

SPEED POST

Ref. No.CA/5/ Academic/ 2014(UGC)
April 03, 2014

The Secretary
University Grants Commission
Bahadurshah Zafar Marg
New Delhi – 110 002

Subject : Framing of UGC (Affiliation of Colleges offering Technical Education by Universities) Regulations, 2014, by UGC with prior approval of Central Government – reg.

Sir,

I am directed to state that the Architects Act is a legislation enacted in exercise of the powers under entry 66 of List 1 of the seventh schedule of the constitution of India. It is also a law relatable to Article 19 (6) of the Constitution of India since it seeks to regulate the practice of architecture and registered architects.

The UGC Act 1956 is intended to govern Universities specifically with regard to funding and also the specification of degrees. By virtue of Section 12 of the UGC Act, other sister legislations such as the Architects Act are to be kept in mind while making any subordinate legislation in exercise of powers under Section 26 of the UGC Act. There is a clear reference to mandatory consultation while dealing with issues specifically covered by other competent legislations.

Regretfully, no such consultation has been made with COA before issuing the above regulations. In spite thereof, we had based on newspaper reports placed our objections as regards certain provisions in the Draft Regulations which appeared to be directly in conflict with the provisions of the Architects Act and the Regulations framed thereunder. With the formal publication of the final regulations we notice with concern that none of the issues raised by us have been taken into account or even considered. We were not even called for any formal consultation or discussion in relation to issues of concern of COA.

We now notice that by virtue of your regulations, a parallel set of minimum standards are sought to be prescribed. What is more significant is that these minimum standards now being prescribed are below the minimum standards prescribed in COA's statutory Regulations and statutory guidelines. In many cases these standards are completely different from the statutory minimum standards prescribed under the Architects Act.



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We draw your attention to the Judgement of the Hon'ble Supreme Court in Civil Appeal No. 1145 of 2004 dated 25.04.2013, which has been stated to be basis for making the Regulations in question.

It may be noticed that the Hon'ble Supreme Court came to the conclusion that the judgment in Bharathidasan University exempts Universities, its colleges, constituent institutions and units from seeking prior approval of AICTE. It was also noticed that under the provisions of the AICTE Act and UGC Act 1956, the role of AICTE vis-a-vis universities is only advisory and recommendatory and one providing guidance and has no authority empowering it to issue or enforce any sanctions by itself. In the judgment, reported as (2013) 8 SCC 271, we wish to draw your attention specially to para 55 which contains the following statement of law;

"A careful reading of sub-sections 2 (c), (3), (4) and (5) of Section 12A of the UGC Act makes it abundantly clear about colleges which are required to be affiliated to run the courses for which sanction/ approval will be accorded by the University or under the control and supervision of such universities. Therefore, affiliated colleges to the university/ universities are part of them and the exclusion of University in the definition of technical institution as defined in Section (h) of the AICTE Act must be extended to the affiliated colleges to the university also, otherwise, the object and purpose of the UGC Act enacted by the Parliament will be defeated. The enactment of UGC Act is also traceable to Entry 66 of List I. The aforesaid provisions of the UGC Act has been examined by this Court with reference to the provisions of AICTE Act in Bharathidasan University's Case. Therefore, it has clearly laid down the principle that the role of AICTE Act is only advisory in nature and is confined to submitting report or giving suggestions to the UGC for the purpose of implementing its suggestions to maintain good standards in technical education in terms of definition under Section 2(h) of the AICTE Act and to see that there shall be uniform education standard throughout the country to be maintained which is the laudable object of the AICTE Act for which it is enacted by the Parliament. The provisions of the AICTE Act shall be implemented through UGC as the Universities and its affiliated colleges are all governed by the provisions of the said Act under Section 12A of the UGC Act read with Rules Regulations that will be framed by the UGC in exercise of its power under Section 25 and 26 of the said Act. Therefore, the conclusions arrived at in Bharathidasan University case is supported by the eleven Judge Constitution Bench decision in T.M.A. Pai case (supra) wherein this Court has overruled the directions given in Unni Krishnan J.P & Ors V. State of Andhra Pradesh & Ors. to Central government and others regarding the reservations and schemes."

