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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on - 09.01.2018.
Date of Decision - 25.04.2018.

+ W.P.(C) 934/2012 & C.M. No.18315/2014

SUDHIR VOHRA Petitioner
Through Mr. Amit Bhagat, Adv with
Ms. Sonali Chopra, Adv.

versus

REGISTRAR OF COMPANIES AND ORS Respondent

Through Ms. Suparna Srivastava, CGSC
with Mr. Tushar Mathur, Adv. for R-1.
Mr. Milanka Chaudhary, Adv. with Mr.
Siddarth Mehra, Adv. for BDP Design.
Mr. Naseem R. Nath, Adv. with Mr.
Abhimanyu Verma, Adv. for R-3.
Mr. Sunil Gupta, Sr. Adv. with Mr. H.S.
Chandhoke, Mr. Prashant Mishra & Ms.
Jomol, Advs. for R-6.
Mr. Anish Dayal with Mr. Siddharth Vaid &
Ms. Rupam Sharma, Advs. for Intervener in
C.M. No.14122/2013.

+ W.P.(C) 3975/2012 & C.M. Nos.4055/2013 & 15336/2017

ANIL KUMAR SHARMA AND ANR Petitioner

Through Mr. Amit Bhagat, Adv. with
Ms. Sonali Chopra, Adv.

versus

THE UNION OF INDIA AND ORS

..... Respondent

Through Mr. Sanjeev Narula, CGSC with
Ms. Anumita Chandra, Adv. for UOI.

Mr. Naseem R. Nath with
Mr. Abihmanyu Verma, Adv. for
R-3.

Mr. Sunil Gupta, Sr. Adv. with
Mr. H.S. Chandhoke, Adv.
Mr. Prashant Mishra, Adv.
& Ms. Jomol, Adv. for R-4.

+ W.P.(C) 1435/2014 & C.M. Nos.2977/2014, 26660/2017,
32491/2017 & 37116/2017

BDP DESIGN ENGINEERING PRIVATE LIMITED

..... Petitioner

Through Mr. Milanka Chaudhary, Adv with
Mr. Siddarth Mehra, Adv. for BDP Design.
versus

UNION OF INDIA & ORS

..... Respondent

Through Mr. Shatrajit Banerjee, Adv. with
Ms. Mrivalini Sen, Adv. for UOI.

Mr. Naseem R. Nath with Mr. Abhimanyu
Verma, Adv. for R-3.

Mr. Siddharth Vaid, Adv. & Ms. Rupam
Sharma, Adv. for R-4.

Mr. Ashim Sood, Adv. with Mr. Dhruv Sood,
Adv., Ms. Payal Chandra, Adv. for Intervener
in C.M. No.37116/2017.

Mr. Amit Bhagat, Adv. with Ms. Sonali
Chopra, Adv. for Intervener/Mr. Sudhir
Vohra.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The present batch of writ petitions raise common issues with similar prayers and are being decided vide this common judgment.
2. The first writ petition bearing no. *W.P.(C) No. 934/2012* has been preferred by Mr. Sudhir Vohra, an architect registered under the Architects Act, 1972 (hereinafter referred to as the "Act"), mainly seeking the issuance of a writ of mandamus directing the Registrar of Companies and Ministry of Corporate Affairs to not entertain registration applications from any 'company' or 'Limited Liability Partnership' (hereinafter referred to as "LLP") which states that it provides architectural services as one of its objectives in its memorandum of association (hereinafter referred to as "MOA"). The Petitioner therein also prays for a direction to the Registrar of Companies and Ministry of Corporate Affairs to take timely action against the existing companies and LLPs which contain the provision of architectural services as one of their objectives, and initiate winding-up proceedings against those existing companies and LLPs that fail to delete such objectives from their MOA. He also makes an ancillary prayer for the issuance of a direction to the Council of Architecture (hereinafter referred to as "COA") and Ministry of Human Resource Development to take all possible steps to ensure the observance of professional ethics and standards set for architects under the Act.

3. The second writ petition bearing no. *W.P.(C) No. 3975/2014* has been preferred by Mr. Anil Kumar Sharma and Mr. Sudhir Vohra (who has also preferred the first writ petition referred to hereinabove), both of whom are registered architects. The Petitioners therein seek a direction to the Ministry of Finance to cancel the permission granted to RSP Architects Planners and Engineers (PTE) Limited Singapore (hereinafter referred to as "RSP Singapore"), by the Ministry of Commerce and Industry vide its letter dated 08.01.1996, for setting up a wholly owned subsidiary company in India for providing services in architectural planning, design, civil engineering and construction management. It is pertinent to note that RSP Singapore's wholly owned subsidiary in India, i.e. M/S RSP Design Consultants India Private Limited (hereinafter referred to as "RSP India"), has been impleaded as a respondent in this second writ petition.

4. The third writ petition bearing no. *W.P.(C) No.1435/2014* has been preferred by BDP Design Engineering Private Limited (hereinafter referred to as "BDP Design"), which is a company incorporated under the Companies Act, seeking quashing of circular dated 10.10.2011 (hereinafter referred to as the "Impugned Circular No. 1") and circular dated 01.03.2012 (hereinafter referred to as the "Impugned Circular No. 2") issued by the Ministry of Corporate Affairs. The Impugned Circulars collectively direct that no company or LLP will be incorporated, if it contains the provision of architectural services as one of its objectives, unless it obtains an approval/NOC from the COA to carry on the business or profession of architecture. The Petitioner in this writ petition also seeks quashing of notice dated 20.05.2013 issued by the COA

(hereinafter referred to as the "Impugned Notice"), wherein the COA has relied upon the Impugned Circular No. 2 and stated that it had received a complaint of violation of the Act by LLPs and companies by:

- (i) using the word 'architect' or its derivatives in their names and objects, for the purpose of carrying on the profession of an architect; and
- (ii) by appointing foreign architects to carry out architectural works in India, without the prior approval of the Central Government under the Act.

