

  
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  
December 23, 2020

**Shri Navneet Sehgal, IAS**  
**Addl. Chief Secretary**  
MSME & Export Promotion  
Government of Uttar Pradesh  
Room No. 110, C Block,  
Lok Bhavan, Lucknow,  
Uttar Pradesh-226001,

**Subject: Violations of the Architects Act, 1972 in Bhadohi Industrial Development Authority (BIDA)-reg.**

Sir,

The attention of Council of Architecture is drawn that as per Bhadohi Industrial Development Authority Regulation 2014 only an architect is allowed to carry out work related to building permission of all plans including submission of plans and related information. However, the authority is giving license to non-architects to carry on the functions of an architect. Further, the architects registered with the Council of Architecture are insisted to seek empanelment with the BIDA.

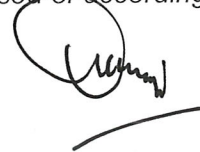
Pertinent to the matter, it is informed that as per provision of the Architects Act, 1972 only a person registered with the Council of Architecture can use the title and style of an architect for carrying on the profession of the architecture in India.

Pertinent to the matter, may I point out that the architects registered with the Council of Architecture are entitled to carry on the profession of architecture throughout the territory of India and no local body/authority is competent to seek further registration /license to carry on the profession of architecture under their jurisdiction is contrary to the provisions of Architects Act, 1972. Engineers cannot be empaneled as "Architects". Mis-representation and misuse title and style of Architects is punishable offence.

As per Section 35(1) of the Act, 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. Section 35(2), provides that a person who is registered in the register shall get preference for 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 from the public or local funds or in any institution recognized.

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:

*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.*



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The Division Bench of Gujarat High Court in Special Civil Application No.1111 of 1999 vide Order dated 20.06.2000 held as under:

Xxxxxxx So far as the Civil Engineers are concerned, ordinarily they are engaged in designing and constructing major structures and facilities viz. bridges, dams, tunnels, tall buildings, factories, highways, airports, rail, roads, and so on. There is a significant contribution by this branch also and has glorified by creation of sanitary system to reduce disease and improve the environment. Xxxxxxx

Xxxxxxx *“Considering various aspects it is clear that the function of Architects and Civil Engineer cannot be the same. To some extent, the work might be appearing to be overlapping. The Engineer may carry out the work of erecting a building as per the design prepared by the architect. Architect may require supervision of the work carried out by the Engineer. It may be that in some cases one may require assistance of architect and engineer to complete the work but at the same time it must not be forgotten that the legislature has been taken note of the fact that architects are professionals and qualifications are enumerated in the schedule in the schedule to the Architects Act. So far as the Civil Engineers are concerned noting has been placed before us indicating that they are required to be enrolled with the statutory body recognized under the Act, empowering the statutory body to exercise powers over the members or to take action, such as disciplinary action. An engineer cannot be equated with an architect.”* Xxxxxxx. A copy of the above order is enclosed herewith.

Further, your attention, is also invited to the judgement dated 14 February, 2017 of the Supreme Court of India in SLP (C) No. 3346-3348 of 205, Council of Architecture V/s. M.K. Ranade wherein the Hon'ble Court held as under:

Xxxxxxx *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 anyone can practice as an architect even if he is not registered under the Architects Act, 1972* xxxxx.

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

The Government of Uttar Pradesh vide letter no. 1699/9-AA-3-1999 dated 18.08.1999 had already issued directions that the architects registered with the Council of Architecture should not be insisted to seek further registration by the local bodies to carry on the profession of an architect. A copy of the Government order is also enclosed herewith.

In view of the above the Government of Uttar Pradesh is requested to issue appropriate directions to the Bhadohi Industrial development Authority and such other bodies/authorities/Municipal Corporations to not to insist empanelment/registration etc of architects registered with the Council of Architecture.

Thanking you

Yours faithfully

R.K. Oberoi  
Registrar

Encl: As above



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. 5600 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

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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 Reghbir 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

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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 repugancy 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

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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 or 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)

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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

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statues 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



MR. BP MUNSHI for Respondent No. 3,5-6  
MR. NIRALI B MUNSHI for Respondent No. 4  
MR. MH RATHOD for Respondent No. 7

SCA/1111/1999 C.A.V. Judgement dated 20/6/2000

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1111 of 1999  
with  
CIVIL APPLICATION NO. 12021 OF 1999  
with  
CIVIL APPLICATION NO. 1927 OF 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR. DM DHARMADHIKARI: Sd/-  
and  
Hon'ble MR. JUSTICE B.C.PATEL: Sd/-

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|---|---|-----|
| 1. Whether Reporters of Local Papers may be allowed to see the judgements?  | : | YES |
| 2. To be referred to the Reporter or not?   | : | YES |
| 3. Whether their Lordships wish to see the fair copy  | : |     |
| 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? | : | NO  |
| Whether it is to be circulated to the Civil Judge?  | : | NO  |
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GIRISH MISTRY, CHAIRMAN, INDIAN INSTITUTE OF ARCHITECTS  
Versus  
STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 1111 of 1999 & Civil Application No. 1927 of 2000

