

  
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(A)/2021/AE

July 02, 2021

**The Chief Secretary**  
**Government of Kerala**  
Secretariat,  
Thiruvananthapuram-695001

**Subject: Amendments made by the Government of Kerala in the Kerala Panchayat Building Rule -2019 and Kerala Municipality Rules-2019-reg.**

Dear Sir,

The attention of the Council is invited towards the recent amendments published in the Kerala Gazette dated 29<sup>th</sup> June 2021 vide GO(MS) No. 120/2021/LSGD dated 28.06.2021 further amending the Kerala Panchayat Building Rules 2019 and also the GO (MS) No. 121/2021/LSGD, further amending the Kerala Municipality Building Rules-2019. The amendment no.15 which amends the Rule 99 of Kerala Building Rules, 2019 and amendment 16 in Rule 99 of Kerala Panchayat Building Rules 2019 provides inter alia for empanelment of architects for providing self-certified building permit.

Further, non-architects like Engineers, Building Designer, Town Planner, Supervisor, who are not regulated under any legislation like Architects Act has also been allowed to function like Architects.

In this regard, it is informed that the architects registered with Council of Architecture are not required to get themselves empaneled or registered with any local authority to carry out the profession of architecture. The registration of architects is controlled and maintained under the provision of Architects Act, 1972 and no other body of the authority is competent to register/license as an architect.

The Hon'ble Delhi High Court in L.P.A No. 59 of 1975, Municipal Corporation of Delhi & Ors. Vs. Shri Ram Kumar Bhardwaj & Ors. vide order dated 02.04.1980 held that:

*Xxxx 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 authorizing the corporation to regulate the licensing of architects and draughtsman could not be so construed after coming into force of the Architects Act, 1972 Xxxx*

*An SLP filed against this judgement was dismissed by the Hon'ble Supreme Court of India.*

Further, the Hon'ble Bombay High Court in Writ Petition No. 1830/1988, M.K. Ranade V/s Pune Municipal Corporations and Another vide order dated 24.11.2019 held that:



Contd...p/2





-2-

*Xxxx In the result, petitions are partly allowed and it is declared that the architects registered under the Architects Act, 1972 would not be required to obtain license under the MPMC Act byelaws made thereunder and the respondent Corporations are restrained from insisting upon the architects for obtaining such licenses. Petitions are disposed of accordingly with no order as to costs xxxx.*

The same was upheld by the Hon'ble Supreme Court of India vide its judgement dated 14 February, 2017 in SLP (C) No. 3346-3348 of 205, Council of Architecture V/s. M.K. Ranade & Ors., and Hon'ble Supreme Court further held that:

*"...It is not correct to say that anyone can practice as an Architect even if he is not registered under the Architects Act, 1972."*

Further, a copy of the letter no. F.7-1/83. T.13 dated 28<sup>th</sup> May, 1984 from Ministry of Education, Government of India to all the Chief Secretaries of State Government's asking them not to ask any fees from Architects Registered with COA is enclosed herewith for your kind perusal.

In view of the above the Government of Kerala is requested to issue appropriate direction to the concerned authorities for exempting architects registered with Council of Architecture to submit any empanelment fees or obtain any license from the Government of Kerala to provide their professional services. (Further, Non-architects like Building Designers, Engineers, Town Planner and Supervisor cannot be equated with the architects and allowed to carry on the duties and function of an architect).

A Line in reply of the action taken in the matter will be highly appreciated.

Thanking you

Yours faithfully

R.K. Oberoi  
Registrar

Encl: A3 above

Copy for information to:

**The Secretary**  
Local Self Government (Rural) Department  
Government of Kerala  
Room No. 404A, 4th Floor,  
Annex I, Secretariat  
Phone: 0471- 2517219  
Mob: 9447021100



In the High Court of Delhi

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

1. 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 Radha Lal Saxena, S/o. Shri Brij Basi Lal Saxena, C-1/444, 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  
HON'BLE MR. JUSTICE B.N. KIRPAL.