Vide the Impugned Notice, the COA has essentially directed all companies and LLPs to stop such aforementioned alleged violations of the Act, by removing the word 'architect' or its derivatives from their respective names and styles, and by amending the objects in their respective MOAs to remove the provision of architectural services in any form. In the event of non-compliance by any company/LLP, the Impugned Notice directs that it should be wound up at the earliest. In fact, a perusal of the prayers in this writ petition shows that the Petitioner has also sought a declaratory direction that a company/LLP can validly provide architectural services as one of its objects by employing architects, subject to the restrictions contained in the Act.

5. Thus, what emerges is that the first two writ petitions seek (i) a direction that only architects registered under the Act can provide architectural services; and (ii) no company/LLP can use the title and style of 'architect' or its derivatives.

The third writ petition essentially seeks directions to the contrary. The main thrust of the third writ petition is that the Act only restricts the

use of the title and style of 'architect', and it neither precludes companies/LLPs from rendering architectural services nor prevents them from mentioning the same as one of their objects in their MOA.

6. As noted above, almost diametrically opposite pleas have been raised by the petitioners in the present batch of petitions. For the sake of convenience, I will first refer to the submissions made on behalf of those petitioners, who contend that only natural persons registered as architects under the Act can use the title and style of 'architect' or its derivatives and, further, that only such natural persons can provide architectural services.

7. Mr. Amit Bhagat, learned counsel for Mr. Sudhir Vohra and Mr. Anil Kumar Sharma, contends that architectural services can only be rendered by those to whom the Act applies. He submits that the expression 'architect' has been defined under Section 2(a) of the Act to mean a person whose name is for the time being entered into the register maintained by the COA. He further submits that the method for preparing and maintaining the said register is prescribed under Section 23 of the Act, and Section 25 provides for the requisite qualifications that one must have to have his name entered into the said register. On a conjoint reading of the aforesaid provisions Mr. Bhagat submits that the Act only applies to persons having the requisite qualifications under Section 25 of the Act, whose names have been registered with the COA under Section 23 of the Act. He contends that neither Section 23 nor Section 25 can be read to include juristic entities into the definition of 'architect' under section 2(a) of the Act. As a result, the Act only applies to natural persons registered with the COA, and not to juristic entities

such as companies and LLPs. Since the Act only applies to natural persons registered with the COA, Mr. Bhagat contends that only such persons can render architectural services under the Act. Taking his plea further, Mr. Bhagat submits that, while companies cannot render architectural services at all, a LLP can provide architectural services only if each one of its partners is a registered architect.

8. Mr. Bhagat further contends that unregistered persons, including juristic entities are prohibited from using the title/style of 'architect' or its derivatives or using the same in their name. In this regard, he relies on Section 37 of the Act, which categorically prohibits any person other than a registered architect from using the title and style of 'architect' as also Section 36, which provides for a penalty in case of a violation of Section 37. His contention, thus, is that only architects, being natural persons registered under the Act, have the exclusive privilege to use the title/style of 'architect' or its derivatives.

9. Before proceeding further, it would be apt to refer to the relevant provisions of the Act, which read as under :-

*"2. **Definitions.**-In this, Act, unless the context otherwise requires,-*

(a) "architect" means a person whose name is for the time being entered in the register;

(d) "recognized qualification" means any qualification in architecture for the time being included in the Schedule or notified under section 15;

*14. **Recognition of qualifications granted by authorities in India.***

(1) The qualifications included in the schedule or notified under section 15 shall be recognised qualifications for the purposes of this Act.

(2) Any authority in India which grants an architectural qualification not included in the schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the schedule against such architectural qualification declaring that it shall be a recognised qualification only when granted after a specified date.

Provided that until the first Council is constituted, the Central Government shall, before, issuing any notification as aforesaid, consult an expert committee consisting of three members to be appointed by the Central Government by notification in the official Gazette.

15. Recognition of architectural qualifications granted by authorities in foreign countries.

(1) The Central Government may, after consultation with the Council, direct, by notification in the Official Gazette, that an architectural qualification granted by any university or other institution in any country outside India in respect of which a scheme of reciprocity for the recognition of architectural qualification is not in force, shall be a recognised qualification for the purposes of this Act or, shall be so only when granted after a specified date or before a specified date:

Provided that until the first Council is constituted the Central Government shall, before issuing any notification as aforesaid, consult the expert committee set up under the proviso to sub-section (2) of section 14.

(2) The Council may enter into negotiations with the authority in any State or country outside India, which by the law of such State or country is entrusted with the maintenance of a register of architects, for settling of a scheme of reciprocity for the

recognition of architectural qualifications and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette, direct that such architectural qualification as the Council has decided should be recognised, shall be deemed to be a recognised qualification for the purposes of this Act, and any such notification may also direct that such architectural qualification, shall be so recognised only when granted after a specified date or before a specified date.

23. Preparation and maintenance of register.-

(1) The Central Government shall, as soon as may be, cause to be prepared in the manner hereinafter provided a register of architects for India.

(2) The Council shall upon its constitution assume the duty of maintaining the register in accordance with the provisions of this Act.

(3) The register shall include the following particulars, namely:-

(a) the full name with date of birth, nationality and residential address of the architect;

(b) his qualification for registration, and the date on which he obtained that qualification and the authority which conferred it;

(c) the date of this first admission to the register;

(d) his professional address; and

(e) such further particulars as may be prescribed by rules.

25. Qualification for entry in register.-

A person shall be entitled on payment of such fee as may be prescribed by rules to have his name entered in the register, if he resides or carries on the profession of architect in India and-

(a) holds a recognized qualification, or

(b) does not hold such a qualification but, being a citizen of India, has been 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 :

Provided that no person other than a citizen of India shall be entitled to registration by virtue of a qualification-

(a) recognized under sub-section (1) of section 15 unless by the law and practice of a country outside India to which such person belongs, citizens of India holding architectural qualification registrable in that country are permitted to enter and practice the profession of architect in such country, or

(b) unless the Central Government has, in pursuance of a scheme of reciprocity or otherwise, declared that qualification to be a recognized qualification under sub-section (2) of section 15.

“35. Effect of registration:-

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.”

36. Penalty for falsely claiming to be registered - *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.

37. Prohibition against use of title-

(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.