MR B.J. SHELAT FOR MR. BD KARIA for Petitioner  
MR S.K. PATEL, AGP, for Respondent No. 1  
MRS KETTY A MEHTA for Respondent No. 2  
MR B.P. TANNA for MR. BP MUNSHI for Respondent no. 3, 5 & 6  
MS NIRALI B MUNSHI for Respondent No. 4  
MR MH RATHOD for Respondent No. 7

Civil Application No. 12021 of 1999

MR A.K. CLERK for the applicant

MR. B.D. KARIA for the Respondent

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI  
and  
MR. JUSTICE B.C. PATEL

Date of decision: 20/06/2000

C.A.V. JUGEMENT (Per B.C. Patel, J)

By way of this Public Interest Litigation the Petitioner, the Chairman of the Indian Institute of Architects, Gujarat Chapter, Ahmedabad, has moved this court for quashing and setting aside the agreement entered into between the respondent, Gujarat

Housing Board and respondent No. 3 Sandip & Prerak Associates claiming to be the reputed Architectural Consultancy Firm."

2. Short facts which are relevant to dispose of this petition are as under:

3. The Architects Act, 1972 (hereinafter referred to as "the Architects Act") has been enacted by the Parliament which provides for Council of Architects, President and Vice-President of Council, Finances of Council, Recognition of qualifications granted by authorities in India, Recognition of architectural qualifications granted by authorities in foreign countries, effect of recognition, Minimum standard of architectural education and Professional conduct etc. Chapter III refers to Registration of Architects. Chapter III provides for preparation and maintenance of register, qualification for entry in register, procedure for subsequent registration, removal from register, procedure in inquiries relating to misconduct, effect of registration. In chapter IV provisions are made including that of prohibition against use of title and cognizance of an offence.

4. According to the Architects Act, as architect is a person whose name is for the time being entered in the register. Person possessing minimum standard of architectural education required for granting qualifications by Institutions in the India can be enrolled as an architect in the register maintained under the Act. It is for the Council to prescribe minimum standard of architectural education. Section 37 of the Architects Act prohibits use of title unless he is a registered architect. Section 37 of the Architects Act being relevant is reproduced hereunder :-

"Prohibition against use of title ? (1) After the expiry of one year from the date appointed under sub-section (2) of Section 24, No person other than a registered architect, or a firm of architects shall use the title and style of architect:

Provided that the provisions of this section shall not apply to :

- (a) Practice of the profession of an architect by a person designated as a "landscape architect" or "naval architect";
- (b) a person who, carrying on the profession of an architect in any country outside India, undertakes the function as a consultant or designer in India for a specific project with the prior permission of the Central Government.

Explanation ? for the purposes of clause (a) -

- (i) "Landscape architect" means a person who deal with the design of open spaces relating to plants, trees and landscape;
  - (ii) "Naval architect" means an architect who deals with design and construction of ships.
- (2) If any person contravenes the provisions of sub-section (1), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both."

5. From the aforesaid provisions it is clear that a firm of architects can use title if all the partners are architects and not otherwise. For a firm which is introducing itself as a firm of architects, all its partners must be architects under the Act. If a person is not a architect, he cannot be introduced as a partner to the firm of architects and such person cannot be introduced as an architect. Like the legal profession, medical profession and Chartered Accountants, for the architects, Architects Act prescribes qualification, entry of name in the register, removal of name from the register and procedure in inquiries relating to misconduct. The legislature considering the fact that the architects are engaged in profession and not in business, has enacted the Architects Act with a view to maintain standards of architects and to protect the dignity of architects. The petitioner in the capacity as the Chairman of Gujarat Chapter of Indian Institute of Architects, submitted that the national body of Architectural professionals has 15000 members while the Gujarat Chapter of Indian Institute of Architects has about 600 members. He being interested to uphold and maintain standards and status of practising Architects in Gujarat in accordance with the provisions of the Architects Act and the rules and regulations framed thereunder, has thought it fit to file the petition and to point out the illegalities and gross irregularities committed by the respondents.

6. Respondent No. 2 is the Chairman of the Gujarat Housing Board which is duly constituted under the provisions contained in Gujarat Housing Board Act, 1961 and the Board took a decision to appoint private architects for its project at Gotha Housing Township worth Rs. 230 crores in 43 hectares of land at Gotha village, touching the border of Ahmedabad. It is averred in the petition that the decision to appoint private architects was taken by the Housing Board and to pay Consultancy charges of about Rs. 10 crores to respondent Nos. 3 to 6.

7. Respondent No. 3 is a partnership firm carrying on business in the name and style of M/s. Sandip & Prerak Associates which has its office at Prajal Apartments, opp.Parth Empire, Near Maninagar Police Station, Maninagar, Ahmedabad. The said firm has three partners, namely, respondent Nos. 4, 5 and 6. Respondent no 4 V.T. Lalwani, is an architect, whose name appears in the register of the Architects. Respondent No. 5 is an Engineer having a diploma in Engineering while respondent No.6 is HUF of respondent No.5. Respondent No. 5 is a karta of the said HUF. It is pointed out in the petition that respondent No. 4 V.T. Lalwani's share in the firm is 2% and the HUF of Sanjay Sharadchandra Shah's share is 70%. An agreement was executed by and between partners respondent Nos. 4, 5 and 6 of respondent No. 3, a partnership firm,