FOR THE PETITIONER:  
SHRI MAHARAJ KISWAN 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 practice 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 there under". 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 empowered 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 97 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 431 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.690, 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 there under authorise the Corporation to do so, and secondly, what is the effect on the authority of the Corporation, if any, of the passing of 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 upon 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 constructed 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 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 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 constructed authorising the corporation to regulate the licensing of architects and draughtsman could not be so constructed 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(s) 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



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Writ Petition No.4692 of 1990

The Indian Inst. of Architects  
Maharashtra Chamber Pune ...Petitioner

Versus

Pimpri Chinchwad Mun. Corporation & Anr. ...Respondents

Mr.N.P.Deshpande for Petitioner

Mr. D.R.More for Respondent No. 1.

WITH

Writ Petition No. 1830 of 1988

Manohar krishnaji Ranade ...Petitioner

Versus

Pune Municipal Corporation Pune & Anr. ...Respondents

Mr.N.P.Deshpande for Petitioner

Mr.R.G.Ketkar for Respondent No. 2

Mr.Vijay Patil for Respondent No. 4.

WITH

Writ Petition No. 3600 of 1997

Krishnaji Shankar Ranade ...Petitioner

Versus

Pune Municipal Corporation & Ors. ...Respondents

None for Petitioner

Mr.R.G.Ketkar for Respondent No. 1 and 2.

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ.

DATED: 29.11.2004

P.C.

1. By these Writ Petitions the Petitioners, who are architects, are seeking a declaration that the architects registered under the Architects Act, 1972 are not required to obtain licences as architects under the Mumbai Provincial Municipal Corporation Act, 1949, hereinafter referred to for brevity a sake as "the MPMC Act", and the byelaws framed thereunder and an injunction restraining the Respondent Corporation/s from insisting that the Petitioners should obtain licences under the provisions of MPMC Act. The Petitioners are also seeking a direction to the Respondent Corporation/s not to issue licences under Chapter XII of the MPMC Act in favour of any person to do a job which an Architect is supposed to do and who is not registered under the Architects Act.
2. The contention on behalf of the Respondent Corporation/s mainly is that the provisions of the Architects Act do not cover the field which is covered by the provisions of section 372 of the MPMC Act and the byelaws framed thereunder and since it is necessary that the Respondent Corporation/s should have effective control to deal with the cases of erring architects and in suitable cases to take disciplinary action against them, provisions of the MPMC Act should be harmoniously construed. It is urged that since the MPMC Act is covered by Entry 5 of List II and the Architects Act is referable only to

Entry 26 of List III, there is no question of repugnancy between the two statutes. When a law passed by the State Legislature while being substantially within the scope of entries in the State List trenches upon any of the entries in the Central List, constitutionality of such law can be upheld by invoking the doctrine of pith and substance, if on an analysis of the provisions of the State Act, it appears that by and large the law falls within the four corners of the State List and the encroachment, if any, is purely incidental or inconsequential. It is also urged that there is nothing in the Architects Act to show that engineers or surveyors possessing necessary qualifications cannot discharge the functions which are also discharged by an Architect registered under the Architects Act.

3. At the outset we may mention that the issue as to whether a Municipal Corporation can regulate licences of Architects after coming into force of the Architects Act is no more res integra and is fully covered by the decision of the Division Bench in *Jaswantsingh Vs. Municipal Corporation, Aurangabad* in Writ Petition No. 4 of 1985 decided on 3<sup>rd</sup> July 1987. The Division Bench in that case, after examining the provisions of the Architects Act and the MPMC Act, held that in view of the fact that the Architects Act prescribes an exhaustive code the Municipal Corporation constituted under the MPMC Act has no

4

power to ask the architects registered under the Architects Act to obtain licences for working as Architects. M.S.Deshpande J. speaking for the bench observed:

