


वास्तुकला परिषद्
Council of Architecture

वास्तुविद् अधिनियम, 1972 के अंतर्गत भारत सरकार का एक स्वायत्त सांविधिक निकाय
(An Autonomous Statutory Body of Govt. of India, under the Architects Act, 1972)

Ref. No. CA/15/2020/AE
October 22, 2020

Sri Alapan Bandyopadhyay Ji, IAS
Chief Secretary
Government of West Bengal
Nabanna, 13th floor, 325, Sarat Chatterjee road,
Mandirtala Shibpur,
Howrah-711102
Email: cs-westbengal@nic.in

Subject: Licensing of Architects under Asansol Municipal Corporation Act, 1990-in violation of the Architects Act, 1972.

Sir,

The Parliament of India enacted the Architects Act, 1972 with the consent of all State Governments, to provide for registration of architects on all over India basis and to regulate the standards of the Architectural Education and Professional Conduct of Architects.

The Act was enacted by the Parliament with the objective that since independence and more particularly with the implementation of the Five-year Plan, the building construction activity in our country is expanded on a phenomenal scale. A large variety of buildings, many of extreme magnitude like multi stores, factory buildings and residential houses is being constructed each year. With this increase the building activity many unqualified persons calling themselves as Architects are undertaking the construction of building which are uneconomically and quite frequently unsafe, thus bringing into disrepute to the profession of Architects. With the passing of this legislation, it will be illegal for any person to designate themselves as Architect unless he has required qualification is registered under Architects Act, 1972.

The attention of the Council of Architecture is drawn that Asansol Municipal Corporation is insisting Architect registered with the Council of Architecture to obtain license by paying fees for carry on the profession of architects under its jurisdiction. Similar representation has been received about Kolkata Municipal Corporation, WSIDC, WBIC, WIIDC and other local authorities granting license to Architects under their respective Acts.

Pertinent to the matter, I would like to state that Architects Act, 1972 is special Act dealing with registration of Architects all over India and is applicable throughout the territory of India. The relevant provisions of the Act are as under:

- (i) Section 2(a) : "Architect" means a person registered under the Architect Act, 1972.
(ii) Section 35(1) : Any reference in any law for the time being in force to an Architect shall be deemed to be reference to an Architect registered under the Architects Act, 1972.



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Section 35(2) : A person who is registered in the register shall get preference 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 recognized by the Central or State Government from the public or local funds or in any institution recognized by the Central or State Government.

The Architects registered with the Council of Architecture are entitled to carry on the profession of architecture throughout the territory of India. After coming into force of the Architects Act 1972, and no local body/authority is competent to register/license any person as an "Architect" to carry on the profession of architecture.

It is respectfully submitted that under the provision of the Architects Act, 1972, which is a Central Law, relatable to entry 66 of List 1 (Union List) of the 7th Schedule of Constitution of India, Entry 26 of List 3, Concurrent List and Article 19(6)(1) of the Constitution of India, it is only Council of Architecture which can grant registration to a person to work as an Architect throughout the territory of India. The field of Architectural education and profession having been occupied by the Architects Act, 1972 (A Central Law), the State Government cannot make any law on the same.

Further, in view of the provision of Article 254 of the Constitution of India a Central Law shall prevail over the State Law. Hence, the State Laws (rules/Bye-Laws) made by the State Government laying down the requirement for registration of Architects and payment of fees are directly in conflict with the provisions of Architects Act, 1972 and shall be void to that extend.

The Hon'ble Kolkata High court in W.P. No. 1712 of 1985 held as under:

In that view of the matter it is declared that the provisions of Calcutta Municipal Corporation Act will not in any way affect the rights of the architects registered under the Architects Act 1972 to practice the profession of architects without any further restriction and the writ petitioners shall be free to act as architects without any fetter and without any further license and without payment of any license fee or amount of security. This however is restricted to the persons registered under the Architects Act and not to have general application.

The Hon'ble High court further held as under:

The other issue is in regard to the restriction as regards to the architects' status and functions under Bidhan Nagar Building Rules. It has been contended by Mr. Dutt that the preparation and maintenance of a panel of architects means a restriction on the architects and as such is violative of Architects Act, 1972. Mr. Dutt contended that no rules can be framed so as to defeat the purpose of a Central Legislation. In my view, there is substantial force in Mr. Dutta's submission.

In the event, a panel is prepared by the concerned authority, there is an innate restriction for some other who are not empaneled. Can it thus be said that it is in consonance with the provisions of the Architects Act? In my view the answer is in the negative. Preparation of panel means restriction on some others and there cannot be any manner or doubt in regard there to. In the view expressed above while dealing with the main brunt of the submissions of the parties, I am of the view that such a panel cannot be maintained or prepared. Anybody having qualification of an



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architect ought to be allowed to submit a plan provided of course he is registered under the Architects Act. As such the rules in regard to such a panel being maintained ought to be and it is hereby declared to be invalid and bad in law.

A copy of the above order is enclosed herewith for your kind attention and perusal.

The Hon'ble High Court of Delhi in L.P.A. No.59 of 1975, The Municipal Corporation of Delhi & Ors. Vs. Shri ram Kumar Bhardwaj & Ors. vide order dated 02nd April, 1980 held that

The Architects Act, 1972 is a special law dealing with the qualifications to be possessed by persons for being registered as architects and restricting the terms "architect" or "registered architect" to such persons only. Since the possession of a registration certificate under the Architects Act, 1972 regarded by Parliament as sufficient qualification for the practice of architects and since all related questions have been dealt it with in respect of architects by the said Act, it become unnecessary for the Corporation to do thereafter. In view of section 502 of the Act, the provisions referred to above which could be construed as authorizing to regulated the licensing of architects and draughtsman could not be so construed after coming into force of the Architects Act, 1972.

SLP(Civil) Nos. 6469 and 9396 of 1980 filed against the above order were dismissed by the Hon'ble Supreme Court of India vide order dated 22.04.1983. Copies of the above orders are enclosed herewith for your kind perusal.

I am enclosing herewith copies of the communications sent by Central Government to all State Governments informing that it is only Council of Architecture which can grant registration to a qualified person as an Architect.

I am enclosing herewith copies of the directions issue by other State Governments to their concerned local bodies in the matter for your kind perusal and ready reference.

In view of the above, Government of West Bengal is requested to issue appropriate directions in the matter to all Municipal Corporations, development Authorities, Municipal Council' etc. to not to insist Architects registered with the Council of Architecture to obtain any registration/license for carrying the profession of architect under their jurisdiction and also not to grant any registration/license as an "Architect" to any person.

It is requested to kindly keep the Council posted with the action taken in the matter.

Thanking you,

Yours faithfully,

R.K. Oberoi
Registrar

Encl: As above



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Copy for information and necessary action to:

Sri Sandip Kumar Ray Chaudhari, WBJS
Secretary Department of Law
Writers Building, Main Block, 1st Floor
Kolkata-700001
E-mail: seclaw@wb.gov.in

Ar. Mrs. Nupur Banerjee, Member, COA &
Chief Govt. Architect
Govt of West Bengal
Bhabani Bhawan, New Building,
31/1 Bevedere Road Kolkata-700027
Email: cgapwdwb@gmail.com

The Commissioner
Asansol Municipal Corporation
Station Road, Asansol-713301 Burdwan,
West Bengal

✓ The Commissioner
Kolkata Municipal Corporation
5, S.N. Banerjee Road,
Kolkata-700013

In the High Court at Calcutta

Ordinary Original Civil Jurisdiction

Present

The Hon^{ble} Mr. Justice
Umesh Chandra Banerjee

24 July, 1989

Court

Utpal Bose And Others

vs State Of West Bengal And Others on 24 July, 1989

Equivalent citations: AIR 1991 Cal 48

Bench: U C Banerjee

The change in the socio-economic condition of the country has resulted in the building construction activity a phenomenal upward trend. To meet the growing demand in the construction of building activity, there was an upsurge of under-qualified persons describing themselves as architects and resulting in unsafe work of construction. The Architects Act, 1972 was engrafted in the Statute Book to provide for the registration of architects so as to eradicate the unqualified and under-qualified persons taking upon the responsibility in that regard as architects.