on 1.4.1997. Clause (3) of the agreement refers to the object of the firm. Reading the same it appears that respondent No. 3 is to be considered as a sister/secondary concern of M/s. Sanjay Shah and Associates. Respondent No. 3 shall carry out the business of Architectural, Civil, Engineering, Planning and Designing etc. of Government, Semi Government, Public Sector or Private Trust or Private Properties. It will purchase the land, organize it and construct houses for sale. Over and above this, if any other business is required to be carried out with the consent of the partners, the same shall be carried out. In clause (7) there is a reference to working partners and the amounts to be paid as per book profits in accordance with Section 40(b) of the Income-tax Act, 1961. Respondent No. 4 is referred as working partner who is closely associated with Sanjay Shah and Associates and he has a registration certificate issued by the Indian Institute of Architects bearing registration No. C/A 15657. For the purpose of license/identification, registration number of architect is required. The said registration certificate and its registration number shall be used as authorized registered number. Thus, for the purpose of identification, registration and use of the registration number of respondent No. 4 is considered as legitimate registered number of the firm and respondent No. 4 has agreed to allow the use of such number in favour of the partnership firm.

8. So far as the work is concerned, it is clear that only other partners were authorized to deal. It is only that Sanjay Sharadchandra Shah was authorized to present the bills, to receive payment, to appoint advisers to prepare, accept and finalize details of the plans, to take a decision, to enter into an agreement, to offer or to accept or reject offer, to give public advertisement, to appoint staff or to cancel appointment of the staff, to appoint contractor, to accept bills, to finalize bills and to take a decision in this behalf and to do all other acts for carrying out the object of the firm. Respondent No. 5, Sanjay Sharadchandra Shah was authorized to deal on behalf of the firm. Reading the agreement, it clearly appears that respondent No. 4 V.T. Lalwani was not required to do anything except to permit the use of his registration number by getting 2% of the book profits of the firm.
9. Clause (10) of the agreement indicates that all accounts shall be operated only by Sanjay or Sharadchandra Rajnikant Shah.
10. Clause (16) of the agreement refers to the service of registered architect Harishbhai C. Parikh who is rendering his service since 1984. In case of need to experts' services, clause (16) of the agreement is required to be referred. It is specifically stated that services of registered Architect Harishbhai C. Parikh are availed of by the firm as well as sister concern since 1984. Registration number of the said architect is used wherever and whenever required with his consent for which agreement is also executed. Thus services of respondent No. 4 were only for a limited purpose of using his registration number and no further. Thus, it is clear that the agreement is a sham agreement executed only with a view to use the name of respondent No. 4 as architect and to introduce the firm as firm of architects.
11. On 5.2.1998 all the partners of the firm executed Power of Attorney in favour of Sanjay Sharadchandra Shah and thus on behalf of firm, respondent No. 5 was required to sign. On 5.2.1998 an agreement was executed between respondent No. 3 and 4 in connection with Gujarat Housing Board, Gotha Township. In that document respondent No. 4, authorized partnership firm to use his registration number and licence wherever and whenever required and the same shall be considered as a registration number and licence in favour of the partnership firm. The partnership firm was registered on 13.2.1998 with the Registrar of firms, Ahmedabad City. The petitioner has placed on record all the documents which are referred to hereinabove.
12. Gujarat Housing Board published an advertisement in English daily of Western Times (evening circulation only) dated 18.1.1997 inviting applications for empanelment of architectural consultants. This newspaper has only evening edition. The last date for collecting application forms was fixed as 29.1.1997 while the last date for submitting application forms was fixed as 5.2.1997. The advertisement which is placed on record, if read, it becomes clear that the Housing Board invited applications for pre-qualifications to appoint panel of Architectural Consultancy Firm for its project. It invited applications from reputed architectural consultancy firms interested for pre-qualification. It appears that five applications were received by the Board and marks were awarded as indicated in para 7 of the petition. Respondent No. 3 firm was given third rank (56 marks) on the basis of assessments. The petitioner has obtained comparative statement for pre-qualification of Architects Firms which is placed on record at Annexure-C. It is pointed out in the petition that respondent No. 3 firm made a tall claim of practising as architects since 10 years in its application while in fact, respondent No. 3 firm commenced its business on 18.1.1997 which fact cannot be denied. In assessing and evaluating status of the applicant firm, marks were to be assigned at the rate of one mark in term of each year of practice subject to maximum of 10 marks. Respondent No. 3 has been given 10 marks as per its claim of practice for 10 years. On behalf of the petitioners it is pointed out that this is utterly incorrect and misleading. It is clear that the firm came into existence only in 1997 and therefore was not entitled to have the credit of 10 marks at the rate of one mark per year. It is suggested that the respondent Board has connived at this glaring lapse with a view to favour the respondent No. 3 firm and its partners.
13. As indicated in earlier part of the judgment that out of the three partners only respondent No. 4 Mr. V.T. Lalwani, partner of respondent No. 3, is an architect. As per the public advertisement, applications were invited latest by 5.2.1997. An agreement that respondent Nos. 4, 5 and 6 executed on 1.4.1997, is much later than the date on which application was submitted pursuant to the advertisement of the respondent Board dated 18.1.1997. Surprisingly, respondents have come out with a case that they commenced business on 18.1.1997, the date on which advertisement appeared in the newspaper. It is thus pointed out that the marks given by the respondent Board are incorrect and are given only with a view to favour

