

  
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/28/2016/AE

February 03, 2016

To

**The Chief Secretaries of all the States/ UTs in India**

**SUBJECT : VIOLATIONS OF THE ARCHITECTS ACT, 1972 (A CENTRAL LAW) BY THE LOCAL AUTHORITIES IN THE STATES/UTs – REG.**

Sir,

The Council of Architecture is a Statutory Body established under the Architects Act, 1972 (A Central Act) enacted by the Parliament of India under the nodal Ministry of Human Resource Development, Govt. of India, and vested with the responsibility of prescribing and monitoring standards of architectural education and profession and registering Architects all over India.

The Architects Act, 1972 is a law relatable to Article 19 (6)(i) and also entry 66 of List-I & entry 25 & 26 of List-III to the Seventh Schedule of the Constitution of India.

The Architects Act, 1972, was enacted by the Parliament of India keeping in view the fact that since Independence and more particularly with the implementation of five-year plans, the building construction activity in our country had expanded almost on a phenomenal scale. A large variety of buildings, many of extreme complexity and magnitude, like multi-storeyed office buildings, factory buildings, residential houses were being constructed each year. With this increase in building activity, many unqualified persons calling themselves as architects were undertaking the construction of buildings which were uneconomical and quite frequently were unsafe. In order to protect the general public from unqualified persons working as Architects, the Parliament decided to pass the legislation making it unlawful for any person to designate himself as "architect" unless he has the requisite qualifications and experience and is registered under the Act for carrying on the profession of an architect.

We would like to bring to your kind notice that the Council of Architecture is in receipt of representations from Architects that

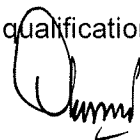
- (i) Non-Architects are being issued license/ registration as architects; and
- (ii) Architects registered with the Council of Architecture are insisted to seek registration under the jurisdiction of concerned local bodies of State to practice the profession of architecture.

The above practice of municipal/ development authorities is in utter contravention of the provisions of the Architects Act, 1972. The violation of the provisions is Act a punishable offence.

Pertinent to the matter, may I draw your attention to the two issues involved in the matter :

- a. Who is an Architect ?
- b. Who can register a person possessing recognized qualifications as Architect?

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In this regard, the following provisions of the Architects Act, 1972 are enumerated below for your kind perusal :

- i) Section 2 (a) of the Act defines an **Architect** to mean a person whose name is for the time being entered in the register maintained by the Council.
- ii) Section 2(d) of the Act defines recognized qualifications to mean any qualification in architecture for the time being included in the Schedule or notified under Section 15.
- iii) Section 35(1) of the Act provides that any reference in any law for the time being in force to an architect shall be deemed to a reference to an architect registered under the Architects Act, 1972.**
- iv) Section 35(2) provides that after the expiry of two years from the date appointed under sub-section (2) of Section 24, (i.e. 27.04.1974), 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 for in any institution recognized by the Central or State Government.
- v) Section 36 of the Act provides that if any person whose name is not for the time being entered in the register falsely represents that it is so entered, or uses in connection with his name of title any works of letters reasonable calculated to suggest that his name is so entered, he shall be punishable with fine which may extend to one thousand rupees.
- vi) Section 37 (1) of the Act provides that no person except an architect or a firm of architects registered under the Architects Act, 1972, shall use the title and style of an architect and/ or carry on the profession of an architect in India, violation of which is a punishable offence.
- vii) Proviso (b) to Section 37(1) permits 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.
- viii) Section 37 (2) of the Act provides that 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 with may extend to six months or with fine not exceeding one thousand rupees or with both.
- ix) Section 39 of the Act provides taking cognizance of offences punishable under the Act and for filing of criminal complaints before a first class magistrate.

Therefore, consequent upon enactment of the Architects Act, 1972, by the Parliament of India, which is in force w.e.f. 01.09.1972 all over India, all State and local laws stand automatically repealed to the extent that an Architect is a person who is defined under Sections 2(a) & 35 of the Architects Act, 1972 & other related provisions.

**Further, as per the provisions of the Article 254 of the Constitution of India a Central Law prevails over a State law. Therefore, all State laws including Building Bye-laws have to be in conformity with the provisions of the Central Law i.e. the Architects Act, 1972.**

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It is also noticed that some Municipalities are following National Building Code (NBC) prescribed by BIS to grant registration as an architect and determine qualification/ competence of Architects. In this regard, it is clarified that the NBC is not a statutory document and merely a guideline. A copy of the Division Bench Judgement of Hon'ble Delhi dated 06.01.2014 is enclosed herewith for your kind perusal.