Section 25 of the Act of 1972 provides that a person shall be entitled, on payment of a 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 the architect in India and holds a recognised qualification. S. 29 provides that the Council established in terms of the Act is empowered to remove the name of any architect from the register to be maintained in terms of the provisions of the Act. Retention of the name in the register by payment of fees has also been engrafted in the Statute Book under S. 27 of the Act and in terms of S. 44 the Central Government has been authorised to make rules for all or the matters as specified in sub-sec. (2) of S. 44 of the Act of 1972. The Schedule to the Act provides the qualification for being registered as architects under the Act. On a perusal of the statute, it appears that the Act of 1972 is a complete Code in itself and provides for all possible situations in regard thereto.

The main controversy in this writ petition centres round the power of the Municipal Corporation of Calcutta to impose the additional fee on architects and the regulatory measures introduced thereby. Mr. Dutt appearing for the petitioners submitted that S. 414 of the Calcutta Municipal Corporation Act, 1980 purports to levy additional fee as regards architects and on this score, it was contended firstly that since there is no quid pro quo, question of levy of a fee does not and cannot arise.

The doctrine of 'quid pro quo' has received a considerable attention of our Courts but the traditional concept of the doctrine has been watered down to a great extent. In this context reference may be made to the decision of the Supreme Court in the case of City Corporation of Calicut v. Thacham Thachambalatch Sadasivam, wherein the Supreme Court observed (at p. 758 of AIR):

"It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered or the advantages conferred, such relation need not be direct a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

The earlier decision of the Supreme Court in the case of Municipal Corporation of Delhi v. Md. Yasin also observed in similar tone as the Supreme Court observed (at p. 757 of AIR 1985 SC):

"What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hall-mark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantage

conferred, such relation need not be direct, a mere casual relation may be enough. Further; neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad relationship is all that is necessary. Quid pro quo in the strict sense is not the one had only true index of a fee; nor is it necessarily absent in a tax".

Let us, therefore, now analyse as to what are the privileges enjoyed by the architects by reason of such special fee. In the affidavit-in-opposition it has been categorically stated that by reason of the special fee levied under S. 414, the architects are being allowed access as regards the records of the Municipal Corporation of Calcutta which is a privilege which is not granted to any other person, but specially ear-marked for those who are within the ambit of the provisions of S. 414 of the Calcutta Municipal Corporation Act 1980. I need not detail the special privilege or benefits or the services rendered by the Municipal Corporation of Calcutta in favour of the architects suffice it to say that there is sufficient justification for such a levy of a special fee. In that view of the matter, I am unable to accept the contention of Mr. Dutt that the fee imposed under S. 414 ought to be declared invalid on the ground of there being no quid pro quo. As such the first contention of Mr. Dutt fails.

Mr. Dutt next contended that items 49, 60 and 66 of List II of the 7th Schedule do not authorise such an imposition of tax and as such S. 414 of the Act of 1980 ultra vires the provisions of the Constitution since the State Legislature had no power or authority to legislate on a field already occupied and impose second licence fees in regard to a particular profession. Mr. Dutt submitted that there is only one class of architects and as such bifurcation in that regard is not possible. It was contended that no imposition can be had on one class of architects, whereas the others would not be so brought under the purview of the provisions under S. 414.

At this juncture S. 414 is set out hereunder for convenience sake and for better appreciation of the submissions made on behalf of the parties. S. 414 reads:

"Section 414: Licensing of Building Architects.

- (I) The Municipal Commissioner may, from time to time and in accordance with such rules regarding qualification of architects in respect of several class of buildings as may be prescribed grant licence to any architect as a licensed Building Architect for the purpose of this Chapter;
- (II) Every such licence shall be renewed every three years;
- (III) The Mayor-in-Council may from time to time prescribe a scale of fee for licenced building architects in respect of any class of buildings to be made applicable in the absence of any written contract to the contrary".

Incidentally it is to be noted at this juncture that the Calcutta Municipal Corporation on the strength of S. 414 of the Act of 1980 issues fresh licence to the architects upon payment of a fee of Rs. 900/- which has been subsequently raised to Rs. 1800/-. This imposition of the licence fee and renewal after every three years is what is being objected to as also the power of the Mayor-in-Council as regards the scale of fees for licenced building architects as envisaged under sub-section (3) of S. 414. It has been submitted that it is an unreasonable restriction on the right of the architects to practice the profession of architects. The main grounds of challenge being lack of legislative competence.

The petitioners are the architects duly qualified from the institution recognised under the Architects Act 1972. As such architects the petitioners carry on profession of architects in the country and in particular in the State of West Bengal. The petitioners upon payment of prescribed fee under the Architects Act 1972 including the renewal fee continued to have their names entered in the register maintained by the Council of Architects established under the Architects Act. The petitioners contended that by reason of such registration the petitioners are entitled to carry on the profession of architects throughout India and no further registration is called for neither there can be any such requirement of law since the Central Act of 1972 (Architect Act 1972) has already occupied the field and has prescribed the method and mode of registration of architects in the country.

Schedule 16 of the Calcutta Municipal Corporation Act 1951 which has been saved by the 1980 Act lays down the building rules within the Metropolitan city of Calcutta. Rule 50 provides that every person who intends to erect new building or add to or alter any building shall employ a licenced building architect for the purpose of erection or addition or alteration to the existing building, as the case may be. Rule 50 further provides that the name, address and the licence number of the person so employed shall be stated in the application under R. 47 of the Schedule 16 in respect of such a building. It is to be noted that the Calcutta Municipal Corporation Act 1980 came into force on 4th Jan., 1984 and S. 414 of the Act of 1980 provides for the licensing of building

architects and upon payment of a fee as noted above. Charge of special fee is being objected to on the ground that since the registration is otherwise valid under the Architects Act, question of having a further registration does not arise. Prescribed scale of fee by the Mayor-in-Council in terms of S. 414(3) also cannot be had since it seeks to discriminate the architects registered under the Architects Act 1972 wherein a scale of fee has already been prescribed for the purpose of carrying on the profession including the works contained in Chapter 22 of the Calcutta Municipal Corporation Act read with Sch. 16 of the Act of 1951. Whatever the quantum of fee, it was contended, the question of further registration under the Calcutta Municipal Corporation Act by way of a grant of licence to an architect having once registered under the provisions of Architects Act 1972 does not and cannot arise.

Though strenuous submissions have been made as regards validity of the legislation on the ground of incompetence and for declaration of the provisions of S. 414 of the Calcutta Municipal Corporation Act as ultra vires the Constitution, the Law Courts would be loath to declare it to be so on the well-settled principle of law that the validity of a statute is to be always presumed unless in clearest possible way ultra vires the provisions of the Constitution. Needless to say in this context that it is further well-settled that if a legislation can be saved, it is the Court's duty to save the legislation rather than declaring it to be invalid in law. Chapter 22 of the Calcutta Municipal Act, 1980 provides the procedural aspect for erection of building as also powers of the concerned authority in regard to certain specified buildings. Along with the general conditions of erection of buildings and the certain other specified items to regulate future construction of building or alteration of existing building etc. the statute under Head 'C' provides Licensing of Building Architects in S. 414 of the Act of 1980.