Explanation- For the purposes of clause (a)-

(i) "landscape architect" means a person who deals with the design of open spaces relating to plants trees and landscape;

(ii) "naval architect" means an architect who deals with design and construction of ships.

(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."

10. Mr. Bhagat further contends that the Act is a self-contained code, and the proviso to Section 37 exhaustively enumerates the only exceptions to the prohibition against the provision of architectural services and the use of the title and style of 'architect' or its derivatives,

by persons unregistered under the Act. He submits that Section 37 makes it crystal clear, that there is no scope for a company/LLP to practice the profession of an architect or to provide architectural services. He contends that architecture is a profession and not a business and, therefore, like all other professions, only those persons who are registered with the concerned council, which in the present case is the COA, can be allowed to provide architectural services in any manner or use the title and style of 'architect' or its derivatives.

11. Mr. Naveen Nath, who appears for the COA, submits that the issue as to whether the practice of the profession of architecture is the exclusive privilege of natural persons registered under the Act is no longer *res integra*, as the same stands concluded by two decisions of the Hon'ble Supreme Court in the case of ***Council of Architecture v. Manohar Krishnaji Ranade and Ors.*** [Civil Appeal No. 3346-48/2015] and ***Council of Architecture v. Indian Institute of Architects and Ors.*** [Civil Appeal No. 12469/2017]. For ready reference, the Hon'ble Supreme Court's order dated 14.02.2017 in ***Manohar Krishnaji Ranade (supra)*** is reproduced hereinbelow:-

“We have heard learned counsel for the parties.

While we find no reason to interfere with the impugned judgment and order dated 29th November, 2004 passed by the Bombay High Court in Writ Petition No.1830 of 1988 and connected matters, 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 any one can practice as an architect even if he is not registered under the Architects Act, 1972. That being the

position and with this clarification, we dispose of these appeals”.

12. Thus, by placing reliance on the aforesaid orders, Mr. Nath contends that the Hon'ble Supreme Court has unequivocally held that it is not correct to say that anyone can practice as an architect, even if they are not registered under the Act. He submits that, in view of this categorical declaration of the legal position by the Supreme Court, the first two writ petitions are liable to be allowed, as there can be no doubt that only a registered architect can practice the profession of an architect or use the title and style of 'architect' or its derivatives.

13. Placing reliance on Section 35, Mr. Nath contends that the provisions of this section in itself show that any reference in any law to an architect has to be deemed to be a reference to an architect registered under the Act. He, thus, contends that the Act envisages the provision of architectural services only by registered architects.

14. Mr. Nath further contends that the profession of architecture is a regulated profession, as the Act not only defines the term 'architect' but also defines the term 'recognised qualification' under Section 2(d), which when read with Sections 14 and 15, shows that the Act refers to professional qualifications as opposed to mere academic qualifications. He, thus, submits that the prescription of professional standards as a pre-requisite for being registered as an architect, shows that the practice of architecture is a privilege bestowed upon those possessing a specific aptitude. He submits that if the legislative intent was to allow anyone to practice architecture, including carrying out a business in architectural services, there would have been no need to define the term 'recognized

qualification' in the Act as a pre-requisite for being registered as an architect.

15. Mr. Nath submits that the object of the Act is to ensure that the practice of architecture is elevated to the status of a profession and not treated as a business. He contends that, in furtherance of this object, the practice of architecture is strictly regulated not only by the various provisions of the Act but also the regulations framed thereunder. He submits that the Act as well the regulations framed thereunder prescribe the standards for the practice of architecture, including the terms of the scope of work, manner of discharge of professional conduct, regulation of fees, competition *inter se* etc., and lay down strict ethical standards to be followed while carrying out the profession of an architect. He draws my attention to Section 22 of the Act to contend that this provision enables the COA to prescribe a code of ethics for architects as well as the standards for their professional conduct and etiquette, in exercise of which power, the '*Architects (Professional Conduct) Regulations, 1989*' (hereinafter referred to as the "1989 Regulations") were framed. He submits that the 1989 Regulations impose binding ethical and moral standards on architects, and clearly indicate that the practice of architecture cannot be treated as a business, but only as a professional activity. He submits that the practice of architecture has a direct nexus with general public interest, since every architect who is in practice or in employment, has to ensure that his professional activities do not conflict with his/her general responsibility to contribute to the quality and future welfare of the society.

16. Before proceeding further, it would be appropriate to refer to the relevant provisions of the 1989 Regulations, which read as under:-

“ 2. (1) Every architect, either in practice or employment, subject to the provisions of the Central Civil Services (Conduct) Rules, 1964 or any other similar rules applicable to an Architect, he shall :-

iv. if in private practice, inform his Client of the conditions of engagement and scale of charges and agree that these conditions shall be the basis of the appointment,

xiii. not supplant or attempt to supplant another Architect,

xiv. not prepare designs in competition with other Architects for a Client without payment or for a reduced fee (except in a competition conducted in accordance with the Architectural competition guidelines approved by the Council),

xv. not attempt to obtain, offer to undertake or accept a commission for which he knows another Architect has been selected or employed until he has evidence that the selection, employment or agreement has been terminated and he has given the previous Architect written notice that he is so doing : provided that in the preliminary stages of works, the Client may consult, in order to select the Architect, as many Architects as he wants, provided he makes payment of charges to each of the Architects so consulted,

xvi. comply with Council's guidelines for Architectural competitions and inform the Council of his appointment as assessor for an Architectural competition ,

xvii. when working in other countries, observe the requirements of codes of conduct applicable to the place where he is working ,

xxv. shall not advertise his professional services nor shall he allow his name to be included in advertisement or to be used for publicity purposes save the following exceptions :-

(a) a notice of change of address may be published on three occasions and correspondents may be informed by post,

(b) an Architect may exhibit his name outside his office and on a building, either under construction or completed, for which he is or was an Architect, provided the lettering does not exceed 10 cm. in height ,

(c) advertisements including the name and address of an Architect may be published in connection with calling of tenders, staff requirements and similar matters,

(d) may allow his name to be associated with illustrations and descriptions of his work in the press or other public media but he shall not give or accept any consideration for such appearances,

(e) may allow his name to appear in advertisements inserted in the press by suppliers or manufacturers of materials used in a building he has designed, provided his name is included in an unostentatious manner and he does not accept any consideration for its use,

(f) may allow his name to appear in brochure prepared by Clients for the purpose of advertising or promoting projects for which he has been commissioned,

(g) may produce or publish brochures, pamphlets describing his experience and capabilities for distribution to those potential Clients whom he can identify by name and position ,

(h) may allow his name to appear in the classified columns of the trade / professional directory and/or telephone directory/ website.”

