



GRAVITAS LEGAL

The unique position of the Architects Act, 1972

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In its judgement dated March 17, 2020, in the matter of *Council of Architects v. Mukesh Goyal & Ors.*¹, the Supreme Court held that the Architects Act, 1972 ('Act') does not prohibit individuals not registered under it from engaging in the practice of architecture or functions allied thereto. This article dissects the history of this provision and its interpretation, and makes suitable comparisons to better quantify the outcome of the aforesaid judgement.

Legislative Framework

At the outset, it ought to be noted that the Statement of Objects and Reasons of the Act cannot be inferred to be of a prohibitory nature. The Statement of Objects and Reasons says that "*The legislation protects the title of '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 their normal vocation in respect of building construction works provided that they do not style themselves as architects.*"

The Legislators, while framing the act have emphasized that "*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.*" It is on this premise that the Legislators framed the Act, providing for the definition of Architect², the mandatory qualifications to be considered an Architect³, etc. Although the Legislators did not intend to place an embargo on the functionality of architecture and its many nuances (like planning, designing, landscaping, supervision, etc), they did endeavour to ensure that the use of the term 'architect' was backed by the objective fulfilment of yardsticks specified in the Act.

¹ Civil Appeal No 1819 of 2020 (Arising out of SLP(C) No 18752 of 2014).

² Section 2(a), The Architects Act, 1972.

³ Section 25, The Architects Act, 1972.

The Architects Act, 1972 is divided into four chapters containing 45 sections and it is evident from the scheme of the Act that it neither defines who can provide architectural services nor seeks to prohibit those who engage in the provision of architectural services. It does, however, define an Architect to mean a person whose name is entered in the register maintained by the Council of Architecture and lays down the mandatory qualifications that an individual must have in order to secure an entry in the said Register. Thus, the Act while clearly prescribing that unregistered persons, including juristic entities i.e. a firm of Architects cannot describe or style themselves as ‘Architects’, does not preclude anyone from providing architectural services.

Comparison with similar acts that govern other professions

The lack of any prohibitory provisions in the Architects Act, 1972 is distinct from the following acts, which also regulate the practice of other professions:

- **Advocates Act, 1961:** An act enacted to amend and consolidate the law relating to legal practitioners, and to provide for the constitution of the Bar Councils and an All India Bar. Sections 29, 30 and 33 of the Advocates Act specifically prohibit persons other than advocates whose names are enrolled with a State Bar from practicing the profession of law.
- **Chartered Accountants Act, 1949:** An Act that makes provisions for the regulation of the profession of Chartered Accountants. A cumulative reading of Sections 2(1)(g), 2(2), 4 & 6 shows that no person would be entitled to practice chartered accountancy unless his/her name is present in the register maintained by the Institute of Chartered Accountants of India. Furthermore, Section 25 specifically prohibits companies and LLPs from engaging in accountancy.
- **Indian Medical Council Act, 1956:** This Act was enacted to provide for the reconstitution of the Medical Council of India, for the maintenance of a medical register for India and allied matters. Section 15(2) bars any person other than medical practitioners enrolled on the State Medical Registers from practicing Medicine or holding the office as ‘physician’ or ‘surgeon’ in any Government Institution or other Institution maintained by any local or other Authority.

Judicial Interpretation

In *Mukesh Kumar Manhar & Anr. v State of Madhya Pradesh*⁴, the Hon’ble High Court of Madhya Pradesh marked a contrast between the Architects Act, 1972, and the Advocates Act, 1961 and Medical Council Act, 1956 noting that the Architects Act does not prohibit persons other than those registered as Architects from practicing the profession. It held that the prohibition was only to the extent of the usage of the title and style of ‘Architect’. It reiterated the aforementioned Statement of Objects and Reasons and held that other professions like engineers would be free to engage themselves “*in their normal vocation in respect of building construction work provided that they do not style themselves as ‘Architects’.*”

Later, the Hon’ble Bombay High Court in *Indian Institute of Architects v Pimpri Chinchwad Municipal Corporation and Anr*⁵; *Manohar Krishnaji Ranade & Ors v Pune Municipal*

⁴ 2006 (1) MPLJ 238.