It appears that even though 1951 Act as amended by the Calcutta Municipal Amendment Act 1977 incorporate licensing of building architects in S. 378. The provision of sub-section (3) was not in the statute book under the 1951 Act even under Amendment in 1977. In 1980 the Act engrafted S. 414(3) which provides payment of a prescribed scale of fees.

The provisions of the Architects Act 1972 read with the statements of objects in not uncertain terms allow an architect to practice the profession of architects throughout the country and since the possession of a registration certificate under the Architects Act 1972 was found sufficient to the law makers of the country, question of further registration becomes wholly redundant in that regard. The legislative field is already occupied by the Architects Act 1972 and on the wake of the existing provisions of the Act of 1972, in my view, the state Legislature does not have the necessary power to legislate in relation to persons who are already registered as architects under the Act of 1972. As stated earlier, Architects Act is a complete Code in itself and caters for the needs of the Society. The powers granted previously under the Calcutta Municipal Act of 1951 cannot be taken recourse to since Architects Act of 1972 is a later legislation by the Central Government. After the incorporation of the 1972 Act, the State Legislature does not have any further competence to legislate on the same field. Powers under the 1951 Act, however, cannot be said to be contrary to any law since there existed no other central law prior to 1972. An architect having registered himself as an architect within the meaning of Architects Act 1972 cannot be restricted in propagating the profession of architects anywhere in the country and further state legislation cannot otherwise affect the right of the architects, once registered under the Central Statute, to practice the profession of architects anywhere in the country. One redeeming feature however is to be noted that the Architects Act does not restrict the practice by architects not registered under the Act. Therefore, some architects may still be free to do the work which is normally done by architects, but outside the purview of the Architects Act of 1972 and the State Legislature's right or authority to deal with those who are outside the purview of the Architects Act cannot be disputed since there are some architects who are not within the ambit or are not protected by the provisions of the Architects Act 1972 (vide L.P.A. No. 59 of 1975: Municipal Corporation of Delhi v. Ram Kumar Bharadwaj).

The other aspect of the matter is in regard to S. 599 of the Act of 1980. Section 599 provides:

"Save as otherwise provided in this Act, nothing contained in this Act shall be construed to authorise the Corporation or any Municipal Authority or any officer or other employee of the Corporation to disregard of any law for the time being in force."

On the wake of the above provision and by reason of the express provision of the Architects Act 1972, question of further legislation by way of any restriction does not and cannot arise. Registration Certificate under the Architects Act 1972 has been thought of to be sufficient by the Parliament and question of further legislation as such does not and cannot arise. In this context the Delhi High Court's decision in the case of Municipal Corporation of Delhi v. Ram Kumar Bharadwaj (LPA No. 59 of 1975) seems to be very apposite. The Delhi High Court while dealing with S. 502 of the Delhi Municipal Corporation Act 1957 which is in pan materia with S. 599 of the Act under consideration, observed:

"This salutary provision recognises that the Delhi Municipal Corporation Act being a general measure relating to the functioning of the Corporation is not expected to provide for the details of the various related questions with which the Corporation may have

the deal for the time being only as in the absence of special law dealing with such matters. The Architects' Act 1972 is a special law dealing with the qualifications to be possessed by persons for being registered as – Architects and restricting the terms "Architect" or "Registered Architect" to such persons only. Since the possession of a registration certificate under the Architects Act 1972 regarded by Parliament as sufficient qualification for the practice of architects and since all related questions have been dealt with in respect of the architects by the said Act, it became unnecessary for the corporation to do so thereafter. In view of S. 502 of the Act the provisions referred to above which could be constructed (?) as authorising the corporation to regulate the licensing of architects and draughtsman could not be constructed (?) after coming into force of the Architects Act 1972".

In that view of the matter it is declared that the provisions of Calcutta Municipal Corporation Act will not in any way affect the rights of the architects registered under the Architects Act 1972 to practise the profession of architects without any further restriction and the writ petitioners shall be free to act as architects without any fetter and without any further licence and without payment of any licence fee or amount of security. This however is restricted to the persons registered under the Architects Act and not to have general application.

In the view I have taken, I need not to go into the issue as regards the validity of the legislation as urged by Mr. Dim on behalf of the petitioners suffice it however to record that the issue involved is interesting both in fact or in law.

The other issue is in regard to the restriction as regards to the architects' status and functions under Bidhan Nagar Building Rules. It has been contended by Mr. Dutt that the preparation and maintenance of a panel of architects means a restriction on the architects and as such is violative of the Architects Act 1972. Mr. Dutt contended that no rules can be framed so as to defeat the purpose of a Central Legislation. In my view, there is substantial force in Mr. Dutta's submission. In the event, a panel is prepared by the concerned authority, there is an innate restriction for some others who are not empanelled. Can it thus be said that it is in consonance with the provisions of the Architects Act? In my view the answer is in the negative. Preparation of panel means restriction on some others and there cannot be any manner or doubt in regard thereto. In the view expressed above while dealing with the main brunt of the submissions of the parties, I am of the view that such a panel cannot be maintained or prepared. Anybody having qualification of an architect ought to be allowed to submit a plan provided of course he is registered under the Architects Act. As such the rules in regard to such a panel being maintained ought to be and it is hereby declared to be invalid and bad in law. As regards the counter signature of an Engineer, in my view, however, the appropriate authority is within its right considering the safety of the building to ask for an Engineering Certification as regards the structural designs and the work of construction. It is a safety device which cannot and ought not to be interfered with by the law Courts. The authority concerned considering the situation of the land in all its prospective have thought it fit to ask for a certification by an Engineer. The same in my view cannot be termed to be unreasonable restriction. This is no restriction as such but for the purpose of effecting proper and beneficial user of land and the building thereon, this device has been adopted. As such the contention of Mr. Dutt in regard thereto fails.

The last contention of Mr. Dutt is in regard to the restriction imposed by the Bidhan Nagar Authorities on the scale of fees of the architects. As long as it is not inconsistent with the Architects Act, there cannot be any complaint in my view in that regard. Apparently it cannot be said to be inconsistent or in conflict with the Architects Act. As such, I am not inclined to make any observation in regard thereto.

22. The writ petition is disposed of accordingly. There will be no order as to costs.

23. A prayer for stay is made. The prayer is allowed. Stay is granted for 10 (ten) days.

I hereby certify that this is true copy of the original in my custody.

Dated this 11th day of November 1989.

Umesh Chandra Banerjee, J.

The Registrar of the High Court at Calcutta

In the High Court of Delhi

**IN THE HIGH COURT OF DELHI AT NEW DELHI
L.P.A. No.59 of 1975**

1. The Municipal Corporation of Delhi, through the Commissioner, Town Hall, Delhi.
2. The Commissioner the Municipal Corporation of Delhi, Town Hall, Delhi.
3. The Executive Engineer (Bld), Building Department (HQ), Town Hall, Delhi.PETITIONERS

VERSUS

1. Shri Ram Kumar Bhardwaj, S/o. Shri Ram Chandra Sharma, 25/149 Shaktinagar, Delhi-7
2. Shri Kasturi Lal, S/o. Shri Panju Ram, 76-A, East Azad Nagar, Shahdara Delhi.
3. Shri Miri Lal Sanoriya, S/o. Shri Nanak Chand Sanoriya, 2/44 Roop Nagar, Delhi-7
4. Shri R.G. Sanoria, S/o Shri Niader Mal Sanoria, 243, Ajmeri Gate, Delhi-6
5. Shri C.L. Ghai, S/o. Jiwand Lal, 1/32 B, Poorvi Marg, New Delhi-6.
6. Shri Radhe Lal Saxena, S/o. Shri Brij Basi Lal Saxena, C-1/44, S.J.D.A., New Delhi.7
7. Shri Chanan Ram Sharma, S/o. Sh. Manak Chand Sharma. 4/60, Roop Nagar, Delhi-7.
8. Shri P.S. Jain, S/o. Sh. Bansari Das Jain, 2153, Gali Hanuman Pershad, Masjid Khajoor, Delhi-6.RESPONDENTS

LETTERS PATENT UNDER X OF THE LETTERS PATENT AGAINST THE JUDGEMENT DATED 23.5.1975 BY HON'BLE MR. JUSTICE S. RANGARAJAN IN C.W.P. NO. 509/75 and 515/75.