17. Mr. Nath places specific reliance on Regulations 2(i), (xii), (xiii) and (xiv) of the 1989 Regulations, which deal with the conditions of engagement and scale of charges of architects, and contends that the aim of the Act is to ensure that the profession of architecture is an organized profession with only registered architects being permitted to style themselves as 'architects' or to provide architectural services. Apart from

reiterating the contentions of Mr. Bhagat in this behalf, he submits that, in view of the 1989 Regulations, 'comprehensive architectural services' can be provided only by registered architects and the only exception where unregistered persons can provide architectural services are clearly specified in the proviso to Section 37 itself. He further submits that, in the absence of any challenge to the provisions of Section 37, none of the parties can be allowed to urge that persons other than registered architects are also entitled to provide architectural services.

18. Mr. Nath further submits that a restrictive interpretation of Section 37, so as to imply a prohibition only on the use of the title and style of architect by unregistered persons, would result in absurdity and render the Act nugatory. He submits that, in case Section 37 is interpreted to mean that even unregistered persons can practice architecture, there would be no reason for a person possessing a recognized qualification to get herself/himself registered as an architect and make herself/himself subject to a number of restrictions imposed under the Act and the regulations framed thereunder.

19. Mr. Nath submits that a literal interpretation of Section 37 would result in the creation of two classes of persons to carry out the profession of architecture, namely:-

- (i) Registered architects, being natural persons possessing recognised qualifications, who are professionally accountable under the Act and the regulations framed thereunder; and
- (ii) Unregistered persons, including juristic entities, that can carry out the 'business' of rendering architectural services, without being professionally accountable to maintain the standards or

abide by the restrictions prescribed under the Act and the regulations framed thereunder.

This, Mr. Nath contends, would create an anomalous situation not envisaged by law, as it would defeat the very purpose of organizing the practice of architecture as a regulated profession in the larger public interest.

20. The Indian Institute of Architects has also filed an application bearing no. *C.M. No. 37116/2017* for intervention and impleadment. Submissions on its behalf have been made by Mr. Ashim Sood. Besides reiterating the contentions made by Mr. Bhagat and Mr. Nath, Mr. Sood submits that the Act clearly contemplates that architectural services can be provided only by competent persons having the specialized knowledge to do so. He contends that allowing unregistered persons, including juristic entities, to provide architectural services would compromise the general public interest in ensuring that only regulated professionals who have the requisite knowledge and skills to practice the profession are engaged in providing architectural services. Therefore, he submits that Section 37 should be so interpreted as to promote the maintenance of high standards in carrying out the profession of architecture.

21. At this stage, it is also necessary to discuss Mr. Bhagat's contentions in support of the second writ petition, wherein the Petitioners have sought a direction to the Ministry of Finance to cancel the approval granted to RSP Singapore, by the Ministry of Commerce and Industry vide its letter dated 08.01.1996, for setting up its wholly owned subsidiary company in India (i.e. RSP India), for providing services in

architectural planning, design, civil engineering and construction management (hereinafter referred to as "FIPB approval").

22. Mr. Bhagat submits that the very incorporation of RSP India was in violation of Sections 36 and 37 of the Act, since it used the word 'architect' in its name and its objects specifically included the provision of 'architectural services'. He contends that, though RSP India later amended its name to remove the word 'architect' from the same, the company continues to violate the Act since it still renders architectural services and mentions the same as one of its objects in its MOA without the approval of the COA. In this regard, he draws my attention to the counter affidavit filed on behalf of **both the Ministries**, wherein a specific stand was taken that a violation of any Indian law by RSP India would automatically result in the invalidation of the FIPB approval from the date of the said violation. Since the FIPB approval granted to RSP Singapore to incorporate RSP India was subject to a specific condition that RSP India would abide by all Indian laws, he contends that the said approval is liable to be cancelled, in view of the aforementioned alleged violations by RSP India.

23. Mr. Bhagat further submits that, based on the complaints of Mr. Sudhir Vohra and Mr. Anil Kumar Sharma, the COA had approached the concerned authorities for taking appropriate action for cancelling the FIPB approval granted to RSP Singapore. Thereafter, a meeting of the Foreign Investment Promotion Board (hereinafter referred to as the "FIPB") was held on 09.05.2012, in which a decision had been taken by the Board to inform the COA that, since the FIPB approval was subject to RSP India abiding by all Indian laws, the COA could take necessary

action as per the provisions of the Act, if RSP India was found to be violating the provisions of the Act.

24. On the other hand, Mr. Anish Dayal, learned counsel for the Consulting Engineers Association of India, at the outset contends that the first two writ petitions are not maintainable on account of the inherent lack of the Petitioners' *locus standi*. By placing reliance on the judgments of this Court in ***National Federation of Telecom v. Bhartiya Sanchar Nigam Ltd.*** [W.P.(C) No. 2754-55/2005] and ***Sunita Arora v. Delhi University and Ors.*** [W.P.(C) No. 198/2016], he submits that the Petitioners must show a legal injury or a violation of their legal rights to justify the invocation of the writ jurisdiction of this Court. He contends that Mr. Sudhir Vohra and Mr. Anil Kumar Sharma have not shown a violation of any of their legal rights or any legal injury caused to them and, therefore, on this ground alone, their writ petitions are liable to be rejected outrightly.

25. Mr. Dayal further contends that the Act, in its current form, does not contemplate any of the prohibitions sought to be read into it by Mr. Bhagat and Mr. Nath. While agreeing with the submission that the Act only applies to natural persons registered with the COA, he contends that the non-applicability of the Act to unregistered persons, including juristic entities, cannot be read to preclude such persons from rendering architectural services.