"7. In Deep Chand V. State of U.P. (AIR 1959 SC 648), where a Five Judges Bench of the Supreme Court had to consider the provisions of Article 254(1) of the Constitution, it was observed as follows:-

"This Court in Tika Ramji V. State of Uttar Pradesh, 1956 SCR 393; (5) AIR 1956 SC 676) accepted the said three rules, among others useful guides to test the question of repugnancy. In Zavarbhai Amaldas V. State of Bombay, 1955-1SCR 799, this court laid down a similar test. At page 807 (of SCR) it is stated:-

The principle embodied in Section 107(2) AND Article 254 (2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the centre should prevail over that of the State.

Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

(1) Whether there is direct conflict between the two provisions;

unfitness, through incompetency, mis-conduct or other grave reason under the guise of the power which purports to have been conferred on him by virtue of Section 372 of the Corporation Act for refusing the licence to an Architect. It is, therefore, difficult to say that the provisions of section 372 of the Corporations Act and the Building Bye-laws which we have noticed can co-exist with the corresponding provisions of the architects Act of 1972.

9. We have referred to the observations of the Supreme Court in *Regbir Vs. State of Haryana* (1981) 4 Supreme Court Cases 210) where it was held that Article 254 (1) is applicable only where the State and Central legislations are fully inconsistent and absolutely irreconcilable and while, construing provisions of statute, apparent inconsistency of those provisions with the provisions of another related statute should be harmonized and reconciled in the light of the object and purpose of the legislation in question. But having regard to the objects and reasons of the architects Act to which we have made a reference above we find it impossible to contenance the argument that the provisions of Sec. 372 of the Corporation Act can co-exist with those provisions

of the Architects Act. Reference was also made to the decision of Supreme Court in the Bar Council of Uttar Pradesh Vs. The State of U.P. and another (AIR 1973 SC 831). But there the position was not similar to that we have here. It was observed that the question of repugnancy under Article 254 of the Constitution can only arise in matters where both the Parliament and the State Legislature have legislative competence to pass laws. In other words when the legislative power is located in the concurrent list the question of repugnancy arises. There the question was about the imposition of stamp duty on the certificate of enrolment under Sec. 22 of the Advocates Act to be issued by the State Bar Council of the State of Uttar Pradesh. The Supreme Court observed that the power flowed from the list II and not list III i.e. the Concurrent List. In the present case, there is no dispute that the State Legislature and Parliament can enact on the subject of architects under item 26 of List III which is in respect of Legal, medical and other professions. Mr. Nawander drew our attention to the provisions of entries 60 and 66 of List II which are in respect of taxes on professions, trades, callings and employment and fees in respect of any of the factors in

8

that list, but not including fees taken in any court. We do not have to consider the effect of these entries for the purpose of the present petition because the controversy before us is not with regard to the taxes of fees but is about the power of Commissioner under the Corporations Act, in the face of the provisions of the Architects Act, to require the Petitioners to obtain licences. The Bar Council of Uttar Pradesh's case to which reference was made is, therefore, not of any assistance to Respondent No. 1.

In the light of our conclusion that the Central Act prescribes an exhaustive code, we do not think that respondent No. 1 has the power to ask the Petitioners to obtain licences for working as Architects".

(emphasis supplied)

4. The Division Bench of the Delhi High Court has taken a similar view in Municipal Corporation of Delhi and ors. Vs. Shri Ramkumar Bharadwaj and ors. in LPA No.59 of 1975 decided on 2.4.1980. the Division Bench has held as follows:

"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 Architects" 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 architect 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 authorizing the Corporation to regulate the licensing of architects and draughts-man could not be so construed after coming into force of the Architects Act, 1972.

It would be sufficient in our view, for the disposal of the Writ Petitions and the appeals before us, to say that neither the provisions of the Act, nor the provisions of any bye-laws made thereunder or any orders issued for the implementation of these byelaws or any resolutions of these byelaws or any resolutions passed by the Corporation in that respect will affect the persons who are registered under the Architects Act, 1972".