respondent No. 3. The petitioner has specifically averred in the petition in para 11 that as per the provisions of Section 2(a) to 2(e) and Section 35 and Section 37 of the Architects Act, there cannot be a partnership between an architect and non-architect. It is further submitted by the petitioner that the firm having all the partners who are architects can introduce the firm as an architectural firm or architectural consultant. If one of the partners of the firm is not an architect, the firm cannot be introduced as an architectural consultancy firm or cannot be appointed as an architectural firm. Section 45 of the Architects Act permits the Council with the approval of the Central Government to make regulations not inconsistent with the provisions of the Act or Rules thereunder to carry out the purpose of this Act. Section 44 of the Architects Act empowers the Central Government to make Rules. The Rules made under this section is to be laid as soon as may be after it is made before each House of Parliament. Reading this section it clearly appears that the consent of each House of Parliament is required. There is rule making power and the Central government has made regulations known as Architects (Professional Conduct) Regulations, 1989 which prescribes that all partners in a firm of architects should be registered architects. It is submitted before us that respondent No. 5 being a diploma holder in Civil Engineering and not an architect, the firm cannot be said to have been constituted by architects and thus not in accordance with law. It is further submitted by the learned counsel for the petitioner that the respondent No. 3 are hand in glove to share consultancy fees of Rs. 10 crores to be paid by the respondent Board.

14. The respondent Housing Board has its own architectural department and is having about 200 qualified Engineers and architect personnels from the level of Chief Engineer to Junior Engineer. It is specifically averred in the petition that despite this huge infrastructure, having experienced and qualified Engineers and Architects who have prepared the master plan and design for Gotha Housing Township, the respondent Board has appointed the respondent No. 3 firm only to siphon the funds of Gujarat Housing Board illegally.
15. On behalf of respondent Housing Board an affidavit is filed by one Patel Ramanlal Bhulabhai. In the title of the affidavit or in the operative part of the affidavit we do not find the status of deponent and therefore it is difficult for us to state in what capacity he has filed the affidavit. The Housing Board has come out with a case that the members of the Indian Institute of Architects are interested persons and have invoked the jurisdiction of this court to decide the disputed questions of facts.
16. With regard to the advertisement given in Western Times dated 18.1.1997 the Housing Board has come out with an explanation that the Housing Board is expected to send the information to the District Information Officer of the Government of Gujarat and it is for him to decide as to in which newspaper the advertisement should be published. It is submitted that thus the Housing Board has no control over the said department regarding giving of the advertisement in a particular newspaper. It is specifically averred in para 7 of the affidavit that "I say that referring to the advertisement, it is clear that there was no intention of the Gujarat Housing Board to give consultancy of township i.e. Gotha Oganaj to respondent Nos. 3 to 6. In fact, the advertisement makes it clear that it was intended to create a general panel of architects consultancy firm in Ahmedabad, Baroda and Rajkot circles separately." The Housing Board has further stated in the affidavit that the Board had not decided to give advertisement in a particular newspaper and it had not advertised for giving consultancy to private architects for its particular township of Gotha-Oganaj.
17. With regard to the firm, in para 8 of the affidavit the Housing Board has come out with a version that respondent No. 3 firm is a sister concern of M/s. Sanjay Shah & Associates and that the partners of the firm are the partners of the said firm. It is further stated in the affidavit that M/s. Sanjay & Associates was working as Architects and Engineers. It is further averred in the affidavit by the deponent that respondent No. 3 firm was formed in 1997 with the intention to provide the architectural services to the Government and in view of this fact 10 marks were awarded to respondent No. 3 considering the experience of M/s. Sanjay Shah & Associates. Deponent of the affidavit has not placed on record any material to indicate the work entrusted to M/s. Sanjay Shah and Associates, working as Architects and Engineers or no documentary evidence is placed on record for that firm to indicate its existence etc. Thus, wrong excuse is given for awarding them 10 marks. In para 9 of the affidavit the Housing Board has given details about the work so as to justify that the work is required to be done by an Architect and Engineer. From the contents of para 9 it appears that the board is trying to suggest that majority of the work was required to be done by an Engineer and not by an Architect and work was not within the scope of the firm managed by architects alone and thus has tried to justify the inclusion of name of respondent No. 3 in the panel of architects.
18. Respondent Board in para 13 of the affidavit has suggested that the Housing Board has awarded consultancy services to the firm and not to the individual partners. The Board is of the opinion that if the firm is having a registered architect as a partner it complies with the guidelines. The Board has denied that it had 2000 qualified Engineers and Architects from the level of Chief Engineer to the level of Junior Engineers. It is averred that in fact the Board has strength of 180 qualified engineers and architects. From the affidavit it appears that incorrect figure of "2000" qualified engineers was referred and therefore the Board has denied the same but has admitted about staff of 180 persons as stated hereinabove. In the affidavit it is admitted that the Board has technical staff who are trained and experienced in planning, supervision etc. in conformity with the Government rules and regulations. However, it is stated that the staff is not in touch with the prevailing trends of the market. Thus, the officer of the respondent Board is conveying that the officers of the respondent Board are not upto date with the day-to-day management and research in the Engineering or housing sector. The Board has justified its action by stating that to develop the Township with modern concept of living, it has decided vide its Resolution No. 209/97 dated 27.6.1997 to avail of the services of private architectural consultancy.