26. Mr. Dayal further submits that Section 37 of the Act, in its current form, only protects the title and style of 'architect', and not its derivatives. Therefore, unregistered persons, including juristic entities, are only prohibited from using the title and style of 'architect'. Thus, his

contention is that Section 37, being categorical in prohibiting the use of the title and style of 'architect' only, cannot be read so broadly as to prevent unregistered persons from rendering architectural services or mentioning the same as one of their objectives in their MOA.

27. To buttress his aforesaid contentions, that the Act only regulates the use of the title and style of architect and not its derivatives and that it does not preclude unregistered natural persons or juristic entities from rendering architectural services, Mr. Dayal relies on the legislative history of the Act and its Statement of Objects and Reasons.

28. Taking Mr. Dayal's pleas further, Mr. Sunil Gupta, learned Senior Counsel for RSP India, submits that RSP India has not violated any of the provisions of the Act. He contends that what the Act prohibits is the use of the title and style of 'architect', and not the rendering of architectural services, by unregistered natural persons or juristic entities. Therefore, his contention is that, since RSP India has already amended its name to remove the word "architect" from the same, there is nothing to warrant or justify the cancellation of RSP Singapore's FIPB approval.

29. Mr. Gupta also draws my attention to the fact that companies/LLPs like RSP India that provide multi-disciplinary design and construction services are the need of the hour, since they consolidate the expertise from various disciplines to provide reliable services to their clients in a convenient manner.

30. Mr. Gupta further contends that the non-applicability of the Act does not render such companies/LLPs unaccountable for the services provided by them, or in any way unfairly disadvantage individual architects, as is sought to be contended by Mr. Bhagat. He submits that

these juristic entities are accountable to their clients and have binding legal obligations at three levels. Firstly, they are legally bound by the individual contracts with their clients and are liable under the same for the breach of any obligations envisaged by such contracts. Secondly, the architect, who signs the sanction plans that are submitted to the requisite authority before commencement of any kind of construction activities, is answerable and liable under the Act and the applicable building laws. Thirdly, all the architects employed by the company/LLP are individually governed by the provisions of the Act and the rules made thereunder.

31. Mr. Milanka Chaudhary, learned counsel for BDP Design, contends that the Impugned Circulars and the Impugned Notice are contrary to law, since they prohibit unregistered juristic entities from rendering architectural services, which prohibition is not contemplated by the Act or any other law in India. Therefore, he submits, the Impugned Circulars and the Impugned Notice are liable to be quashed. For the sake of ready reference, the relevant portions of the Impugned Circulars and the Impugned Notice are reproduced hereinbelow:-

Impugned Circular I dt. 10.10.2011

In terms of Sections 36 & 37 of the Architects Act, 1972 as well as Rules and Regulations framed thereunder only an architect registered with the Council of Architecture of a firm of Architects (a partnership firm under the Partnership Act, 1932, comprising of all registered architects) can represent itself as an architect or use the title and style of architect of practicing the profession of an Architect in India with the exception of a landscape architect

and naval architect. The matter is under examination in consultation with the Department of Legal Affairs.

Pending finalization of view of the Central Government on the subject it is hereby directed incorporation of companies/LLPs where one of the objects of such entities is to carry on the business of architect be not proceeded with till further order.

Impugned Circular II dt. 01.03.2012

....at the time of incorporation of companies where one of the objects is to carry on the business of Banking, Insurance or to practice the profession of Chartered Accountancy, Cost Accountancy and Company Secretaries, then the concerned Registrar of Companies shall incorporate the same only on production of in-principle approval/NOC from the concerned regulator/professional Institutes.

Further, in this connection, it is also stated that where one of the objects is to carry on the business/profession of Architecture, then the concerned Registrar of Companies/ Registrar of LLP shall incorporate the same only on production of in-principle approval/NOC from the concerned regulator.

Impugned Notice dt. 20.05.2013

The Council of Architecture (COA), a statutory body set up under the Architects Act, 1972 (Act), has been receiving complaints regarding violations of the Act by LLPs and Companies by using the word 'Architect' or its derivatives in their names and objects, for carrying on the profession of an Architect and also appointment of foreign architects without prior approval of Central Government under the Act for carrying out Architectural works in India.

.....

The Ministry of Corporate Affairs, Govt. of India (MCA) has also issued a Circular No.2/2012 dated 1st March,

2012, directing that ‘Where one of the objects is to carry on the business/profession of Architecture, then the concerned Registrar of Companies/Registrar of LLP shall incorporate the same only on production of in-principle approval/NOC from the concerned Regulator’.

.....

Therefore, Companies/LLPs/individuals committing above violations are directed to stop such violations by changing the name of the entity by removing the word ‘Architect’ or any its derivatives as part of their name & style and also after the objects/Memorandum of Association of the concerned entity to remove the intent to practice architecture/represent as architect/architectural consultant OR wind up such juridical entities, at the earliest, failing which COA may initiate Criminal Prosecution.

Further, no foreign Architect/Consultant (not registered with COA) be appointed for Architectural works without following the procedure prescribed under the Act.

32. Having heard the learned counsels for the parties and having considered their rival contentions, I find that the fundamental dispute arising in the present case pertains to the scope of the applicability of the Architects Act. The primary issue before the Court is whether the Act precludes unregistered architects, including juristic entities, from rendering architectural services or does it merely prohibit them from using the title and style of 'architect' or its derivatives. An ancillary issue is whether architectural services can be provided only by *natural* persons who are registered under the Act.

33. However, before dealing with the merits of the primary issue in the present batch of petitions, I deem it appropriate to deal with the preliminary contention raised by Mr. Dayal, that Mr. Sudhir Vohra and Mr. Anil Kumar Sharma do not have any *locus standi* to invoke the writ

jurisdiction of this Court, since they have not been able to show any discernible legal injury. Having considered the various decisions relied upon by both sides on this aspect, I find that the legal position relating to 'locus standi' has been summarized by the Hon'ble Supreme Court in a recent decision in the case of **Ratanlal v. Prahlad Jat and Ors.** [(2017) 9 SCC 340], the relevant paragraph of which reads as under:-

"8. The traditional view of locus standi has been that the person who is aggrieved or affected has the standing before the court, that is to say, he only has a right to move the court for seeking justice. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in India and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. It is now well-settled that if the person is found to be not merely a stranger to the case, he cannot be non-suited on the ground of his not having locus standi."

