law against one or more of the respondents. Mr. Aziz contended that the Sri Lanka Institute of Architects is a private body and does not exercise public functions and therefore not amenable to writ jurisdiction of Court. He further submitted that the relationship of the members is based on contract and in these cases declarations

and injunctions are the appropriate remedies, certiorari and prohibition are out of place, since the Court's supervisory powers over public authorities are not concerned with private contracts. The attention of Court was drawn to the chapter dealing with "Domestic Tribunals and Disciplinary Board" in Wades Administrative Law 7th Edition page 641. Mr. Aziz relied on the decision of this Court in *Fernando v. Sri Lanka Institute of Architects*,⁽¹⁾ where Justice Ranarajah expressed the following view.

"Membership of the S. L. I. A entails the acceptance of the rules and regulations governing membership. Membership is a body, be it statutory or otherwise does not by itself give it a public character. The relationship between a member and the S. L. I. A. is by (its very) nature contractual and of a private character. The duties the S. L. I. A. is called upon to perform are not duties in the public domain (vide Section 3 of Law No 1 of 1976). There is no obligation cast on an otherwise qualified Architect to seek membership of the S. L. I. A. Thus the petitioner is seeking not to enforce a public law right but a mere private right. The right the petitioner seeks to enforce lacks statutory flavour and which he cannot in any way claim to be statutorily protected."

In view of the above observations of Justice Ranarajah it is necessary to consider whether the statute which incorporated the Sri Lanka Institute of Architects is a Public enactment or a Private one. The law No 1 of 1976 is a general Act which has been enacted to regulate the profession of Architects. This statute is similar in nature to the statutes regulating the different professional bodies such as Medical Practitioners Ordinance No 26 of 1927 (as amended), Chartered Accountants Act No 23 of 1959, Surveys Act No 21 of 1969 and Valuers Law No 33 of 1975.

The distinction between a Public Act and Private Act has been clearly demonstrated by several legal writers. Francis Bennim in "Statutory Interpretation" (3rd Edition 1997 Page 122)

referring to the difference between a Public Act and a Private Act states as follows.

"A private Act is one which is not a public Act. Alternatively it may be described as one coming into existence of the giving of royal assent to a private Bill; that is founded upon a petition deposited by the promoter. A private Bill goes through a procedure different and its promotor must satisfy a Parliamentary Committee that it deserves to be enacted. It changes the law in a limited way purely for the benefit of its promotor and parliament accepts the duty to make sure no one else will be unfairly prejudiced by it."

Similarly Sir Rupert Cross in his book *Interpretation of Statutes* (3rd Edition 1995) sees the distinction between the private and public enactment as follows.

"A distinction is drawn between public general Acts and private Acts. A public general Act relates to some matter of public policy, while a private Act relates to the affairs of some individual or body in a manner which is not of public concern."

Dr. J. A. L. Cooray in his book *Constitutional and Administrative Law of Sri Lanka* (2nd Edition Page 256 - 257) refers to the special procedure adopted for the enactment of private Bills in Sri Lanka.

Mr. Faiz Musthapha, President's Counsel who appeared for the petitioner submitted that the view expressed by Justice Ranarajah does not accurately reflect the true legal position of the plaintiff; specially in view of the fact that the original Act No 1 of 1976 was amended by Act No 14 of 1996. It was the submission of Mr. Musthapha that in terms of the amendment, it is no longer possible for a person to describe himself as a Chartered Architect, Architect or Architectural Licentiate or sue for professional fees unless he is duly registered as a Chartered Architect, Architect or Architectural Licentiate as the case may be.

It is important to note that Section 3 of the principal enactment (Law No 1 of 1976) sets out the general objectives of the Sri Lanka Institute of Architects. Section 3(b) is to the following effect.

"To protect and promote the interests, status, welfare, rights and privileges of the profession of Architects in Sri Lanka, and the interests of the public in relation to that profession and of persons desiring to qualify as Architects."

Section 3(c) of the original Act was amended by Section 2 of the amending Act to include non members. The new Section reads thus,⁶ "Members of the Institute and for Architects and Architectural Licentiates who are not members of the Institute".