This the 2nd day of April, 1980.

CORAM:
HON'BLE THE CHIEF JUSTICE MR. JUSTICE V.S. DESHPANDE
HON'BLE MR. JUSTICE B.N. KIRPAL.

FOR THE PETITIONER:
SHRI MAHARAJ KISHAN WITH SHRI P.R MONGA, ADVOCATE.

FOR THE RESPONDENT:
SHRI D.D CHAWLA, SR. ADVOCATE WITH SHRI C.L CHAUDHERY, ADVOCATE

ORDER

V.S. DESHPANDE C.J. (ORAL):

The respondents are registered as architects under the Architects Act, 1972 and practice as such in the Union Territory of Delhi. They filed two writ petitions challenging the power of the Delhi Municipal Corporation to impose restrictions on their right to practise as architects. The restrictions and the basis on which the restriction was imposed may be described as below :-

Section 2 (25) of the Delhi Municipal Corporation Act, 1957 (the Act) is as below:

"Licensed architect" "licensed draughtsman" "licensed engineer, "licensed plumber, "licensed surveyor" and "licensed town planner" mean respectively a person licensed under the provisions of this Act as an architect, draughtsman, engineer, plumber, surveyor and town planner."

Since the definition of section 2(25) contemplates that a licensed architect or a licensed draughtsman, it is necessary to know the provisions which empower the Corporation to license an architect or a draughtsman under the Act. Section 430 (1) of the Act states that whenever it is provided in this Act or any bye-law made there under that a license or a "written permission may be

granted for any purpose, such license or a written permission shall be signed by the Commissioner or by the officer empowered to grant the same under this Act or the bye laws made thereunder". There is no specific provision in the Act itself empowering the Corporation to issue license to an architect or a draughtsman. Section 481 (1) of the Act empowers the Corporation to make bye- laws for various matters. Part F thereof empowers the making of bye-laws relating to buildings. Part L thereof empowers the making of bye-laws relating to miscellaneous matters. Clause (7) of Part L is as follows :-

"(7) Any other matter which is to be or may be prescribed by bye-laws made under this Act or in respect of which this Act makes no provisions or makes insufficient provision and provision is, in the opinion of the Corporation, necessary for the efficient municipal government of Delhi."

This is a residuary power to make bye-laws given to the Corporation, if the making of such bye-laws is necessary "for the efficient municipal government of Delhi".

Whatever may have been the position before the coming into force of the Architects Act, 1972, what we have to consider is whether after the coming into force of the said Act the Delhi Municipal Corporation has any power to regulate the practice of architects by the insistence that they must possess a license issued by the Corporation. The Architects Act, 1972 sets out the qualification to be possessed by the persons to be registered as architects under the said Act. It also prohibits persons who do not have such registration from describing themselves as architects and also deals with disciplinary action for misconduct of architects. It is, therefore, a complete enactment the effect of which is that a person cannot call himself an architect unless he is registered under the said Act. Of course, unlike the Advocates Act, which restricts there under, the Architects Act does not restrict the practice by architects to persons registered under the said Act. Therefore, some persons who cannot call themselves architects may still be free to do the work which is ordinarily done by architects and they are not dealt with by the Architects Act; whether the Corporation can deal with such persons is not a question which arises before us. Our considerations is limited to the question whether the corporation can regulate the profession and practice of architects registered under the Architects Act, 1972 by insisting that the architects practicing in Delhi and submitting plans for construction of buildings for the approval of the corporation must possess licenses issued by the Corporation.

The provisions in the Act on which such authority could be claimed by the corporation have been discussed above and it has been found that there is no specific provision in the Delhi Municipal Corporation Act itself authorising the corporation to issues licenses to architects. We have, therefore, to seek for such provisions in the bye-laws, 69 bye-laws 6, 9 and 10(2) of the Building Bye-laws, 1959 refer to the licensed architects as being persons who can submit building plans. In view of the definition of "licensed architects" in section 2(25) the licensed architects referred to in the bye-laws have to be persons who are licensed under the provisions of the Act. The result is that on a consideration of these bye-laws the Commissioner, Delhi Municipal Corporation, issued the letter, dated 7th May, 1974 which is Annexure A to writ petition. In this letter it was proposed that the corporation may frame bye-laws for licensing and registration, inter alia, of draughtsman and architects as required by virtue of powers under 2(25) read with sections 430 and 481 of the Act, and Bye-laws 6 and 9 of the Building bye-laws, 1959. In the bye-laws proposed in this letter, provision is sought to be made to prescribe qualifications to be held by architects and draughtsman before licenses could be issued to them, for payment of license fees, deposit of security amounts by them and certain penalties to be imposed on them for contravention of these bye-laws. The whole scheme of such regulation was challenged by the respondents.

The writ petitions of the respondents are allowed by the learned Single Judge, who granted reliefs prayed for, namely to declare that this regulatory scheme was contrary to the Architects Act, 1972 and superseded by the said Act and, therefore, the purported action of the Corporation was ultra vires the Delhi Municipal Corporation Act, 1957. The resolution No.724, dated 3.9.1974, and the orders dated 2.4.1975 and 15.4.1975 were also apparently quashed by, allowing the writ petitions as a whole. These appeals have been preferred by the Corporation against the said decisions of learned Single Judge.

Two considerations are relevant to determine the authority of the Corporation to regulate the practice of the architects in submitting building plans to the Corporation for approval. Firstly, whether the Act and bye-laws framed validly thereunder authorise the Corporation to do so, and secondly, what is the effect on the authority of the Corporation, if any, of the passing of the Architects Act, 1972.

CONSIDERATION NO. 1

Presumably, section 2(25) of the Act contemplated issue of licenses to architects and draughtsman because at the time the Act was framed and enacted there was no Act providing for the registration of architects and issuing of registration certificates to them and thus regulating the profession and practice of Architects. Further, there may be other persons who cannot be registered as architects under the Architects Act, 1972 and in respect of such persons it is arguable that the Corporation had to make some provision because the building plans submitted to the Corporation have to be by persons who are qualified to the satisfaction of the Corporation. It is necessary for the Corporation to ensure that building plans are made by qualified persons and since the Corporation authorities cannot be expected to scrutinise the building plans with a view to redrafting them in each and every case, some preliminary safeguard that the plans have been prepared by qualified persons could be insisted up in by corporation. The

authority for making bye-laws for this purpose is somewhat tenuous, but it may be spelt out from the provision of section 481 part F and Part L, particularly sub section (i) of part L containing the words necessary for the efficient municipal Government of Delhi. In so far as the building plans submitted to the Corporation made by persons who are not architects under the Architect's Act, 1972 are concerned, we need not say anything as to the power of the Corporation to insist on such to the persons possessing licenses to be issued by the Corporation under the bye-laws framed by the Corporation. In our view, therefore, the authority of the Corporation, if any, is restricted to the licensing and making other related provisions to govern the qualifications and conduct of persons other than the registered architects while submitting building plans to the Corporation. But as will be shown under the second consideration below, the Corporation does not possess any such power after the coming into force of the Architects Act, 1972 in relation to persons who are registered as architects there under.