34. Having considered the rival contentions of the parties on the question, I am of the considered opinion that Mr. Sudhir Vohra and Mr. Anil Kumar Sharma, both being architects registered with the COA, cannot be said to be alien to the subject dispute. Their endeavor or interest in ensuring the compliance of the legal provisions of the Act and the regulations framed thereunder, cannot be simply brushed away. In my considered view, in light of the observation of the Supreme Court in the case of **Ratanlal (supra)**, the Petitioners cannot be non-suited on the ground of lack of *locus*. The decisions relied upon by Mr. Gupta and Mr. Dayal do not apply to the facts of the present case, in view of the admitted position that both the Petitioners, being registered architects, are seeking that only architects registered under the Act should be allowed to provide architectural services.

35. In determining whether the Architects Act makes the practice of architecture an exclusive privilege of registered architects, it may be useful to undertake a comparative analysis of the same with the Advocates Act, 1961 and Chartered Accountants Act, 1949 (hereinafter referred to as "CA Act"). Sections 29, 30 and 33 of the Advocates Act, which specifically prohibit persons, other than advocates whose names are enrolled with a State Bar, from practicing the profession of law, read as under:-

“29. Advocates to be the only recognised class of persons entitled to practise law.—Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

30. Right of advocates to practise.—Subject to provisions of this Act, every advocate whose name is entered in the 1[State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,—

- (i) in all courts including the Supreme Court;
- (ii) before any tribunal or person legally authorised to take evidence; and
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

33. Advocates alone entitled to practise.—Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.”

36. Similarly, a cumulative reading of Sections 2(1)(g), 2(2), 4 & 6 of the CA Act shows that no person can engage himself in the practice of accountancy unless his/her name is entered into the register maintained

by the Institute of Charter Accountants of India. Furthermore, Section 25 of the CA Act specifically prohibits companies and LLPs from engaging in accountancy. For the sake of ready reference, Sections 2(1)(g), 2(2), 4, 6 & 25 of the CA Act are reproduced hereinbelow:-

2. Interpretation

(1) In this Act, unless there is anything repugnant in the subject or context,—

(g) “Register” means the Register of Members maintained under this Act;

.....

(2) A member of the Institute shall be deemed “to be in practice”, when individually or in partnership with chartered accountants [in practice], he, in consideration of remuneration received or to be received—

.....

4. Entry of Names in the Register-- *(1) Any of the following persons shall be entitled to have his name entered in the Register, namely:-*

(i) any person who is a registered accountant or a holder of a restricted certificate at the commencement of this Act;

(ii) any person who has passed such examination and completed such training as may be prescribed for members of the Institute;

(iii) any person who has passed the examination for the Government Diploma in Accountancy or an examination recognised as equivalent thereto by the rules for the award of the Government Diploma in Accountancy before the commencement of this Act, and who, although not duly qualified to be registered as an accountant under the Auditor’s Certificates Rules, 1932, fulfils such conditions as the Central Government may specify in this behalf;

(iv) any person who, at the commencement of this Act, is engaged in the practice of accountancy in any [Part B State] and who, although; not possessing the requisite qualifications to be registered as an accountant under the Auditor's Certificates Rules, 1932, fulfils such conditions as the Central Government may specify in this behalf;

(v) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed for members of the Institute: Provided that in the case of any person who is not permanently residing in India, the Central Government or the Council, as the case may be, may impose such further conditions as it may deem fit;]

(vi) any person domiciled in India who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, or, who, having passed such foreign examination, is at the commencement of this Act undergoing training, whether within or without India:

Provided that any such examination or training was recognised before the commencement of this Act for the purpose of conferring the right to be registered as an accountant under Auditor's Certificates Rules, 1932, and provided further that such person passes the examination or completes the training within five years after the commencement of this Act.

....

6. Certificate of Practice-- (1) No member of the Institute shall be entitled to practise [whether in India or elsewhere] unless he has obtained from the Council a certificate of practice: Provided that nothing contained in this sub-section shall apply to any person who, immediately before the commencement of this Act, has been in practice as a registered accountant or a holder of a restricted certificate until one month has elapsed from the date of the first meeting of the Council.

(2) *Every such member shall pay such annual fee for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year: Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.*

(3) *The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.]*

“25. Companies not to engage in accountancy.

(1) *No company, whether incorporated in India or elsewhere, shall practise as chartered accountants.*

(2) *If any company contravenes the provisions of sub-section (1), then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction to five thousand rupees.”*

37. On a careful examination of the aforesaid provisions of the Advocates Act and CA Act viz-a-viz the provisions of the Architects Act, it is apparent that the latter does not contain any prohibitory provisions similar to the ones in the former two. The Architects Act neither prescribes that only registered architects can provide architectural services, nor contains any clause prohibiting companies and LLPs from providing architectural services. In fact, what emerges from the entire scheme of the Architects Act is that it neither defines as to who can provide architectural services nor puts any fetters on persons who wish to provide architectural services. It merely defines an architect to mean a

person whose name is entered in the register maintained by the COA and lays down the mandatory qualifications for an entry in the said register. On the other hand, the Advocates Act and CA Act include specific provisions laying down as to who can practice as an advocate or accountant.

38. Thus, the Act, while clearly prescribing that unregistered persons, including juristic entities, cannot describe or style themselves as architects, does not preclude any one from providing architectural services. Merely because the Act includes a specific provision prescribing that only a registered architect can use the title of an 'architect' or style himself/herself as an 'architect', it cannot be concluded that the Act in any manner envisages that architectural services can be rendered only by those to whom the Act applies. In the absence of any provision in the Act prohibiting unregistered natural persons or juristic entities from rendering architectural services, I am not inclined to accept the aforementioned contention that the provision of architectural services is the exclusive privilege of natural persons registered as architects under the Act. Should that have been the legislative intent, the Act would have expressly stipulated prohibitory provisions to the effect, such as has been done in various other legislative enactments regulating the legal and chartered accountancy professions.