(emphasis supplied)



10

5. Mr. Ketkar and Mr. More appearing for the respondents strenuously contended that under Article 254 of the Constitution the question of repugnancy can arise only with reference to a legislation falling under the Concurrent List. According to the learned counsel Architects Act squarely falls under Entry 26 of the Concurrent List whereas the MPMC Act is not covered by the said Entry but falls under Entry 5 of the List II. Whenever repugnancy between the State and central legislations is alleged what has to be first examined is whether the two legislations covered or related to the same subject matter. The test for determining the same is to find out the dominant intention of the two legislations. If the dominant intention, i.e. pith and substance of the legislations is different, they cover different subject matters. If the subject matters covered by the legislations are thus different, then merely because two legislations refer to some allied or cognate subject, they do not cover the same field. Both legislations must be substantially on the same subject to attract Article 254. In this connection the learned counsel placed strong reliance on the observations of P.B.Sawant J, in *Vijay Kumar Sharma Vs. State of Karnataka*, AIR 1990 SC 2071 at page 2085.

“Even otherwise, I am of the view that not to apply the theory of pith and substance when the repugnancy between the two

11

statutes is to be considered under Article 254 of the Constitution would be illogical when the same doctrine is applied while considering whether there is an encroachment by the Union or the State Legislature on a subject exclusively reserved for the other. When the legislative encroachment is under consideration the doctrine of pith and substance comes to the aid to validate a legislation which would otherwise be invalid for the very want of legislative competence. When the repugnancy between the two legislations is under consideration, what is in issue is whether the provision of the State enactment, though otherwise constitutionally valid, has lost its validity because the Parliament has made a legislation with a conflicting provision on legislation the same matter. If it is open to resolve the conflict between two entries in different List, viz., the Union and the State List by examining the dominant purpose and therefore the pith and substance of the two legislations there is no reason why the repugnancy between the provisions of the two legislations under different entries in the same list, viz the concurrent list should not be resolved by scrutinizing the same by the same touchstone. What is to be ascertained in each case is whether the legislations are on the same subject matter or not. In both cases the cause of conflict is the apparent identity of the subject matters., the tests for resolving it therefore cannot be different".

6. We are unable to accede to the submissions of the learned counsel. Whatever may be the position before coming into force of the Architects Act, 1972, what we have to consider is whether after coming into force of the Architects Act the Municipal Corporation constituted under the MPMC that has any power to regulate practice of Architects by the insistence that they must possess licences issued by the Corporations. The Architects Act sets out qualifications being possessed by the persons to be registered as Architects under the said Act. It also prohibits persons, who do not have such registration from prescribing themselves as architects and also deal with disciplinary action for misconduct of architects. It is therefore a complete enactment, the effect of which is that a person cannot call himself as an Architect unless he is registered under the said Act. The argument of the learned counsel that the two Acts occupied different legislative fields is not correct. A comparison of the provisions of the two enactments would show that section 372 of the MPMC Act and the Building byelaws made under the said Act, occupy the same field for which provisions have been made in the Architects Act, 1972. Sub-section (1) of section 35 of the Architects Act makes it clear that any reference in any law for the time being in force to an architect shall be deemed to be a reference to an architect

registered under the said Act and this would show its reach to the provisions of any other enactment for the time being in force in relation to an architect. In the instant case the State law is earlier legislation and the Parliamentary Act of 1972 came later and the State legislation contains provisions which are clearly repugnant to the provisions made under the 1972 Act. We have therefore no hesitation to hold that in view of this apparent conflict Parliamentary legislation has to prevail and the law made by the State Legislature to the extent of repugnancy becomes void. Therefore we are in respectful agreement with the view taken by the Division Bench that the architects registered under the Architects Act, 1972 would not be required to obtain licences under the MPMC Act and the Building Bye-laws made thereunder. The respondent Corporation is therefore liable to be restrained from insisting upon the Petitioners to obtain licences under the MPMC Act.