CONSIDERATION NO. 2

Section 502 of the Act is as follows :

"Save as provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the corporation or any municipal authority or any municipal officer or other municipal employees of any law for the time being enforce."

This salutory provision recognises that the Delhi Municipal Corporation Act being a general measure relating to the functioning of the Corporation is not expected to provide for the details of the various related questions with which the Corporation may have to deal for the time being only or in the absence of special law dealing with such matters. The Architects Act, 1972 is a special law dealing with the qualifications to be possessed by persons for being registered as architects and restricting the terms "architect" or "registered architect" to such persons only. Since the possession of a registration certificate under the Architects Act, 1972 regarded by Parliament as sufficient qualification for the practice of architects and since all related questions have been dealt with in respect of architects by the said Act, it became unnecessary for the Corporation to do so thereafter. In view of section 502 of the Act, the provisions referred to above which could be construed as authorising the corporation to regulate the licensing of architects and draughtsman could not be so construed after coming into force of the Architects Act, 1972.

We accordingly declare that the judgements under appeal by the learned single Judge are not to be understood to mean that the impugned actions of the Corporation including the bye-laws and the resolutions or orders referred to in relief(a) asked for in the writ petitions are quashed for all purposes. It is sufficient for us to declare that none of these provisions will affect in any way the status and practice of persons, including the possession of license and payment of license fee or amounts of security etc. and the respondents shall be free to act as architects and submit building plans to the Municipal Corporation of Delhi without having to comply with any of these provisions.

Subject to these observations, the appeals are dismissed without any order as to costs.

Sd/-
B.N. Kirpal
Judge

Sd/-
V .S. Despande
Chief Justice

Seal High Court of Delhi

Special Leave Petition in Supreme Court of India

Item No.10 Court No.7 041281 Section XIV

SUPREME COURT OF INDIA RECORD OF PROCEEDINGS

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL)

Nos. 6469 and 9396 of 1980 A/N

(From the judgement and order dated 2-4-80 of the High Court of Delhi at New Delhi)

In L:P:A. No. 59/75

Municipal Corpn. of DelhiPETITIONER(S)

VERSUS

Ram Kumar Bhardwaj & Ors. etc. (with appln for stay)RESPONDENT(S)

Date : 22-4-83. This petition was called on for hearing today.

CORAM:

Hon'ble Mr. Justice A. P. Sen
Hon'ble Mr. Justice E. S. Venkatramiah

FOR THE PETITIONER(S):

Mr. L. N. Sinha, A. G. Mr. Subhash Bhatt &
Mr. B. P. Maheshwari, Advs.

FOR THE RESPONDENT(S):

Mr. S. L. Bhatia, Sr. Adv. Mr. B. R. Aggarwal and
Mr. K. S. Rohtagi, Advs.

Upon hearing counsel the Court made the following

ORDER

Special Leave Petitions are dismissed

Sd/-
Court Master

1699
संख्या 19-आ-3-1999

प्रेमक,

श्री अतुल कुमार मुत्ता,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,

उपाध्यक्ष
विकास प्राधिकरण,
मुजफ्फरनगर।

आवास अनुभाग-3

लखनऊ : दिनांक 18 अगस्त, 1999

विषय: आर्किटेक्ट एक्ट-1972 के प्राविधानों को लागू किया जाना।

महोदय,

प्रशासनिक अधिकारी, काउन्सिल आफ आर्किटेक्चर द्वारा शासन के संज्ञान में लाया गया है कि मुजफ्फरनगर विकास प्राधिकरण क्षेत्र में कतिपय व्यक्तियों द्वारा अनधिकृत तरीके से आर्किटेक्ट के रूप में कार्य किया जा रहा है जोकि अनुचित है। उन्होने अनुरोध किया है कि जनसाधारण के हितों की सुरक्षा तथा आर्किटेक्चर प्रोफेशन के संरक्षण हेतु इस पर तत्काल प्रतिबन्ध लगाया जाना आवश्यक है।

2- इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि आर्किटेक्ट एक्ट-1972 एक केन्द्रीय कानून है तथा भारत सरकार के गजट नोटिफिकेशन के दिनांक (31 मई, 1972) से सम्पूर्ण भारतवर्ष में प्रभावी है। इस अधिनियम की धारा-3 के अन्तर्गत काउन्सिल आफ आर्किटेक्चर का गठन किया गया है तथा धारा-37 के प्राविधानों के अन्तर्गत काउन्सिल आफ आर्किटेक्चर से रजिस्टर्ड आर्किटेक्ट के अतिरिक्त किसी अन्य व्यक्ति द्वारा आर्किटेक्ट के टाइटिल के साथ कार्य करने पर पूर्ण प्रतिबन्ध है। अधिनियम की धारा-39 के अन्तर्गत ऐसा करना एक दण्डनीय अपराध भी है। इसके अतिरिक्त काउन्सिल आफ आर्किटेक्ट से रजिस्टर्ड आर्किटेक्ट को सम्पूर्ण भारतवर्ष में आर्किटेक्ट के रूप में कार्य करने के लिए किसी अन्य स्तर पर रजिस्ट्रेशन कराने अथवा लाइसेंस लेने की भी आवश्यकता नहीं है।

3- कृपया अपने प्राधिकरण क्षेत्र में आर्किटेक्ट एक्ट-1972 के प्राविधानों को प्रभावी ढंग से लागू कराएँ तथा अनधिकृत रूप से आर्किटेक्ट के रूप में प्रवृत्त कर

रहे व्यक्तियों के विरुद्ध तत्काल आवश्यक कार्यवाही करने का कष्ट करें। कृत कार्यवाही से शासन को भी अवगत कराए।

भवदीय,

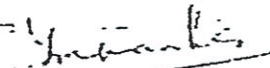


(अतुल कुमार गुप्ता)
सचिव।

संख्या 1699 (1)/9-आ-3-1999 तददिनांक

- प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-
- 1- श्री के० गोपाल कृष्ण भट्ट, प्रशासनिक अधिकारी, काउन्सिल आफ आर्किटेक्टचर, इण्डिया हेवीटाट सेन्टर, 6-ए, प्रथम तल, लोदी रोड, नई दिल्ली को उनके फ़ाईल सी.ए./28/99/ए.ई. दिनांक 27.3.99 जो मुख्य सचिव, उ० प्र० शासन को सम्बोधित है, के संदर्भ में।
 - 2- स्टाफ़ आफिसर, मुख्य सचिव, उत्तर प्रदेश शासन।
 - 3- आवास आयुक्त, आवास एवं विकास परिषद, उत्तर प्रदेश, लखनऊ।
 - 4- उपाध्यक्ष, समस्त विकास प्राधिकरण, उत्तर प्रदेश।
 - 5- प्रेसीडेन्ट, यू०पी० चैम्बर, इण्डियन इन्स्टीट्यूट आफ आर्किटेक्ट, 58-हजरतगंज, लखनऊ।

आज्ञा से,



(यशवीर सिंह चौहान)

विशेष सचिव।

प्रेषक,

श्री जे.एस मिश्र,
सचिव,
उत्तर प्रदेश शासन।

सेवा में,

1. आवास आयुक्त,
उत्तर प्रदेश आवास एवं विकास परिषद,
उत्तर प्रदेश।
2. उपाध्यक्ष,
समस्त विकास प्राधिकरण,
उत्तर प्रदेश।
3. अध्यक्ष,
समस्त विशेष क्षेत्र विकास प्राधिकरण,
उत्तर प्रदेश।
4. नियन्त्रक प्राधिकारी,
समस्त विनियमित क्षेत्र,
उत्तर प्रदेश।

