



वास्तुकला परिषद्
Council of Architecture

वास्तुविद 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 (Haryana)
February 14, 2020

The Chief Secretary
Government of Haryana
Haryana Secretariat
CHANDIGARH - 160001

Subject : Amendments in the Haryana Building Code 2017– reg.

Sir,

The Council of Architecture is a statutory authority established under the Architects Act, 1972 enacted by the Indian Parliament and entrusted with the responsibility, inter alia, to regulate architectural education and profession in the country and register Architects on national level and also to take action against Architects in case professional misconduct. The Act was enacted with the consent of all State Governments.

It has come to notice of the Council that Government of Haryana is considering amendments in Haryana Building Code 2017 for allowing Supervisors to carry on the duties and functions similar to one meant for Architects registered with the Council of Architecture.

Pertinent to the matter, I would like to inform that the Role and functions of Architects and Engineers and other diploma holders is totally distinct and different. Engineers/Diploma holders cannot be allowed to carry the practice of profession of an Architect i.e. preparing building plans/ layouts, supervision and issuance of completion certificate of buildings etc.

In this regard I would like to invite your kind attention towards the following :

A. The Architects Act, 1972. The relevant provisions of the Act are stated as under :

- (1) Section 2 (a) states that “Architect” means a person whose name is for the time being entered in the register;
- (2) Section 2(e) states that “Register” means the register of architects maintained under Section 23;
- (3) Section 22 states that :
 - (1) The Council may by regulations prescribe standards of professional conduct and etiquette and a code of ethics for architects.
 - (2) Regulations made by the Council under sub-section (1) may specify which violations thereof shall constitute infamous conduct in any professional respect, that is to say, professional misconduct, and **such provision shall have effect notwithstanding anything contained in any law for the time being in force.**

Contd...p/2



-2-

(4) Section 25 states that a person shall be entitled on payment of such fees as may be prescribed by rules to have his name entered in the register, if he resides or **carries on the profession of an architect** in India and –

- (a) Holds a recognized qualification, or
- (b) Does not hold such qualification but, being a citizen of India, has engaged in practice as an architect for a period of not less than five years prior to the date appointed under sub-section (2) of Section 24, or
- (c) Possesses such other qualifications as may be prescribed by rules.

(5) Section 35 states that :

- (1) 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 this Act.
- (2) After the expiry of two years from the date appointed under sub-section (2) of section 24, 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 recognised by the Central or State Government.

(6) Section 36 states 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 or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable with fine which may extend to one thousand rupees.

(7) Section 37 states that :

- (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.
- (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.

Contd...p/3



-3-

(8) Section 39 states that:

(1) No court shall take cognizance of any offence punishable under this Act, except upon complaint made by order of the Council or a person authorised in this behalf by the Council.

(2) No Magistrate other than a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

B. The Division Bench Order of Hon'ble Gujarat High Court in Special Civil Application No.1111 of 1999 dated 20.06.2000 which held as under:

29. 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

Xxxxxx "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 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." Xxxxxx. A copy of the above order is enclosed herewith.

C. Supreme Court of India Judgement dated 14th February, 2017 in Civil Appeal Nos. 3346-3348 of 2005, Council of Architecture V/s. M. K. Ranade & Ors, wherein the Hon'ble Supreme Court while disagreeing with order of Hon'ble Bombay High 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.

D. Supreme Court of India's interim Order dated 03.12.2019 in SLP (C) No.18752 of 2014, Council of Architecture V/s. Mukesh Goyal & Ors, wherein the Hon'ble Supreme Court ordered as under :

Contd...p/4



"The dispute in the present case on the interpretation of the provisions of the Architects Act, 1972. The issue before the Court is whether the provisions of the Section 37 should be construed as merely imposing a prohibition on the use of title and style of an Architect by a person who is not registered with the Council of Architecture under the provisions of Chapter III. In other words, the question is whether a person who is not registered as an Architect with the Council of Architecture can carry on the duties and functions of an Architect.

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Having regard to the importance of the issue, we request that the learned Attorney General of India may himself or if he so considers appropriate may request the Solicitor General of India to assist this Court."

Copy of the above order is attached herewith. This matter is listed for further hearing on 18.02.2020.

E. Delhi High Court Division Bench order dated 06.01.2014, in Writ Petition (C) No.1042 of 2006, Council of Architecture v/s. Union of India, BIS & Ors. ordered as under :

*"6. The Sr. Counsel for the Petitioner in W.P. (C) 1042/2006 under instruction and the counsel for the petitioner no.1 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.**"*

A copy of the above order is enclosed herewith.

In view of the above, Government of Haryana is requested to not to proceed with any amendment in the Haryana Building Code to allow supervisor or any other person to carry on the profession of architecture till the time matter is finally decided by the Hon'ble Supreme Court in SLP (C) No.18752 of 2014, Council of Architecture V/s. Mukesh Goyal & Ors, else the same may result in violation of the Architects Act, 1972 and the Orders of Hon'ble Supreme Court of India.

Thanking you,

Yours faithfully,

R.K. Oberoi

Registrar

Encl : As above