19. We have perused the affidavit placed on record by respondent No. 7, Council of Architects, affidavit in rejoinder on behalf of the petitioner and the affidavit filed on behalf of respondent Nos. 3, 5 and 6. It was submitted before us that in the architectural firm it is not necessary that all the partners must be architects. It was submitted before us that huge work is entrusted to respondent No. 3 and interference by this court at this stage would stall the work which is in progress. It was submitted before us that the scheme will be completed within a short period. A statement showing progress of different schemes of Gujarat Housing Board, Ahmedabad, in township Gotha-Oganaj is placed before us. So far as residential development of 205 LIG T/S and 196 MIG T/S is concerned it was submitted that the work has been completed. With regard to other work in progress we have perused the details. So far as these two schemes are concerned, planning was undertaken by Gujarat Housing Board which is clear from the remarks column. So far as the other types of work is concerned, the statement makes it clear that except 401 houses referred to hereinabove, nothing is completed. Out of 5629 residential houses except 401 houses, one entrance gate and one amenity (out of 16), no construction work is carried out. So far as the infrastructure development is concerned, no roads are constructed. For 1583 houses tenders are only finalised. For 586 houses tenders are under finalisation and for 1668 houses tenders are not invited. It appears that for about 1111 tenements there is some progress but what is the stage of construction is not placed on record. Whether digging of the ground is completed for construction or whether plinth area is completed or what type of work has been carried out has not been stated. Thus, except 401 houses not a single house is ready.
20. An application was submitted by the learned advocate Mr. Clerk being Civil application No. 12021 of 1999 on behalf of Gujarat Housing Board Engineers Association through its President for joining as a party but after some hearing it was stated that if the application is to be allowed then the respondents would like to file reply and thus wanted to delay the hearing of the matter. Even otherwise, in our opinion, it is not necessary to entertain the application as the court can decide the matter in absence of applicants of Civil Application No. 12021 of 1999. The applicants are not likely to be adversely affected. No relief is sought against the applicants. Hence this Civil Application is rejected.
21. The dispute between the petitioner and the Housing Board is required to be decided, in view of the aforesaid facts and circumstances. One will also have to consider the contents of the advertisement and the extent of the circulation and the type of publication. On the basis of the advertisement and the extent of the circulation etc., can it be said that all the firms, association of persons, association of architects were deprived of submitting applications and by short circulation, people were not duly informed?
22. Reading the advertisement at Annexure - A, copy of which is at page 113 at Annexure-B (collectively) filed by respondent No. 2, it is clear that the Housing Board was intending to invite applications from Reputed Architectural Consultancy Firms, and for the purpose of pre-qualification for architectural consultancy services with a view to appoint panels of Architectural Consultancy Firms, advertisement was given. Obviously, in view of the words used in the advertisement "Architectural Consultancy Firms" a person reading the advertisement would consider that an application can be submitted only by a firm of architects and not by a firm or association of persons of which one is not an architect as defined in Architects Act. In view of this advertisement, persons similarly situated like respondent No. 3 were obviously deprived of making application. When the Board is taking a decision, it was the duty of the Board to give publicity correctly. If it wanted to have only Architectural Consultancy Firms then it should have used the words as are used in the advertisement. After filing the petition respondent Board has come out with a version that the nature of work was such which could not be carried out by the architects alone. If that was the opinion of the Board at the time of issuing the advertisement, the Board could have said it clearly that the firms or association of persons of which one partner of the firm need not be an architect can apply and architects, with engineers as the partners, even diploma holders, can apply for the pre-qualification of services. Fact that the words 'Architectural Consultancy Firms' indicate that all the partners of the firm must be architects. It is clear that the Board is managed by the persons having qualifications in various branches. They have their own Law Officers. The Board is aware about the distinction between Architects and Engineers. The Board has employed in its services Engineers and Architects and therefore it was known to the Board the clear distinction between Architects and Engineers. Qualifications for Architects are prescribed in the Schedule of the Architects Act. Reading the Schedule it is clear that even a person not engaged in housing activities would know the distinction between Architects and Engineers. Therefore, it is difficult to accept the contention raised by the Board. The Board could have accepted applications on behalf of firms of architects alone. Thus, on the material aspect the Board has committed a serious error in accepting the application of respondent No. 3 a firm of an architect and an Engineer as an application submitted by a firm of Architects.
23. It is also required to be noted that looking to the agreement executed by and between the partners which has been discussed in detail in earlier part of the judgement and the power of attorney executed in favour of the firm by respondent No. 4, it is clear that the services of the architect as such were never solicited by the firm. The fact that agreement came to be executed between respondent No. 4 and 3 permitting the use of registration number and licence wherever and whenever required and under the agreement of partnership, the bank accounts were to be operated only by the respondent No. 5 and one Sharadchandra Rajnikant Shah. It clearly appears that respondent No. 4 had to play no role in carrying out day-to-day activities of the firm. The aforesaid aspect is strengthened by the fact that the document of partnership refers that the respondent No. 4 has to permit the use of his registration number and licence as if it is the number of the partnership firm and the licence of the partnership firm and that all types of transactions were required to be entertained by Sanjay Sharadchandra Shah, respondent No. 5. Thus, the name of respondent No. 4 was used merely for the purpose of constituting a firm for the purpose of introducing the firm as the firm of architects. Respondent No. 4 in his affidavit has