आवास एवं शहरी नियोजन अनुभाग-3

लखनऊ, दिनांक: 22 अगस्त, 2003

विषय: आवास एवं विकास परिषद, विकास प्राधिकरणों तथा नियन्त्रक प्राधिकारियों द्वारा अनुज्ञापित व्यक्तियों को लाईसेन्स जारी किए जाने हेतु आर्कीटेक्ट एक्ट, 1972 के प्राविधानों को लागू किया जाना।

महोदय,

उपर्युक्त विषय के संदर्भ में मानव संसाधन विकास मंत्रालय, भारत सरकार ने इस तथ्य की ओर ध्यानान्कर्षण किया है कि आर्कीटेक्ट एक्ट, 1972 एक केन्द्रीय कानून है जो दिनांक 01.9.1972 से लागू है एवं इसका मुख्य प्रयोजन प्रैक्टिसिंग आर्कीटेक्ट्स के प्रॉफेशनल आचरण को नियन्त्रित करना तथा सामान्य जनता को ऐसे अपात्र व्यक्तियों से संरक्षण दिलाना है जो अनधिकृत रूप से आर्कीटेक्ट के रूप में कार्यरत हैं। उक्त एक्ट के प्राविधानों के अनुसार आर्कीटेक्ट की उपाधि के रूप में केवल वही व्यक्ति प्रैक्टिस कर सकता है जो काउन्सिल ऑफ आर्कीटेक्चर में पंजीकृत है। परन्तु इसके बावजूद मानव संसाधन विकास मंत्रालय के समक्ष ऐसी शिकायतें प्राप्त हो रही हैं कि स्थानीय अभिकरणों द्वारा लाईसेन्स जारी करने में आर्कीटेक्ट एक्ट, 1972 के प्राविधानों का उल्लंघन किया जा रहा है। अतः मानव संसाधन विकास मंत्रालय द्वारा उक्त एक्ट के प्राविधानों को लागू करने हेतु समस्त सम्बन्धित अभिकरणों को आवश्यक निर्देश जारी करने की अपेक्षा की गई है।

2. इस सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि 'नेशनल बिल्डिंग कोड' में आर्कीटेक्ट, इंजीनियर, स्ट्रक्चरल इंजीनियर, टाउन प्लानर व सुपरवाइजर की अर्हताएँ एवं क्षमता सम्बन्धी गाईडलाइन्स दी गई हैं जिनके आधार पर उत्तर प्रदेश नगर योजना और विकास अधिनियम, 1973 की धारा-57(डी) के अधीन आर्कीटेक्ट टाउन प्लानर, इंजीनियर सर्वेयर, हाफ्ट्समैन आदि को भवन मानचित्र, जलापूर्ति, ड्रेनेज एवं सीवरज प्लान बनाने हेतु राज्य सरकार के पूर्वानुमोदन से बनाए गए बाई-जॉज के अनुसार लाईसेन्स जारी करने का आभेकार है। आर्कीटेक्ट एक्ट, 1972 के अनुसार ऐसा तकनीकी व्यक्ति जो अर्ह आर्कीटेक्ट नहीं है एवं काउन्सिल ऑफ आर्कीटेक्चर में पंजीकृत नहीं है, आर्कीटेक्ट की हैसियत से व्यवसाय

3. नही कर सकता है। अधिनियम की धारा-39 के अन्तर्गत ऐसा करना एक दण्डनीय अपराध भी है। इसके अतिरिक्त काउन्सिल ऑफ आर्कीटेक्ट्स से पंजीकृत आर्कीटेक्ट को सम्पूर्ण भारतवर्ष में आर्कीटेक्ट के रूप में कार्य करने के लिए किसी अन्य स्तर पर पंजीकरण कराने अथवा लाइसेन्स लेने की भी आवश्यकता नहीं है।

4. उपर्युक्त के दृष्टिगत आर्कीटेक्ट्स प्रोफेशन के संरक्षण तथा जनसाधारण के हितों की सुरक्षा हेतु अपने प्राधिकरण क्षेत्र में कृपया आर्कीटेक्ट ऐक्ट, 1972 के प्रावधानों को प्रभावी रूप से लागू कराए तथा अनधिकृत रूप से आर्कीटेक्ट के रूप में प्रैक्टिस कर रहे व्यक्तियों के विरुद्ध तत्काल आवश्यक कार्यवाही करना सुनिश्चित करें। कृत कार्यवाही से शासन को भी अवगत कराने का कष्ट करें।

भवदीय

(जे. एन. मिश्र.)
सचिव।

संख्या: 3883(1)/9-आ-3-2003 तददिनांक।

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित-

1. श्री विनोद कुमार, रजिस्ट्रार, काउन्सिल ऑफ आर्कीटेक्ट, इण्डिया हैबिटाट सेक्टर, 6-ए, प्रथम तल, लोदी रोड, नई दिल्ली।
2. संयुक्त सचिव, तकनीकी, मानव संसाधन विकास मंत्रालय, सेक्रेण्डरी एवं हायर एजुकेशन विभाग, भारत सरकार, शास्त्री भवन, नई दिल्ली को उनके पत्र संख्या एफ-17-6/2002-टीएस. एट दिनांक 19.12.2002 के संदर्भ में।
3. स्टाफ आफिसर, मुख्य सचिव, उत्तर प्रदेश के अवलोकनार्थ।
4. अध्यक्ष समस्त विकास प्राधिकरण, उत्तर प्रदेश।
5. मुख्य नगर एवं ग्राम नियोजक, उत्तर प्रदेश।
3. अध्यक्ष यूपी.रेडको, लखनऊ।
4. अध्यक्ष, उत्तर प्रदेश आर्कीटेक्ट्स एसोशिएशन, 350, सेक्टर-28 नोएडा, उत्तर प्रदेश।
6. अध्यक्ष, यू.पी. चैप्टर, इण्डियन इन्स्टीट्यूट ऑफ आर्कीटेक्ट्स, लखनऊ।
7. अपर निदेशक, नियोजन, आवास बन्धु।

आज्ञा से

(दिवाकर त्रिपाठी)
विशेष सचिव।

प्रेषक,

पी सी शर्मा,
सचिव,
उत्तरांचल।

सेवा में,

1. अध्यक्ष
विशेष क्षेत्र विकास प्राधिकरण,
दूनघाटी/नैनीताल/गंगोत्री।
2. उपाध्यक्ष
विकास प्राधिकरण
मसूरी-देहरादून/हरिद्वार।
3. नियत प्राधिकारी
विनियमित क्षेत्र, रुडकी/बद्रीनाथ/औली/केदारनाथ/गोपेश्वर-चमोली/गौघर/चौपला/पौडी/उत्तरकाशी/श्रीनगर/नया टिहरी/चकराता
(नदीन)/पिथौरागढ़/कौसानी/हल्द्वानी-काठगोदान/रूद्रपुर/किच्छा/काशीपुर/ रामनगर/बाजपुर

देहरादून: दिनांक 14 जून 2001

आवास एवं शहरी विकास

विषय: आर्किटेक्ट एक्ट-1972 के प्रावधानों को लागू किया जाना।

महोदय,

प्रशासनिक अधिकारी, काउन्सिल ऑफ आर्किटेक्ट्स द्वारा शासन के संज्ञान में लाया गया है कि उत्तरांचल राज्य में कतिपय व्यक्तियों द्वारा जो वास्तुकार हेतु आवश्यक अर्हताएँ नहीं रखते हैं छद्म रूप से वास्तुकार के रूप में अपने को प्राधिकरणों तथा विनियमित क्षेत्रों में पंजीकृत करवाकर कार्य कर रहे हैं, जो कि आर्किटेक्ट्स एक्ट 1972 की धारा 37 के प्रावधानों के विरुद्ध हैं। इससे न केवल वास्तुकारों के व्यवसाय बल्कि भवनों के निर्माण संबंधी सुरक्षा तथा डिजाइन पर भी प्रतिकूल प्रभाव पड़ा है। वास्तुकारों के व्यवसाय के संरक्षण एवं जनसाधारण के हितों तथा जानमाल की क्षति की सुरक्षा हेतु, इस पर तत्काल प्रतिबंध लगाये जाने हेतु उनके द्वारा अनुरोध किया गया है।