Section 4(f) empowers the Institute to prescribe the terms and conditions of and the supervisory control and regulate the engagement, training, transfer and dismissal of persons desiring to qualify as Architects.

By Section 3 of the amending Act a new Section viz 4 (ff) was introduced which widened the scope. New Section (ff) reads thus, "to appoint investigating committees and disciplinary committees to inquire into complaints of professional misconduct against Architects or Architectural Licentiates registered under this Law, who are not members of the Institute."

In addition to this new Section 4A(1) imposes a statutory restriction on the use of title Chartered Architect, Architect or Architectural Licentiate unless registered in accordance with the provisions of the enactment. Section 4A(2) stipulates that a person, unless registered as a Chartered Architect, Architect or Architectural Licentiate under and in terms of Law No 1 of 1976 as amended shall not be entitled to institute or maintain any action in a Court of Law for the recovery of any fees for professional services rendered by him as a Chartered Architect, Architect or Architectural Licentiate.

From the above Sections it is clear that the Institute possesses the power to regulate the profession for the benefit of the general public. The resulting position is that when the Institute exercises the said power it displays a public character. It is a well established principle that even where a body exercises de facto power, despite the absence of visible means of legal support, having neither statutory nor contractual powers it is nevertheless amenable to judicial Review (Vide Wade Page 629 8th Edition).

In *Nanayakkara v. Institute of Chartered Accountants*⁽²⁾ Court held that even in the context of a contract of employment if it had a statutory flavour, an employee was entitled to seek judicial review. It is to be noted that the Institute of Chartered Accountants Act No 23 of 1959 was also incorporated in a similar way as the Sri Lankan Institute of Architects.

It is clear from the provisions referred to above the Sri Lankan Institute of Architects has been conferred with very clear statutory functions. The powers of the Institution are exercised in terms of the incorporating statute and they are clearly of public character. In these circumstances I hold that the Institute of Architects exercise a public function rendering it amenable to writ jurisdiction of this Court.

The petitioner's complaint is that Section 8(1) of the Sri Lanka Institute of Architects Law No 1 of 1976 lays down the disqualifications that preclude membership and that he is not disqualified in any manner whatsoever for membership as set out in Section 8(1) and is eligible to be admitted as a Corporate Member in the category of Associate.

It was further pointed out by Mr. Musthapha, PC that in terms of rule 1.1 Schedule A Part 11 of the regulations made by and approved by the general body of the Sri Lankan Institute of Architects, and published in the Gazette Extraordinary of 20. 12. 1996 the petitioner is entitled to be admitted and enrolled as a Corporate Member in the category of Associate.

Rule 1.1 provides as follows.

"The council shall admit as an Associate of the Institute any person who has passed either the qualifying examinations therefor prescribed by the second schedule to these regulations or any other examination or examinations which the Council has, by a resolution passed by a two - third majority, accepted as being equivalent thereto. The Council may accept a qualification or qualifications granted by any Foreign University, Institute or National Body of Architects as entitling the holder thereof to apply for Associate Membership of the Institute."

The Second Schedule to the Regulation provide. Inter alia the necessary qualifications to be admitted as a Associate as follows.

"SLIA Part 111 Examination or the Special Equating Assessment and a Viva Voce held by SLIA for registration members of the Institute."

In the circumstances it is clear that once a member satisfies the criteria laid down in the 2nd Schedule in terms of Section 8(1) of Law No 1 of 1976 as amended the Council of the Sri Lanka Architects Institute has no discretion but to admit such a person as an Associate.

As there is a long and inordinate delay in releasing his results and thereafter a further delay in processing his application the petitioner has reasons to believe that it may be due to professional jealousy or ill will on the part of some members of the Council towards him. I am also mindful of the fact that a writ of mandamus could be issued against a Corporate Body as stated in *Abeyadeera v. Wijesundera*⁽³⁾ and *Jayalingam v. University of Colombo*⁽⁴⁾.

I hold that the petitioner is entitled to get a mandate in the nature of a writ of mandamus and direct the 1st respondent to perform its statutory duty forthwith. The petitioner's application is allowed with costs.

Application allowed.