Again in para 60 the Hon'ble Court further declared as follows :

"A reading of the aforesaid paragraphs extracted from TMA Pai's case makes it very clear that in view of decision of the eleven Judges Constitution Bench of this Court, the scheme framed under t he Unni Krishnan's case has been overruled. Therefore, the

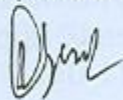


autonomy of the university is recognized in the said case and the object and intendment of the Parliament in excluding the universities from the definition of technical institutions as defined under Section 2(h) of the AICTE Act makes is explicitly clear, after scanning the definition of education institution with reference to the exclusion of universities and Sections 10,11,12 and 13 of the AICTE Act. The object of the statutory enactment made by the Parliament has been succinctly examined by this Court in Bharathidasan University and Parshvanath Charitable Trust cases referred to supra therefore they have rightly made observations that the role of the AICTE Act in view of the UGC Act and the powers and functions conferred by the UGC for controlling and regulating the universities and its affiliated colleges has been explicitly conferred upon the UGC. Hence, they have been given power to regulate such universities and regulations in relation to granting sanctions/ approval and also maintaining educational standards and over-seeing the prescription of the fee structure including the admission of students in various courses and programmes that will be conducted by the university and its institutions, constituent colleges, unit and affiliated colleges”.

It is, therefore, noticed that the power to prescribe these conditions was declared to be vesting in the UGC Act only because Section 2 (h) of the AICTE Act exclude Universities from the purview of the that Act. You will further notice that Section 2(h) contains a specific exclusion of Universities. Therefore, the judgment of the Hon'ble Supreme Court creates no ambiguity that UGC' s power extends prescribing minimum standards only in respect of institutions excluded by virtue of Section 2(h) of the AICTE Act, 1987. The Hon'ble Supreme Court never intended that the UGC Act would have overriding powers over other sister legislations which are intended to apply to the specialized areas such as Architecture which is governed by special Legislation. This is particularly so since the Architects Act, 1972 is subsequent law in relation to UGC Act, 1956.

We further draw your attention to fact that the Hon'ble Supreme Court has repeatedly cautioned that the AICTE Act was not intended to belittle and destroy the authority or autonomy of other statutory bodies. Reference has also been made to re-emphasize this point in the recent judgment in Parshavnath Charitable Trust v. AICTE (2013) 3 SCC 385. Specifically please note the relevant observations in para 51 and 52 of the judgement above referred. By the Regulations in questions the UGC appears to be the crossing this Laxman Rekha which the Hon'ble Supreme Court has repeatedly directed to be obeyed.

More significantly attention is also drawn to the fact that unlike Section 2(h) of the AICTE Act the Architects Act does not contain any provision excluding Universities from its purview. On the contrary the Regulations 2(e) of the Council of Architecture (Minimum Standards of Architectural Education) Regulations, 1983 defines institutions in broadest possible manner.



Another issue which we have repeatedly brought to your notice is that several High Courts have independently held that the AICTE Act has no application to Architectural Education and that the Architects Act is special Act which prevails over the AICTE Act. Therefore, the decision of the Hon'ble Court in Civil Appeal 1145 of 2004 being declaration of law rising out of the exclusion of Universities from the purview of the AICTE Act has no application to Architectural Education. The Regulations framed by the UGC are therefore, in direct conflict with the Architects Act and constitutes an overreach of the declaration of law made by the Hon'ble Supreme Court.

The Hon'ble Supreme Court has also refused stay of the Division Bench Judgemnet dated 09.09.2004 of Hon'ble Bombay High Court which held that AICTE Act has no application to Architectural Education. A copy of the Bombay High Court Judgement and Supreme Court order dated 10.01.2005 is enclosed herewith for your kind perusal.