2. इस संबंध में मुझे यह कहने का निर्देश हुआ है कि आर्किटेक्ट्स एक्ट 1972 एक केन्द्रीय कानून है तथा भारत सरकार के गजट नोटिफिकेशन संख्या 229 दिनांक 1 सितम्बर, 1972 से सम्पूर्ण भारतवर्ष में प्रभावी है। इस अधिनियम की धारा 3 के अंतर्गत काउन्सिल ऑफ आर्किटेक्ट्स का गठन किया गया है तथा धारा 37 के प्रावधानों के अंतर्गत काउन्सिल ऑफ आर्किटेक्ट्स से रजिस्टर्ड आर्किटेक्ट के अतिरिक्त किसी अन्य व्यक्ति द्वारा आर्किटेक्ट के टाईटिल के साथ कार्य करने पर पूर्ण प्रतिबंध है। अधिनियम की धारा 36 के अंतर्गत ऐसा करना एच. 473-तीय अपराध भी है। इसके अतिरिक्त काउन्सिल ऑफ आर्किटेक्ट्स से पंजीकृत आर्किटेक्ट को सम्पूर्ण भारतवर्ष में आर्किटेक्ट के रूप में कार्य करने के लिये किसी अन्य स्तर पर रजिस्ट्रेशन कराने अथवा लाईसेंस लेने की भी आवश्यकता नहीं है, यदि उनका पंजीकरण नियमित रूप से नवीनीकरण हो रहा हो।
3. कृपया अपने क्षेत्र में आप आर्किटेक्ट्स एक्ट, 1972 के प्रावधानों को प्रभावी ढंग से लागू कराये। यदि आपके अधिकरण में कोई व्यक्ति जो काउन्सिल ऑफ आर्किटेक्ट्स द्वारा आर्किटेक्ट के रूप में पंजीकृत नहीं है तथा उसे इस प्रयोजन हेतु लाईसेंस दिया गया है तो उसका लाईसेंस तुरन्त निरस्त कर दिया जाये। अनावधिकृत रूप से आर्किटेक्ट के रूप में कार्य कर रहे व्यक्तियों के विरुद्ध तुरन्त आवश्यक कार्यवाही करके कृत कार्यवाही से शासन को भी अवगत कराये।

भवदीय
Sd/-
(पी.सी. शर्मा)
सचिव

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:

1. श्री के गोपाल कृष्ण भट्ट, प्रशासनिक अधिकारी, काउन्सिल ऑफ आर्किटेक्ट्स, इण्डिया हैबीटाट सेक्टर, 6 ए प्रथम तल, लोधी रोड़, नई दिल्ली को उनके पत्रांक सी0ए0/28/2001/एई दिनांक 04 अप्रैल, 2001 जो मुख्य सचिव उत्तरांचल शासन, देहरादून को संबोधित है, के संदर्भ में।
2. स्टॉफ ऑफिसर, मुख्य सचिव, उत्तरांचल शासन।
3. प्रमुख सचिव एवं आयुक्त, अवस्थपना, उत्तरांचल शासन।
4. प्रभारी अधिकारी नगर एवं ग्राम नियोजन विभाग, उत्तरांचल, देहरादून।

आज्ञा से,
Sd/-
(पी.सी. शर्मा)
सचिव

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Implementation of the Architects Act, 1972 (Central Act No. 20 of 1972) in Andhra Pradesh – Instructions to Urban Development Authorities, Municipal Corporations and Municipalities – Orders – Issued.

MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT (M1) DEPARTMENT

G.O. Rt. No. 978 MA..

Dated 15th November, 2001

Read:

From Sri. A.B. Reddy, President, Practicing Architects Association
letter dated 06.12.1999.

* * *

ORDER:

In the letter read above, the President, Practicing Architects Association has represented that the Architects qualified and registered under the Architects Act, 1972 (Central Act No. 20 of 1972) are entitled to practice anywhere in the country without any further permit or registration or empanelment or restriction imposed by any Municipality / Municipal Corporation or Urban Development Authority in view of the settled position of Law explained by the Hon'ble High Court of Delhi in their judgment in C.W.P. 509/75 and 515/75, LPA No. 59/1975 and in view of the dismissal of Special Leave Appeal No. 6469 and 9380 of 1980 by the Supreme Court of India. He also furnished a copy of the letter addressed by the Joint Educational Advisor Government of India, Ministry of Education and Culture, (Department of Education) dated 28th May, 1984 to all the Chief Secretaries of State Governments wherein he has requested to advise all the local bodies i.e., Municipal Corporations , Municipalities, Urban Development Authorities, not to insist fther registration of fees from the Architects who already registered with the Council of Architecture. They have also submitted that inspite of the above position all the Municipalities and Municipal Corporations are insisting for separate registration / licence thereby causing hardship and imposing unnceccary restrictions. They have th erefore requested to issue necessary instructions to Municipalities / Municipal Corporations / Urban Development Authorities in state.

2. Government after careful examination of the matter hereby direct all the Municipalities, Municipal Corporations, and Urban Development Authorities in the state not to insist for separate registration of licence from the Architects registered with the Council of Architecture under the Architects Act, 1972 (Central Act. No. 20 of 1972). However the Architects shall submit the attested copy of the registration certificate along with the submitted plans.

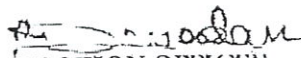
3. The Commissioners of Municipalities / Municipal Corporations and Vice Chairman and Special Officers of Urban Development Authorities are therefore requested to take necessary action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K. GOYAL
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Commissioners of all Municipalities in the state (through R.D.D.T.Ps)
The Commissioners of all Municipal Corporations
The Vice Chairman and Special Officers of all Urban Development Authorities
The Director of Town & Country planning, Hyderabad.
The Chairman Indian Institute of Architects, A.P. Chapter.
The President Practicing Architects Association, A.P.
To All Regional Deputy Director of Town Planning (through D.T. & C.P., Hyd.)

//FORWARDED BY ORDER//


SECTION OFFICER



Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 9

Letter, No 4496/MA/03-4 Dt 23.3.04.

From

Thiru L.N. Vijayaraghavan, I.A.S.,
Secretary to Government.

To

The Commissioner of Municipal Administration, Chennai-5

The Director of Town Panchayats, Chennai -108.

The Member Secretary, C.M.D.A, Chennai -8

The Commissioner, Corporation of Chennai

/Madurai/Coimbatore/Trichy/ Tirunelveli / Salem.

Sir,

Sub: Enforcement of the Architects Act 1972 - Issue of licenses by local
authorities/agencies - Regarding.

Ref. 1. From the Joint Secretary (Technical) to Government of India,
Ministry of Human Resource Development, New Delhi Lr. No. F-
17-6/2002/TS IV dt. 19.12.2002.