In addition, I would also like to invite your kind attention towards Division Bench judgement dated 02.04.1980 of Hon'ble Delhi High Court, which held as under :

*"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 term "architect" or "registered architects" to such persons only. Since the possession of a registration certificate under the Architects Act, 1972 is 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. xxx"*

An SLP filed against this judgement was dismissed by Hon'ble Supreme Court of India on 22.04.1983.

In view of the above, the Council of Architecture requests all the State Governments/ Union Territories to issue directions to all departments and local bodies i.e. Development Authorities, Municipal Corporations, Municipal Council, Improvement Trusts, Slum Development Authorities, etc. under its control to :

- i) *not to Register any person as an Architect for practising the profession of an architect under their jurisdiction ; and*
- ii) *allow architects having valid registration as an Architect from the Council of Architecture to carry on the profession of architecture under their jurisdiction without any registration.*

A Handbook of Professional Document of Council containing Act, Rules, Regulations, etc. is also enclosed herewith for your kind perusal.

This office may be kept posted with the action taken in the matter.

Thanking you,

Yours faithfully,

R. K. Oberoi  
Registrar

Encl : As above

Copy for information to:

1. All the Council Members  
(Nominees of State Governments on Council) : With a request to follow the matter with their State Governments.





and the counsel for the petitioner No.1 and the petitioner No.2 in person in W.P.(C) 4451-52/2006. It is inter alia their contention that Section 10 of the Bureau of Indian Standards Act, 1986 while delineating the functions of Bureau of Indian Standards, nowhere empowers it to formulate a code for the building activity as National Building Code of India, portions whereof are impugned in these petitions, purport to do. It is further their contention that even if the Bureau of Indian Standards is held to be authorized to prepare/draft such a Code, the impugned portions of the said Code are in violation of the Architects Act, 1972 and/or the functions of the Council of Architecture constituted under the said Act.

3. With respect to the first of the aforesaid contentions, it is further contended that the respondent Bureau of Indian Standards, in its counter affidavit in W.P.(C) 1042/2006 has admitted that the said Code is not a statutory document.

4. We have invited the attention of the petitioners to the dicta of the Supreme Court in *Kusum Ingots and Alloys Ltd. Vs. Union of India* (2004) 6 SCC 254 laying down that mere passing of a legislation does not give rise to a cause of action to challenge the constitutionality thereof unless the provisions thereof give rise to civil or evil consequences to the petitioner and that a Writ Court would not determine the constitutional question in vacuum. To the same effect are the judgments in *Sanjeev Coke Manufacturing Company Vs. M/s Bharat Coking Coal Limited* (1983) 1 SCC 147, *State of Haryana Vs. State of Punjab* (2004) 12 SCC 673 and if we may go so far, of the Full Bench of Nagpur High Court in *Shivshankar Vs. State Govt. of Madhya Pradesh*, MANU/MH/0154/1951 penned very succinctly by Hidayatullah, J. and in *Chandrashekher Pandey Vs. State Govt. of Uttar Pradesh*, MANU/U/1049/1992 penned by Justice V.N. Khare.

5. We have, thus, inquired from the Sr. Counsel that if even a statute cannot be challenged without showing any injury, how the petitioner can challenge the Code without showing any injury therefrom and what is the cause of the action of the petitioners to maintain these petitions. The counsels as well as the petitioner in person fairly admit that there is no cause of action per se. Their grievance however is that some of the smaller municipalities outside Delhi, treating the said National Building Code as 'The Bible' have adopted the same verbatim in their statutes and

which statutes are violative of the rights of the architects. They, however fairly admit that those statutes are not challenged in these petitions and those municipalities are not before this Court.

6. The Sr. Counsel for the petitioner in W.P.(C) 1042/2006 under instruction and the counsel for the petitioner No.1 and the petitioner No.2 in person in W.P.(C) 4451-52/2006, thus, seek to withdraw these writ petitions in the light of the admission in the counter affidavit of the Bureau of Indian Standards that the said National Building Code, 2005 is without any statutory basis and with liberty to challenge the same as and when the cause of action arises.

7. Of course, the Sr. Counsel for the Bureau of Indian Standards and the counsels for some of the intervening parties controvert the contentions aforesaid, but when constitutionality of even a statute cannot be examined without showing any imminent injury and without there being a ?case? or ?actual controversy? before the Court, the question of entertaining a hypothetical challenge to the National Building Code in vacuum does not arise.

8. We therefore on the statements aforesaid, allow these petitions to be withdrawn with liberty aforesaid, leaving the parties to bear their own costs.

??CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JANUARY 06, 2014

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