39. In my view, it is not for the Court to make an attempt to discern the legislature's intention, when the statute unequivocally prohibits, and thereby regulates, only the use of the style and title of 'architect'. It is not the court's function to supply that which it supposes the legislature may have intended. I cannot ignore the most cardinal rule of statutory

interpretation that the legislature is not easily accepted to have made linguistic mistakes and courts must proceed with the presumption that the legislature intended what it has said in the statute. In this regard, reliance may be placed on paragraphs 64 and 65 of the Supreme Court's decision in ***Bharat Aluminum Co. v. Kaiser Aluminum Technical Services Inc.*** [(2012) 9 SCC 552], which read as under:-

"64. ...it is not the function of the court to supply the supposed omission, which can only be done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a compulsion, whilst interpreting an Act or a provision in the Act. The observations made by this Court in Nalinakhya Bysack [AIR 1953 SC 148 : 1953 SCR 533] would tend to support the aforesaid views, wherein it has been observed as follows: (AIR p. 152, para 9)

"9. ... It must always be borne in mind, as said by Lord Halsbury in Commissioners for Special Purposes of Income Tax v. Pemsel [1891 AC 531, at p. 549 (HL)] , that it is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the Court cannot, as pointed out in Crawford v. Spooner [(1846-49) 6 Moo PC 1 : 13 ER 582 : 4 MIA 179 : 18 ER 667] , aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in Hansraj Gupta v. Official Liquidators of Dehra Dun-Mussoorie Electric Tramway Co. Ltd. [(1932-33) 60 IA 13 : AIR 1933 PC 63] , for others than the courts to remedy the defect."

65. Mr Sorabjee has also rightly pointed out the observations made by Lord Diplock in Duport Steels Ltd. [(1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] In the aforesaid judgment, the House of Lords disapproved the approach adopted by the Court of

Appeal in discerning the intention of the legislature; it is observed that: (WLR p. 157 C-D)

“... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount.”

40. Before examining the Statement of Objects and Reasons as also the legislative history of the Act, let me turn to the headings of Section 36 and 37. I find that the headings, which are an equally important tool for interpreting a statutory provision, also support a narrow prohibition. The heading of Section 37 provides for the “prohibition against the *use of title*” and that of Section 36, which provides for the penalty for contravening the provisions of Section 37, only prescribes a “penalty for falsely claiming to be registered”. Therefore, a literal interpretation of Sections 36 and 37, which in my view is very unambiguous and categorical, suggests that the Act only protects the title and style of 'architect'. In my considered opinion, a comprehensive reading of the provisions of the Act leads to one and only one conclusion, that the legislature only intended to make the use of the title and style of 'architect', and not the provision of architectural services, the exclusive privilege of natural persons registered as architects under the Act.

41. In analyzing the actual ambit of the Act and examining whether it only regulates the use of the title and style of 'architect' or the provision of architectural services in its entirety, it may be useful to refer to the Statement of Objects and Reasons of the Act, which provides an important insight into the legislative intent. In this regard, reliance may be placed on paragraphs 10 and 11 of the Hon'ble Supreme Court's decision in the case of **Bharat Singh v. New Delhi Tuberculosis Centre** [(1986) 2 SCC 614], which read as under:-

"10. The Objects and Reasons give an insight into the background why [the] section was introduced. Though Objects and Reasons cannot be the ultimate guide in interpretation of statutes, it oftentimes aids in finding out what really persuaded the legislature to enact a particular provision...

...

11. In interpretation of statutes, courts have steered clear of the rigid stand of looking into the words of the section alone but have attempted to make the object of the enactment effective and to render its benefits into the person in whose favour it is made."

42. I find that paragraphs (1) and (3) of the Statement of Objects and Reasons, which are reproduced hereinbelow, provide an important insight into what the legislature intended to achieve with the passing of the Act:-

"1. Since Independence and more particularly with the implementation of Five-Year Plans, the building construction activity in our country has 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, are being constructed each year. With this increase in building activity, many unqualified persons calling themselves as architects are undertaking the construction of buildings which are uneconomical and quite frequently unsafe, thus bringing into

disrepute the profession of architects...With the passing of [the Act], 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.

...

3. The legislation protects the title "architects" but does not make the design, supervision and construction of buildings as an exclusive responsibility of architects. Other professions like engineers will be free to engage themselves in their normal vocation in respect of building construction work provided that they do not style themselves as architects."

43. The Statement of Objects and Reasons referred to hereinabove, clearly indicates that the Act has sought to remedy a particular mischief in a particular way, the mischief being the misuse of the title of 'architect'. The legislature had noted with concern that, with the increase in large-scale building activities in the country, many unqualified persons calling themselves architects were undertaking the construction of uneconomical and unsafe buildings, and thereby defaming the profession of architects. Therefore, in my opinion, there can be no doubt about the fact that the Act sought to prevent the general public from being misled by people falsely claiming to be registered architects, by protecting the title of 'architect', and prohibiting the use of the same by persons unregistered with the COA. The Statement of Objects and Reasons clearly stipulates that the Act does not make the design, supervision and construction of buildings an exclusive responsibility of architects. It is a settled legal position that a statute must be construed so as to prevent the mischief and advance the remedy according to the true intention of the makers of the statute, which in the present case was only to protect the use of the style and title of 'architect'. Therefore, I am unable to read into

Section 37 something more than what it actually prohibits, i.e. the use of title and style of 'architect' by unregistered persons. I find absolutely no merit in the plea of Mr. Bhagat and Mr. Nath, that the practice of architecture has to be read as the exclusive privilege of natural persons registered with the COA.