2. From the Administrative officer, council of Architecture, New Delhi.
Ref.No. CA/28/2003/AE dt. 8.12.2003.

3. From the Commissioner of Town & Country Planning . Letter Roc
No. 1163/2004/GR dt. 21.1.2004.

I am directed to say that the Joint Secretary to Government of India, Ministry of Human Resources Development, Department of Secondary and Higher Education, New Delhi has stated that the Government of India enacted the Architects Act, 1972 under the Act of the Parliament for the registration of Architects and for matters connected therewith. This statutory legislation had come into force with effect from 1st September/ 1972. The main purpose of this Act is to regulate the practice of Architects and thus to protect the general public from unqualified persons working as Architects and ensure the professional conduct of the practicing Architects. As per the provisions of the Act only those persons "registered" with the council of Architecture under Architects Act 1972 can use title and style of the "Architect". The Government, therefore, can not recognise any person other than a registered architect or a firm of registered architects practicing as an "Architect" for any purpose whatsoever. In spite of these

provisions and also the instructions issued at the level of Central Government it is found that the complaints are still being received in the Ministry and the Council of Architecture from various quarters regarding the violation of the provisions of the Architects Act 1972 by local authorities / agencies etc.

2. The Administrative Officer, Council of Architecture, New Delhi has stated that the council of Architecture has been receiving various representations from architects (persons registered with the Council of Architecture) that they are being compelled to register themselves with the Development Authorities, Municipal Corporations, Municipalities in the State of Tamilnadu and pay the licensing fee for practicing (pursuing the profession of an Architect under their jurisdiction. In a case where Municipal Corporation of Delhi had insisted on fresh registration with the local body from the Architects registered with the Council of Architecture, the High Court of Delhi had given a judgement against the Municipal Corporation of Delhi. The latter went in for appeal to the Supreme Court, but the appeal had been dismissed by the Supreme Court on 22nd April 1983.

3. I am therefore directed to request you to implement the provisions of the Architects Act 1972 and ensure that persons registered with the council of Architecture under the Architects Act are issued licenses to act as "Architect" only and no further registration or fees are asked from the Architects already registered with the council of Architecture for practising their profession. I am also bringing your notice that any contravention of the provision of the Act will attract punishment under the Act.

4. I am also directed to request you to communicate this letter to the executive authorities of all local bodies / Development authorities under your control, immediately.

Yours faithfully,

M. S. Nandana
for Secretary to Government

Copy to: The Commissioner of Town and Country Planning, Chennai -2
The Joint Secretary (Technical) to Government of India,
Ministry of Human Resource Development, Department of Secondary
and Higher Education Shastri Bhavan, New Delhi.
The Administrative Officer, Council of Architecture, India Habitat
centre, Core 6-A 1st floor, Lodhi road, New Delhi, 110 003.
The Housing & Urban Development (UD II) Department, Chennai -9.
Stock File / Spare copies

बिहार सरकार

नगर विकास एवं आवास विभाग

प्रेषक:-

प्रधान सचिव,
नगर विकास एवं आवास विभाग
बिहार, पटना।

सेवा में,

नगर आयुक्त,
सभी नगर निगम।
नगर कार्यपालक पदाधिकारी,
सभी नगर परिषद्/सभी नगर पंचायत।
मुख्य कार्यपालक पदाधिकारी,
पटना महानगर क्षेत्र प्राधिकार/बिहारशरीफ आयोजना क्षेत्र प्राधिकार/राजगीर
क्षेत्रीय आयोजना क्षेत्र प्राधिकार/गया आयोजना क्षेत्र प्राधिकार/बोधगया
आयोजना क्षेत्र प्राधिकार/आरा आयोजना क्षेत्र प्राधिकार/मुजफ्फरपुर आयोजना
क्षेत्र प्राधिकार/सहरसा आयोजना क्षेत्र प्राधिकार।

पटना, दिनांक- 07.03.2019

विषय :- वास्तुकला परिषद्, नई दिल्ली से निबंधित वास्तुविदों के संबंध में वास्तुकार अधिनियम, 1972 के प्रावधानों को नगरपालिकाओं एवं आयोजना प्राधिकारों में प्रभावी करने के संबंध में।

प्रसंग :- वास्तुकला परिषद्, नई दिल्ली का पत्रांक-CA/28/2016/AE, दिनांक-03.02.2016 एवं दिनांक-30.03.2017 को प्रकाशित Public Notice।

महाशय,

उपर्युक्त विषयक वास्तुकला परिषद् के प्रासंगिक पत्र एवं Public Notice की छायाप्रति संलग्न करते हुए कहना है कि

(1). वास्तुकला परिषद्, नई दिल्ली से प्राप्त प्रासंगिक पत्र में राज्य सरकारों से अधीनस्थ नगरपालिकाओं/विकास प्राधिकारों आदि से वास्तुविदों के निबंधन से छूट के संबंध में दिशानिदेश निर्गत करने का अनुरोध किया गया है, जो निम्न है :-

i) Not to Register any person as an Architect for practising the profession of an architect under their jurisdiction ; and

ii) Allow architects having valid registration as an Architect from the Council of Architecture to carry on the profession of architecture under their jurisdiction without any registration।

(2). वास्तुकला परिषद् द्वारा प्रकाशित Public Notice में माननीय सर्वोच्च न्यायालय द्वारा दिनांक-14.02.2017 को Civil Appeal Nos. 3346-3348 of 2005 में पारित आदेश के संदर्भ में संबंधित प्राधिकारों से किए गए अनुरोध निम्न हैं :-

i) Only an architect (or firm of registered architects) registered under the Architects Act, 1972 with the Council can practice as an architect in the country. Any person not registered as an architect with the Council be not allowed by the development authorities/local bodies/municipal authorities etc. to practice as an architect under their jurisdiction.

ii) No development authority/Local body/Municipal authority i.e; Municipal Corporation, Municipal Council, etc. should insist architects registered with the Council to obtain further registration/license to practice as an Architect under their jurisdiction.

iii) Development Authorities/Local bodies/Municipal Bodies, etc. should not register/license any person as an architect under their jurisdiction.

iv) The relevant existing building bye-laws/regulations requiring registration/licensing any architects be amended to comply with the provisions of the Architects Act, 1972 and the above Order of the Hon'ble Supreme Court of India.

(3). (i). बिहार नगरपालिका अधिनियम, 2007 की धारा-312(4) में वास्तुकार अधिनियम, 2007 के अधीन रजिस्ट्रीकृत वास्तुकार द्वारा योजना तैयार करने का प्रावधान किया गया है, जो निम्न प्रकार है - "Plan" means a plan prepared by a surveyor, or a draughtsman, or an engineer holding a degree fo Bachelor of Engineering, or an Architect registered under the Architects Act, 1972 |

(ii). बिहार भवन उपविधि, 2014 के उपविधि-2(107) में Registered Architect को परिभाषित किया गया है, जो निम्न प्रकार है - "Registered Architect" means an Architect registered with the Council of Architecture and who has not been debarred by the Authority |

(iii). बिहार भवन उपविधि, 2014 में संशोधन के क्रम में विभाग के स्तर पर वास्तुविदों एवं अन्य तकनीकी व्यक्तियों तथा भवन निर्माताओं के Online Empanelment से संबंधित प्रावधान किए गए हैं, जो स्वीकृति के क्रम में प्रक्रियाधीन है।

उपरोक्त के आलोक में माननीय सर्वोच्च न्यायालय द्वारा पारित आदेश का अनुपालन करने, वास्तुकला परिषद्, नई दिल्ली से पंजीकृत वास्तुविदों द्वारा समर्पित नक्शा भवन उपविधि के तहत स्वीकृति हेतु मान्य किए जाने तथा इस कार्य हेतु इनका अलग से नगरपालिका एवं आयोजना प्राधिकार के स्तर पर निबंधन नहीं किए जाने का तत्काल निदेश दिया जाता है। नक्शा स्वीकृति से संबंधित आवेदन एवं नक्शे पर संबंधित वास्तुविद्, वास्तुकला परिषद् से आवंटित निबंधन संख्या का उल्लेख करेंगे।

अनुलग्नक - यथोक्त।

विश्वसभाजन

7/3/2013

प्रधान सचिव,

नगर विकास एवं आवास विभाग,
बिहार, पटना।