We are already deluged by the several queries from various architectural institutions in the country and stakeholders as a result of the confusion created by the issuance of your Regulations.

The Council had also tried for having a meeting of President, COA with the UGC Chairman to discuss these issues and sought an appointment on 14.03.2014 from the Chairman office but till date nothing is heard. A copy of the mail sent in the matter is also enclosed herewith for your information.

We are, therefore, constrained to write to you in earnest hope that you will take suitable action to delete references to Architecture in the aforesaid Regulations. We expect the UGC to do needful within two weeks of the receipt of this communication.

In the event the Commission does not initiate the remedial measures, we would be left with no option but to issue an appropriate public notice so that there is clarity in the matter and the provisions of the Architects Act, 1972 and Rules and Regulations framed thereunder are enforced.

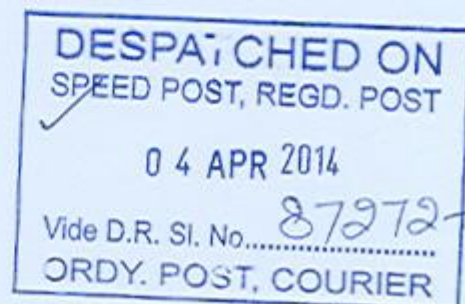
Yours faithfully,



R. K. Oberoi
Offg. Registrar
Encl : As above

Copy for information and necessary action to :

✓ Shri Rajesh Singh, Director (T)
Department of Higher Education
Ministry of Human Resource Development
Govt. of India, Shastri Bhawan
New Delhi - 110 115



SPEED POST

Ref. No. CA/28/2013/MHRD (UGC)

January 08, 2014

✓ The Chairman
University Grants Commission
Bahadur Shah Zafar Marg
New Delhi – 110 002

Subject : Proposed UGC Regulations for Approval of Colleges to impart Technical Education – conflict with the norms & standards prescribed for Architectural Institutions under the Architects Act, 1972 & Regulations framed thereunder - reg.

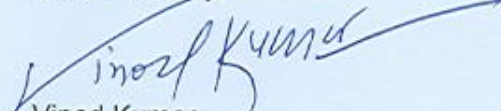
Sir,

I am directed to invite your kind attention towards this office letter No. CA/28/2013/MHRD dated 6th December, 2013, inter alia addressed to your goodself, that UGC may not interfere or override the norms and standards prescribed by the Council of Architecture under the Architects Act, 1972 & Regulations framed thereunder for architectural Institution for imparting recognized architectural qualifications. A copy of the same is again enclosed herewith.

It is once again informed that that Architectural Education is a professional education and is governed under Architects Act, 1972 & Regulations framed thereunder. Any kind of interference by prescribing any norms for architectural institutions by UGC would be an overlapping exercises and created confusion and may result in multiple litigations. Several courts in the past have restrained AICTE from prescribing any norms for architectural education and held that Council of Architecture is the final authority for architectural institutions in the country.

In view of the above, it is hoped that UGC would not prescribe or make applicable any of its Regulations/ norms for Architectural Institutions for imparting recognized architectural qualifications in the country.

Yours faithfully,



Vinod Kumar
Registrar
Encl : As above

Copy to :

✓ The Additional Secretary (T)
Department of Higher Education
Ministry of Human Resource Development
Govt. of India, Shastri Bhawan
New Delhi – 110 115

DESPATCHED ON
SPEED POST, REGD. POST
9 JAN 2014
Vide D.R. Sl. No. 81672-673
ORDY. POST, COURIER



Ref. No.CA/28/2013/MHRD
December 06, 2013

The Secretary
Department of Higher Education
Ministry of Human Resource Development
Government of India
Shastri Bhawan, New Delhi – 110 115

The Chairman
University Grants Commission
Bahadurshah Zafar Marg
New Delhi – 110 002

Subject : Regulation of Architectural Education under the Architects Act, 1972 – reg.