stated that he had been actively involved in diligently rendering complete and comprehensive architectural services for development of the entire Township project of respondent no. 2 Board at village Gotha near Ahmedabad. No material is placed for the said purpose. The documents i.e. partnership deed and documents placed on record refer contrary to that. In his affidavit he has referred having his association with Sanjay Sharadchandra Shah and Associates, the firm which is providing technical consultancy in practice of Architecture, Engineering & Interior designs. He has stated that he is an active professional since 1984 with respondent No. 5. At the cost of repetition, it is required to be stated that the firm of architects can only have architects as its partners. However, it is open for an architect and an engineer to enter into an agreement of partnership and to carry on business but certainly such firm cannot introduce itself as the firm of architects or architectural consultancy firm. Respondent No. 4 has kept mum about the work to be carried out specifically by him. All aforesaid circumstances go to strengthen the say of the petitioner.

24. What was the necessity for the respondent No. 4, 5 and 6 to enter into an agreement on 1.4.97 for having commenced business on 16.1.1997? The partnership deed is silent about the intention of the partners to carry on business as architectural consultancy firm. If that was so they would have referred in agreement itself. Therefore, it appears that after submitting an application, documents might have been executed later i.e. on 1.4.1997. Respondents ought to have placed on record details of application indicating the fact that these partners were partners of the firm and were applying in response to the advertisement. It appears that as and when necessity arose agreements were executed. Power of attorney is executed on 5.2.1998 by respondent No. 4 authorising Sanjay Sharadchandra Shah to act on behalf partnership firm and on the same date an agreement has been executed authorising the partnership firm to use his registration number and licence whenever and wherever required. It is also interesting to note that the firm is registered with the Registrar of Firms thereafter on 13.2.1998. There is an agreement between the Executive Engineer, Housing Division of Gujarat Housing Board and respondent No. 5. This clearly reveals that after this agreement, a further agreement between the partners of the firm has been executed so as to exclude respondent No. 4 from acting on behalf of the firm and authorising respondent No. 5 to act on behalf of the firm. Thus, it is clear that there was no firm in existence on the day on which advertisement appeared or the firm has not carried out any work prior thereto. There is nothing to indicate what type of work has been carried out by the firm. Therefore, also the marks awarded to respondent No. 3 firm are awarded arbitrarily in empaneling respondent No. 3 in the panel as Architectural Consultancy Firms.
25. So far as the publicity is concerned, the project for constructing housing was required to be undertaken by three Circles namely, Ahmedabad, Baroda and Rajkot. The scheme in question involves huge amount. For one project, consultancy fees of Rs. 10 crores are to be paid. This Figure indicates the nature of the work. The total houses, under the scheme for which respondent No. 3 is appointed, required to be constructed are 5629 houses in large area of land situated on the border of Ahmedabad city. This is not the only scheme. For the purpose of preparing panel for carrying out huge work, it was the duty of the respondent Housing Board to see that there is proper advertisement.
26. The advertisement at Annexure-A as well as at Annexure-B collectively suggest for preparation of a panel of Architectural Consultancy Firms. No details about the projects to be undertaken or cost of projects to be undertaken are given. Advertisement nowhere refers the nature of work to be carried out with the help of an Engineer. Thus, an architect, reading the advertisement would be under an impression that the architect whose name will be empaneled will be required to carry out the work as an architect only. It is to be remembered that the nature of work to be performed by an architect and by an engineer is different though there may be overlapping. Grollier Electronic Publishing has published notes with regard to architects, architecture, modern architecture, civil engineering. Architecture is probably the oldest of the fine arts. In this country as well as in Western countries, even today, there are number of buildings constructed before several years. In medieval illuminated manuscripts, God was frequently shown armed with compass and mason's square, as an Architect of the Universe. History of significant buildings, castles, cathedrals, palaces, temples and manor institutional monuments shows what is the architecture.
27. Well-known authors while describing architecture have taken care after. Scrutinising the nature of work performed by architects in the past and in the present. The sum and substance with regard to architecture can be said in four ways: all valid, all interrelated. It is the art and method of erecting structures; it is a planned entity, the result of a conscious act; it is a body or corpus of work; it is a way to build. A good definition was provided by Roman architect VITRUVIUS in the 1st century AD and later on translated from Latin into English during the 17th century by Sir Henry Wotton. The definition recognizes that architecture embraces functional, technological and aesthetic requirements; it must have commodities (utilitarian qualities), firmness (structural stability and sound construction) and delight (attractive appearance).
28. The name of architects first began to be known in Italy during the RENAISSANCE in the 15TH and 16TH centuries. The idea of a professional architect with formal training and academic qualification is a product of the 19th century. In 1819 architecture courses were instituted at the ECOLE DES BEAUX ARTS (School of Fine Arts) in Paris and thereafter in various universities in different years. The said art has retained to some extent its local requirements. Contemporary architects and scholars emphasize the influences of technology on the development of buildings. The use of iron and steel beams and columns released the wall from its traditional load bearing function and allowed architects to incorporate enormous windows and wide, open-plan floors, two of the most significant characteristics of modern architecture. No large modern building, however, would be practicable without the parallel development of elevators, central heating and ventilation systems, and electric lighting devices. Today, the system has further added the use of electronic devices with

includes computers, video cameras and communication network.