7. The next issue is whether the engineers or surveyors passing necessary qualifications can discharge functions which are also discharged by an architect under the Architects act, 1972? The statement of objects and Reasons for the Bill submitted for the passing of Architects Act, 1972 itself clarifies that engineers are not forbidden from designing plans for buildings and that the

design, supervision and construction of buildings is not an exclusive responsibility of the architects. The statement of object and reasons states that a large variety of buildings many of extreme complexity and magnitude like multi-storeyed, office buildings, factory buildings, residential houses are being constructed each year and with this increase in building activity many unqualified persons calling themselves as architects are undertaking the construction of buildings which are uneconomical and quite frequently are unsafe, thus bringing into disrepute the profession of architects. Various organizations including the Indian Institute of Architects have repeatedly emphasized the need for statutory regulation to protect the general public from unqualified persons working as architects. With the passing of this legislation it will be unlawful for any person to designate himself as architect unless he has the requisite qualifications and experience and is registered under the Act. Clause (3) of the Statement of Objects and Reasons then recites that, "the legislation protects the title Architects but does not make the design supervision and construction of buildings as an exclusive responsibility of Architects. Other professionals like Engineers will be free to engage themselves in the normal vocation in respect of building construction works provided that they do not style themselves

as Architects." The Goa Bench of this court has considered this issue although in slightly different context in Writ Petition No.123/1985 Smt. Meghana A.P.Dessai Vs. Union of India and others) and companion Writ Petitions decided on 2.8.1986. The question before the Division Bench is whether the Corporation was right in directing the Petitioner to resubmit the application and plans for construction of a house at Margao signed by an Architect registered with it and not by an Engineer. The Bench after examining the scheme of the Architects Act held as follows:-

"The Statement of objects and Reasons for the Bill of Architect Act, 1972, will in our view be helpful to our earlier for the correct answer to the said question for item having started in its clause (1) that - A large variety of buildings many of extreme complexity and magnitude like Multi-storeyed. Office Building, Factory Building Residential Houses are being constructed each year with this increase in building activity many unqualified persons calling themselves as Architects are undertaking the construction of buildings which are uneconomical and quite frequently are unsafe, thus bringing into disrepute the profession of Architects. Various

organizations including the Indian Institute of Architects, having repeatedly emphasized the need for statutory regulation to protect the general public from unqualified persons working as Architects with the passing of this legislation it will be unlawful for any person to designate himself as Architect unless he has the requisite qualifications and experience and is registered under the Act. The legislature generally on the same lines as similar Acts in other countries it is clarified in clause (3) that "the legislation protects the title Architects but does not make the design supervision and construction of buildings as an exclusive responsibility of Architects. Other professionals like Engineers will be free to engage themselves in the normal vocation in respect of building construction works provided that they do not style themselves as Architects" it would thus appear from the combined reading of the aforementioned Clauses (1) and (3) that actually there is no substantial differentiation in the technical qualifications of Architects and Engineers and both such professionals are qualified and have the necessary knowledge and expertise to engage themselves in building construction and development activities.

9. Such interference is in our view corroborated by the fact that it seems that the Civil Engineering Courses includes subjects relating to construction and development for it is apparent from the ordinances and regulations relating to examinations in the Civil Engineering Course for the years 1982-85 made by the University of Bombay that such subjects are prescribed in the respective syllabus. In fact we find from the exhibits prepared in that respect by the Petitioner Vikas Vithal Dessai that there are papers for construction, testing of materials, building and drawing. Surveying, building design and drawing traffic engineering and control and finally architectural town planning. These papers are prescribed for the examinations in semester III to VII.