Sir(s),

I am directed to state that it has come to notice of the Council of Architecture through newspaper reports that UGC is proposing to make regulations on Technical Education including Architecture Education.

The Council upon visiting the website of UGC examined the proposed Regulations titled as "UGC (Approval of Colleges offering Technical Education by Universities) Regulations, 2013. The Council has very serious reservations on these proposed Regulations as Architects Act, 1972 is Special Act and prevails over other laws.

The proposed Regulations by UGC need thorough amendments and deliberations so that they do not encroach upon the authority, powers and functions of the Council of Architecture and other concerned statutory bodies. It seems that these regulations are drafted in haste and without consulting the concerned stakeholders including Council of Architecture.

Further, it may be noted that the several High Courts in the country have already restrained AICTE from dealing with Architectural Education and held the Council as final authority in the field of Architectural Education. The appeal of AICTE is pending for final adjudication before Hon'ble Supreme Court of India in Civil Appeal No.364 of 2005. The Hon'ble Supreme Court has expressly rejected the request of the AICTE for granting interim stay on the Bombay High Court judgement dated 8th September, 2004. The matter is in regular list of hearing and was recently listed on 05.12.2013 and may be decided on any day. Thus, UGC should not cover "Architecture" under these proposed Regulations.

The Ministry is therefore, requested that UGC be appropriately directed not to interfere in the Architectural Education which is regulated by the Council under the Architects Act, 1972.

The views of the Council on proposed Regulations are attached herewith for your kind perusal.

Yours faithfully,


Vinod Kumar
Registrar

Copy for information and necessary action to :

Dr. K. P. Singh
Joint Secretary
University Grants Commission
Bahadurshah Zafar Marg
New Delhi – 110 002

DESPATCHED ON
SPEED POST, REGD. POST
6 DEC 2013
Vide D.R. Sl. No. 79999-
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SPEED POST

PROF. UDAY GADKARI
PRESIDENT

Ref. No.CA/28/2013/MHRD

November 26, 2013

The Chairman
University Grants Commission
Bahadurshah Zafar Marg
New Delhi

Dear Sir,

It has recently come to our notice that following recent judgement by Hon'ble Supreme Court limiting the role of AICTE as only advisory and recommendatory for affiliated colleges, UGC has been authorized to make Regulations for regulating and/or approving technical courses being imparted at various institutions all over the country.

In this regard, I may apprise you that the Council of Architecture, a Statutory body constituted by the Central Government under the Architects Act, 1972 (A Central Act) has been vested with the authority, among others, to regulate the standards of architectural education at architectural institutions imparting 5-year Full Time B.Arch. degree course in the country. The Architects Act, 1972, is a Special Act and a complete code in itself whose provisions have been upheld by several courts in the country, comprehensively deals with Architectural Education. Under the provisions of Act and Regulations & Standards framed thereunder, the Council grants approval and intake to architectural institutions after assessment of standards being imparted there after conducting periodic inspections from to time, as may be required.

It is, therefore, requested that in case the UGC is introducing any new Regulations for regulating the approval process for various degree courses for institutions, the discipline of Architecture should not be included therein as the same has already been dealt with thoroughly under the Architects Act, 1972 and if included, it may lead to redundancy in determination of standards and infringement upon the authority of the Council.

Yours faithfully,


Uday Gadkari
President

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Copy for information to :

The Secretary
University Grants Commission
Bahadurshah Zafar Marg
New Delhi

Shri Rajesh Singh
Director (T)
Department of Higher Education
Ministry of Human Resource Development
Government of India
Shastri Bhawan, New Delhi – 110 115

DESPATCHED ON
SPEED POST, REGD. POST
26 NOV 2013
Vide D.R. Sl. No. 19653-
ORDY. POST, COURIER

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