29. Architects considering the requirements of the time and need of people have to plan from townships to cities or big complexes such as commercial and residential. They have to bear in mind different requirements of the people in a country. Architects are also required to keep in mind the most important aspect which is known as 'cost factor'. So far as the Civil Engineers are concerned, ordinarily they are engaged in designing and constructing major structures and facilities: bridges, dams, tunnels, tall buildings, factories, highways, airports, railroads, and so on. There is a significant contribution by this branch also and has glorified by creation of sanitary system to reduce disease and improve the environment. Transportation is one branch and it has divisions such as highway, bridge and traffic engineering. Another branch known as structural engineering has to concentrate on the design of bridges and large buildings. Structural engineer may cooperate with an architect, who concentrates on the aesthetic and functional aspects of design while the engineer is concerned with materials, methods of construction and other technical requirements. The present day sanitary engineer is concerned with water supply and sewerage systems for collecting and processing human wastes. Some Civil Engineers manage the construction of other engineers' designs, concerning themselves with the scheduling and coordinating phases of construction and inspection to assure adherence to specifications. Considering various aspects it is clear that the function of Architects and Civil Engineer cannot be the same. To some extent, the work might be appearing to be overlapping. The Engineer may carry out the work of erecting a building as per the design prepared by the architect. Architect may require supervision of the work carried out by the Engineer. It may be that in some cases one may require assistance of architect and engineer to complete the work but at the same time it must not be forgotten that the legislature has taken note of the fact that architects are professionals and qualifications are enumerated in the schedule to the Architects Act. So far as the Civil Engineers are concerned, nothing has been placed before us indicating that they are required to be enrolled with the statutory body recognised under the Act, empowering the statutory body to exercise powers over the members or to take action, such as disciplinary action. An engineer cannot be equated with an architect. This important aspect has been lost sight of by the Board while scrutinising the application.

30. The Board has come out with a very weak defence that it was for the government to take a decision as to in which newspaper the advertisement should be circulated. Gujarat Housing Board should know its duties very well. It was for the Board to realize as what would be the outcome if there is no proper advertisement. It was the duty of the Board to see that there is proper circulation by giving advertisement in a newspaper having larger circulation. In our opinion, circulation of advertisement or publishing an advertisement in a newspaper having circulation in the evening only may not serve the purpose. General public is in the habit of reading the daily newspaper in the morning. It was the duty of the Board to see that their advertisement is published in daily newspaper having vast circulation and having not done so, this advertisement has not served the purpose and possibly by giving advertisement in a newspaper having no larger publicity and having publication in the evening has benefited certain persons. The fact that in Gujarat out of more than 500 architects, very limited number of persons have submitted applications clearly indicates that there was no wide publicity and the persons who were aware about the intention of the Board might have applied. Therefore also in absence of proper publication, it cannot be said that the Board has given proper publicity.

31. In view of the fact that Board though invited applications only from Architectural Consultancy Firms has treated the application submitted on behalf of the firm having not all the partners as architects. The decision taken by the Board for preparing panel is bad in law and it must be quashed and set aside on the ground that respondent No. 3 is not an architectural consultancy firm. In view of the provisions contained in Architects (Professional Conduct) Regulation, 1989 the Board has committed a serious error in accepting the application. The decision of the Board is also required to be quashed and set aside on the ground that it has deprived others who were similarly situated like respondent No. 3. If in the advertisement, the Board would have made it clear that the association of persons or firm consisting of the architects and engineers can apply then possibly no injustice could be said to have been done. The petition is thus required to be allowed. As a result, inclusion of respondent No. 3 in the panel of "Architectural Consultancy Firms" is not in accordance with law. Respondent No. 3 cannot be identified as a firm of architects. The agreement entered into between Gujarat Housing Board and respondent No. 3 on the basis that respondent No. 3 is a firm of architects, which in fact is not, is hereby quashed and set aside. However, it is directed that the Board shall carry out its obligation for the work carried out by the respondent No. 3 till this date.

Civil Application No. 1927 of 2000 does not survive and hence rejected.