10. In the light of the above it would appear that both the Courses of Architects and Civil Engineers have the basic qualifications required for engaging themselves in activities of construction and development. It was however contended by Mr. Jaques the learned counsel appearing for the third respondent that it is not so. He produced an ordinance of the Bombay University prescribing the examination for several semesters in the



course of Architecture. He minutely took us through the said ordinance and submitted that this clear that the qualifications of the Architects are by far more specialized and better than those the Engineers. In so far as the construction and development activities are concerned he submitted that designing is taught in all the years of the course and examinations in respect of such subjects are on minute details of it. Therefore according to the learned counsel it is not possible to say that only because some skeleton knowledge of the said subjects is given in the course of Civil Engineering the Civil Engineerings are duly qualified to proceed with activities of construction and development. He contended that the designing is a very specialized subject and such designing will not be properly done by an Engineer just like and in the same manner as an Architect will not be qualified to proceed with actual construction work of a building. We are however unable to agree with the learned counsel for we find that the papers prescribes in respect of building construction designing and drawing town planning and development in the Engineering Course by implication show that the latter course gives the required technical knowledge not only for the

construction work but also for development. Besides we may point out that the town planning Authorities are not bound to accept all the plans which are submitted to them for development of the land or for construction. This being so we had to find any intelligible differentia distinguishing the Architects from the Engineers which justifies the classification made in the Note of Rule 13 and in any event we find as rational nexus between the said classification and the object to be achieved i.e. a proper disciplined and adequate development. The said classification being therefore unreasonable arbitrary and discriminatory is liable to be struck down it was however contended by Mr. Nadkarni that the Engineers and Architects are not similarly situated and in addition the classification is made between Architects and non Architects such classification being entirely permissible as can be seen from the decision of the Supreme Court in *Sakhawant Ali V. State of Orissa* (AIR 1995 C 166). The learned counsel further contended that Article 14 forbids class legislation but does not forbid possible classification for the purposes of legislation in the present case he added the classification was made to get a proper development of the land and proper construction and by

requiring that the plans for development should be signed and submitted only by an Architect it is not possible to say that such classification is unreasonable and arbitrary. The learned counsel is entirely right in his submission that Article 14 forbids class legislation but does not forbid reasonable classification for the purposes of legislation. But as the Supreme Court observed in Sakhawant Ali's case (above), such classification cannot be arbitrary but must rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which the classification is made. We already mentioned that it flows from the preamble and the scheme of the Town Planning Act that the scope thereof is to have a proper and adequate development and planning. We also mentioned that in our view there is no substantial difference in the qualifications of Engineers and Architects in so far as the development and construction activities are concerned. In these circumstances therefore the classification made is not reasonable and justified wrongly separating the Engineers from the Architects for the aforesaid purpose."

(emphasis supplied)

8. In the above circumstances we are not inclined to accept the case of the Petitioners that the Architects Act restricts practice of architect to persons registered under the said Act. Therefore qualified engineers who cannot themselves call as Architects may still be free to do the work which is ordinarily done by the Architects and it would be open for the Corporations to regulate licensing in favour of such qualified engineers.
9. In the result, petitions are partly allowed and it is declared that the architects registered under the Architects Act, 1972 would not be required to obtain licences under the MPMC Act byelaws made thereunder and the respondent Corporations are restrained from insisting upon the architects for obtaining such licences. Petitions are disposed of accordingly with no order as to costs.

Sd/- illegible

TRUE COPY

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.3346-3348 OF 2005

COUNCIL OF ARCHITECTURE . . . APPELLANT (s)

VERSUS

MANOHAR KRISHNAJI RANADE & ORS. . . RESPONDENT (s)

O R D E R

We have heard learned counsel for the parties.

While we find no reason to interfere with the impugned judgment and order dated 29<sup>th</sup> November, 2004 passed by the Bombay High Court in Writ Petition No.1830 of 1988 and connected matters, we are of the view that the High Court was in error in rejecting the contention of the appellant that practice under the Architects Act, 1972 is not restricted only to the architects. It is not correct to say that any one can practice as an architect even if he is not registered under the Architects Act, 1972.