⁵ WP No. 1830 of 1988.

*Corporation & Anr.*⁶; *Krishnaju Shankar Tandale v Pune Municipal Corporation & Anr.*⁷ refused to accept that the Architects Act restricts the practice of architect to persons registered under the Act. It held that people qualified as engineers who aren't able to call themselves Architects may still be free to do the work that is ordinarily done by Architects and that “it would be open for the Corporations to regulate licensing in favour of such qualified engineers.”

When the aforesaid judgement was appealed against before the Supreme Court as *Council of Architecture v Manohar Krishnaji Ranade & Ors.*⁸, they were dismissed with the caveat that the Bombay High Court had incorrectly stated that “anyone could practice as an architect even if he is not registered under the Architects Act, 1972.”

Relying on the aforesaid judgement in *Mukesh Kumar Manhar & Anr. v State of M.P.*⁹, the Delhi High Court in *Sudhir Arora v. Registrar of Companies & Ors.*¹⁰ held that the intention of the legislature was only to restrict the use of the title and style of ‘architect’ and not the provision of architectural services. In the absence of any provision in the Act prohibiting unregistered natural persons or juristic entities from rendering architectural services, the court refused to accept the contention that the provision of architectural services was restricted to those persons registered as Architects under the Act.

Here, the Delhi High Court also distinguished the aforesaid judgement of the Supreme Court in *Council of Architecture v Manohar Krishnaji Ranade & Ors.*¹¹ by finding that the Supreme Court did not prohibit the practice of architecture by persons other than those registered under the Act, and that it simply echoed the intent of the legislature to circumscribe the exclusive use of the term ‘architect’ by those individuals that are registered.

The Delhi High Court also examined the veracity of circulars dated 10.10.2011¹² and 01.03.2012¹³ issued by the Ministry of Corporate Affairs, and notice dated 25.05.2013 issued by the Council of Architecture. While holding that above were valid to the extent that they prohibited the use of the title of ‘Architect’, the Delhi High Court quashed the circulars to the extent that they prohibited the rendering of architectural services by non-architects and the incorporation of LLP/Companies which offer architectural services without use of the title ‘Architect’.

Most recently, this aforementioned reading of the law was affirmed by a two judge bench of the Supreme Court in *Council of Architects v. Mukesh Goyal & Ors.* where it reiterated the real world consequences of the usage of ‘Architect’ and other similar terms. It noted that Section 35 of the Act backed the assumption that someone using the term ‘Architect’ would accordingly be registered under the Act and that Section 37 detailed a few cases where the use of the term was prohibited.

⁶ WP No. 4692 of 1990.

⁷ WP No. 5600 of 1997.

⁸ C.A. Nos. 3346-3348 of 2005.

⁹ *Supra*, note 4.

¹⁰ 2018 SCC OnLine Del 8576.

¹¹ *Supra*, note 8.

¹² No. 17/165/2011-CL-V (Pt.). See https://www.mca.gov.in/Ministry/pdf/Circular_10oct2011.pdf

¹³ F. No. 17/165/2011-CL V. See http://mca.gov.in/Ministry/pdf/General_Circular_No_02_2012.pdf

However, the court inferred that the legislature would not have intended to impose a ban against all individuals engaged in functions that fall within the broad umbrella of architecture for not being registered under the Act. This could foreseeably result in an ambiguity about what specific functions would fall within the said umbrella of ‘architecture’ and a plethora of other legitimate professionals being precluded from engaging in anything that concerns the construction of buildings.

In summation, the current position of law is that although the Act does not prohibit individuals from engaging in the provision of architectural or other linked services, it does preclude them from using the title of ‘Architect’, which is based on an entry in the register maintained by the Council of Architecture on fulfilment of the criteria specified in the Act¹⁴.



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