32. In the result, the petition is allowed.

Sd/-  
(D.M.DHARMADHIKARI,C.J.)  
Sd/-  
(B.C. PATEL, J.)  
By ORDER OF THE COURT  
Sd/-

Deputy Registrar  
6-7-2000





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  
SANTOSH K. PANT  
Date: 2017.02.14 17:18:56 IST  
Reason:

NEW DELHI  
FEBRUARY 14, 2017

ITEM NO.105

COURT NO.5

SECTION IX

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 & 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.  
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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 Suri, 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)



संख्या 1699 / 19-आ-3-1999

प्रेमक,

श्री अतुल कुमार मुचा,  
सचिव,  
उत्तर प्रदेश शासन।

सेवा में,

उपस्थान  
विकास प्राधिकरण,  
मुजफ्फरनगर।

आवास अनुभाग-3

तखनक : दिनांक 18 अगस्त, 1999

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

महोदय,

प्रशासनिक अधिकारी, काउन्सिल ऑफ 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। उन्होंने अनुरोध किया है कि जनसाधारण के हितों की सुरक्षा तथा आर्किटेक्चर प्रोफेशन को 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 एक्ट नोटिफिकेशन के दिनांक (31 मई, 1972) से सम्पूर्ण भारतवर्ष में प्रभावी है। इस अधिनियम की धारा-3 के अन्तर्गत काउन्सिल ऑफ आर्किटेक्चर का गठन किया गया है तथा धारा-37 के प्रावधानों के अन्तर्गत काउन्सिल ऑफ आर्किटेक्चर से रजिस्टर्ड आर्किटेक्ट के अतिरिक्त किसी अन्य व्यक्ति द्वारा आर्किटेक्ट के टाईटिल के साथ कार्य करने पर पूर्ण प्रतिबन्ध है। अधिनियम की धारा-39 के अन्तर्गत ऐसा करना एक दण्डनीय अपराध भी है। इसके अतिरिक्त काउन्सिल ऑफ 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 प्रावधानों 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। कृपया कार्यवाही से शासन को भी अवगत कराए।

भवदीय,



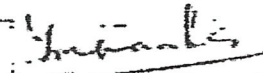
( जितुन कुमार गुप्ता )  
सचिव।

संख्या 1699 (1)/9-आ-3-1999 तददिनांक

प्रतिनिधि निम्नलिखित को सूचनाएँ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1- श्री के० पोपल कृष्ण भट्ट, प्रशासनिक अधिकारी, कारुणिसल आफ आर्किटेक्चर, इण्डिया हेवीयट सेन्टर, 6-ए, प्रथम तल, लोदी रोड, नई दिल्ली को उनके फाईल सी.ए./28/99/ए.ई. दिनांक 27.3.99 को मुख्य सचिव, उ० प्र० शासन को सम्बोधित है, के संदर्भ में।
- 2- स्टाफ 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 आर्किटेक्चर, 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।

3. अध्यक्ष,  
समस्त विशेष क्षेत्र विकास प्राधिकरण,  
उत्तर प्रदेश।

2. उपाध्यक्ष,  
समस्त 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 ध्यानकर्षण 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 प्रादेशिक 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 वह व्यक्ति प्रैक्टिस कर सकता है जो कारन्सिल 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 अर्हताएं 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, डाफ्ट्समैन आदि को भवन मानचित्र, जलापूर्ति, ड्रेनेज एवं सीवरज स्युम बनाने हेतु राज्य सरकार के पूर्वानुमोदन से बनाए गए बाई-जॉइंट के अनुसार लाईसेन्स जारी करने का अधिकार है। आर्कीटेक्ट एक्ट, 1972 के अनुसार ऐसा तकनीकी व्यक्ति जो अर्ह आर्कीटेक्ट नहीं है एवं कारन्सिल ऑफ आर्कीटेक्चर में पंजीकृत नहीं है, आर्कीटेक्ट को ह्रासियत से व्यवसाय



3. नहीं 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 लाईसेंस लेने की भी आवश्यकता नहीं है।

4. उपर्युक्त के दृष्टिगत आर्कीटेक्टर प्रोफेशन के संरक्षण तथा जनसाधारण के हितों की सुरक्षा हेतु अपने प्रवर्धन क्षेत्र में कृपया आर्कीटेक्ट एक्ट, 1972 के अधिनियमों को प्रभावी बना से लागू कराए तथा अनधिकृत रूप से आर्कीटेक्ट के रूप में प्रवृत्त रहे व्यक्तियों के विरुद्ध तत्काल आवश्यक कार्यवाही करना सुनिश्चित करें। कृत कार्यवाही से शासन को भी अवगत कराने का कष्ट करें।

भवदीय

(जे. एस. मिश्र)  
सचिव।

संख्या: 3583(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 सेन्टर, 6-ए, प्रथम तल, लोदी रोड, नई दिल्ली।
2. संयुक्त सचिव, तकनीकी, मानव संसाधन विकास मंत्रालय, सेकेण्डरी एवं हायर एजुकेशन विभाग, भारत सरकार, शास्त्री भवन, नई दिल्ली को उनके पत्र संख्या एफ-17-6/2002-टीएस. ए. दिनांक 19.12.2002 के संदर्भ में।
3. स्टाफ ऑफिसर, 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 एसोसिएशन, 350, सेक्टर-28 नोएडा, उत्तर प्रदेश।
6. अध्यक्ष, यू.पी. चैप्टर, इण्डियन इंस्टीट्यूट ऑफ आर्कीटेक्ट्स, लखनऊ।
7. अपर निदेशक, नियोजन, आवास बन्धु।

आज्ञा से,  
(दिवाकर त्रिपाठी)  
विशेष सचिव।

