

Ref. No. CA/15/2020/AE
December 13, 2021

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

Subject: Licensing of Architects by local bodies/Municipal/ Department Authorities in the State of West Bengal in violation of the Architects Act, 1972.

Sir,

This is in continuation of the Council's letter no. CA/15/2020/AE dated 22.10.2020 on above subject. The Council of Architecture is statutory authority established under the Architects Act, 1972 to regulate Architectural Education and Profession in the Country and to provide registration of Architects throughout the territory of India. The Act extend to the whole of India.

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

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

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

The relevant provisions of the Act are as under:

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

Section 35(2) : A person who is registered in the register shall get preference appointment as an architect under the Central or State Government or in any other local body or institution which is supported or aided from the public or local funds or in any institution recognized by the Central or State Government from the public or local funds or in any institution recognized by the Central or State Government.



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

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

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

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

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

The Hon'ble High court further held as under:

The other issue is in regard to the restriction as regards to the architects' status and functions under Bidhan Nagar Building Rules. It has been contended by Mr. Dutt that the preparation and maintenance of a panel of architects means a restriction on the architects and as such is violative of Architects Act, 1972. Mr. Dutt contended that no rules can be

framed so as to defeat the purpose of a Central Legislation. In my view, there is substantial force in Mr. Dutta's submission.

In the event, a panel is prepared by the concerned authority, there is an innate restriction for some other who are not empaneled. Can it thus be said that it is in consonance with the provisions of the Architects Act? In my view the answer is in the negative. Preparation of panel means restriction on some others and there cannot be any manner or doubt in regard there to. In the view expressed above while dealing with the main brunt of the submissions of the parties, I am of the view that such a panel cannot be maintained or prepared. Anybody having qualification of an architect ought to be allowed to submit a plan provided of course he is registered under the Architects Act. As such the rules in regard to such a panel being maintained ought to be and it is hereby declared to be invalid and bad in law.

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

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

The Architects Act, 1972 is a special law dealing with the qualifications to be possessed by persons for being registered as architects and restricting the terms "architect" or "registered architect" to such persons only. Since the possession of a registration certificate under the Architects Act, 1972 regarded by Parliament as sufficient qualification for the practice of architects and since all related questions have been dealt with in respect of architects by the said Act, it becomes unnecessary for the Corporation to do thereafter. In view of section 502 of the Act, the provisions referred to above which



could be construed as authorizing to regulated the licensing of architects and draughtsman could not be so construed after coming into force of the Architects Act, 1972.

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

I am enclosing herewith copies of the communications sent by Central Government to all State Governments informing that it is only Council of Architecture which can grant registration to a qualified person as an Architect. I am also enclosing herewith directions issued by other State Government in the matter for your ready reference.

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

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

Thanking you,

Yours faithfully,

R.K. Oberoi
Registrar

Encl: As above

Copy for information and necessary action to:

1. The Additional Chief Secretary to the Governor
Government of West Bengal
Rajbhavan, Kolkata - 700 062
Email: secy-gov-wb@nic.in
2. Sri Partha Sarathi Sen,
Secretary, Department of Law,
Government of West Bengal
Writers' Building, Main block, 1st Floor,
Kolkata-700 001
Email: seclaw@wb.gov.in
3. The Commissioner
Asansol Municipal Corporation
Station Road, Asansol-713301 Burdwan,
West Bengal
4. The Commissioner
Kolkata Municipal Corporation
5, S.N. Banerjee Road,
Kolkata-700013