That being the position and with this clarification, we dispose of these appeals.

.....J.  
(MADAN B. LOKUR)

.....J.  
(PRAFULLA C. PANT)

Signature invalid

  
Digitally signed by  
SALIL K. PATIL  
Date: 2017.02.14 17:11:11 IST  
Reason:

NEW DELHI  
FEBRUARY 14, 2017



S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).3346-3348/2005

COUNCIL OF ARCHITECTURE

Appellant(s)

VERSUS

MANOHAR KRISHNAJI RANADE &amp; ORS.

Respondent(s)

(Office Report)

Date : 14/02/2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Mr. Naveen R. Nath, Adv.  
Mr. V. N. Raghupathy, AOR  
Ms. Lalit Mohini Bhat, Adv.  
Mr. Parikshit P. Angadi, Adv.  
Mr. Prakash Jadhav, Adv.

For Respondent(s) Mr. Pankaj Kr. Mishra, Adv.  
Mr. A. S. Bhasme, AOR

Mr. Ashish Wad, Adv.  
Ms. Jayashree Wad, Adv.  
Ms. Paromita Majumdar, Adv.  
Ms. Jaya Khanna, Adv.  
for M/s. J. S. Wad & Co.

Mr. Atul Yeshwant Chitale, Sr. Adv.  
Mrs. Suchitra Atul Chitale, AOR  
Mr. Gurjyot Sethi, Adv.  
Ms. Akansha Ghose, Adv.  
Mr. Hemant Sharma, Adv.

Mr. Ajit Kr. Sinha, Sr. Adv.  
Mr. Sanjay Pathak, Adv.  
Ms. Gunwant Dara, Adv.  
Mr. G.S. Makkar, Adv.  
Mr. Surendu Kumar Gupta, Adv.  
Mr. Raj Bahadur Yadav, Adv.  
Ms. Sushma Euri, AOR

Ms. Prachiti Deshpande, Adv.  
Dr. R. R. Deshpande, AOR





-: 2 :-

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

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

(SANJAY KUMAR-I)  
AR-CUM-PS

(JASWINDER KAUR)  
COURT MASTER

(Signed order is placed on the file)



No.F.17-1/83.T.13  
Government of India  
Ministry of Education and Culture  
(Department of Education)

New Delhi  
Dated 28<sup>th</sup> May, 1984

To,

The Chief Secretaries of State Governments

**Subject: Enforcement of the Architects Act, 1972 (Act. No. 20 of 1972). Charging of Fees by Local Bodies from registered Architects-reg.**

Sir,

I am to invite your attention to the Ministry's letter number F.17-9/81 T.13 dated 19<sup>th</sup> Feb., 1982 (Copy enclosed) wherein, to safeguard the provisions of the Architects Act, all the State Governments were requested to issue instructions to all Municipal Corporations/Municipalities/Improvement Trusts etc. under their control to issue licensee only to those Architects who were registered with the Council of Architecture.

2. It has been brought to the notice of this Ministry that, some of the local bodies have been charging fees from the Architects already registered with the Council of Arch. for practicing in their areas. This does not seem to be justified. In a recent 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 has been dismissed by the Supreme Court on 22<sup>nd</sup> April, 1983.
3. In view of the above, you are requested to advise all the local bodies viz. Municipal Corporations/Municipalities/Improvement Trust etc. under your control that no further registration of fees are asked from the Architects already registered with the Council of Architecture which is a statutory organisation set up under an Act of Parliament, for practicing their profession in any part of the country.
4. A copy of Hindi version of this letter will follow.

Yours faithfully,

Sd/-  
(M.S. Srinivasan)  
Joint Education Adviser (T)  
Tel. No. 384245

Copy forward for information to:

Shri H.R.Laroya, President, Council of Architecture, 8-B, Shankar Market, Connaught Place,  
New Delhi-110001