44. At this stage, it would also be useful to refer to the legislative history of the Act, which I find lends itself to suggest that the Act does not preclude unregistered persons, including juristic entities, from rendering architectural services. Clause 2(a) of the Architects Bill, 1968 (hereinafter referred to as the “1968 Bill”) defined an “architect” as “a person qualified to design and supervise the erection of any building”, Clause 37 thereof prohibited unregistered architects from using any *name*, style or title containing the word “architect”, and Clause 38 of the same prohibited unregistered persons from practicing the profession of architecture.

What further emerges is that the 1968 Bill was tabled before a Joint Committee of the Rajya Sabha and Lok Sabha. After much debate and discussion, the definition of architect in the 1968 Bill was amended to simply mean a person registered under the statute. Moreover, the prohibition contained in Clause 38 was removed, and Clause 37, was amended to protect the title and style of architect only.

Thereafter, the amended 1968 Bill was tabled before the Parliament in 1972 by Professor S. Nurul Hasan as the Architects Bill, 1972 (hereinafter referred to as the “1972 Bill”). In the Parliamentary Debates on the 1972 Bill, Professor S. Nurul Hasan, the then Minister of Education, noted that “...*any engineer or other qualified professional*

person can continue to engage himself in design, supervision and construction of buildings as long as he does not style himself as an architect.”

45. Even though both Mr. Bhagat and Mr. Nath have strenuously contended that a literal interpretation of Sections 36 and 37 would be contrary to the legislative intent, and would render the Act nugatory, in my considered opinion, the contention just cannot be sustained. It is a cardinal rule of statutory interpretation that the law must be given its literal meaning, unless it would lead to a manifestly absurd/anomalous result unintended by the legislature, or it suffers from an inherent ambiguity. Reliance may be placed on paragraph 30 of the Hon'ble Supreme Court's decision in the case of ***Land Acquisition Officer v. Karigowda*** [(2010) 5 SCC 708], which reads as under:-

"30...The intention of the legislature is an important factor in relation to interpretation of statutes. The statute law and the case law go side by side and quite often the relationship between them is supplementary. In other words, interpretation is guided by the spirit of the enactment. Interpretation can be literal or functional. Literal interpretation would not look beyond litera legis, while functional interpretation may make some deviation to the letter of the law. Unless the law is logically defective and suffers from conceptual and inherent ambiguity, it should be given its literal meaning."

46. In view of my conclusion, that Sections 36 and 37 of the Act are neither ambiguous nor do they lead to any absurd or anomalous results unintended by the legislature when literally construed, I find no reason to depart from the literal interpretation of the two provisions. Reliance may be placed on paragraph 8 of the Hon'ble Supreme Court's decision in the

case of *Bharathidasan University v. All-India Council for Technical Education* [(2001) 8 SCC 676], which reads as under:-

"8. ... When the legislative intent finds specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory by giving undue importance to the so-called object underlying the Act or the purpose of creation of a body to supervise the implementation of the provisions of the Act..."

Even otherwise, I find that the legislative intent to restrict the scope of Sections 36 and 37, which is apparent from the legislative history of the Act and its Statement of Objects and Reasons, was a conscious decision in light of the significant overlapping between architectural services and other disciplines, such as civil engineering and design. Looked at from every possible angle, I find that neither of the two provisions can be construed to prohibit unregistered persons, including juristic entities, from rendering architectural services. Thus, not only a literal interpretation but even a purposive interpretation of the provisions, which has been emphasized by both Mr. Bhagat and Mr. Nath, also lends itself to my aforesaid conclusion.

47. At this stage, I may also refer to the decisions of various High Courts, which have already dealt with some of the provisions of the Act. In a decision dated 02.04.1980 in the case of *Municipal Corporation of Delhi v. Ram Kumar Bharadwaj and Ors.* [LPA No. 59/1975], a Division Bench of this Court, while dealing with a challenge to the Delhi Municipal Corporation's power to impose restrictions on a person's right to practice as an architect, held that the Act does not restrict the practice

of architecture to persons registered under the Act. The relevant paragraph of the aforementioned judgment reads as under:-

“4... Of course, unlike the Advocates Act, which restricts thereunder, the Architects Act does not restrict the practice by architects to persons registered under the said Act. Therefore, some person who cannot call themselves architects may still be free to do the work which is ordinarily done by architects and they are not dealt with by the Architects Act.”

48. It is interesting to note that in the case of ***Indian Institute of Architects v. Pimpri Chinchwad Municipal Corporation*** [W.P. No. 1830/1988], while dealing with the issue as to whether qualified engineers and surveyors could discharge the functions that are discharged by architects, a Division Bench of the Bombay High Court held that there was no substantial difference in the technical qualifications of architects and engineers and both such professionals have the necessary expertise to engage themselves in building construction and development activities. The Court went on to hold that the Act does not restrict the *practice of architect* to persons registered under the said Act. The relevant paragraphs 7 and 8 of the decision in ***Pimpri Chinchwad*** (*supra*) read as under:-

"7. The next issue is whether the engineers or surveyors possession necessary qualifications can discharge functions which are also discharged by an architect under the Architects Act, 1972? The Statement of Objects and Reasons for the Bill submitted for the passing of Architects Act, 1972 itself clarifies that engineers are not forbidden from designing plans for buildings and that the design, supervision and construction of buildings is not an exclusive responsibility of the architects. The Statement of Objects and Reasons states that a large variety of buildings many of extreme complexity and magnitude like multi-storeyed, office buildings, factory buildings, residential houses are being constructed each

year and with this increase in building activity many unqualified persons calling themselves as architects are undertaking the construction of buildings which are uneconomical and quite frequently are unsafe, thus bringing into disrepute the profession of architects. Various organisations including the Indian Institute of Architect have repeatedly emphasized the need for statutory regulation to protect the general public from unqualified persons working as architects. With the passing of this legislation 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. Clause (3) of the Statement of Objects and Reasons then recites that, "the legislation protects the title Architects but does not make the design supervision and construction of buildings as an exclusive responsibility of Architect. Other professional like Engineers will be free to engage themselves in the normal vocation in respect of building construction works provided that they do not style themselves as Architects."

...

"8. In the above circumstances we are not inclined to accept the case of the petitioners that the Architects Act restricts practice of architect to persons registered under the said Act. Therefore qualified engineers who cannot themselves call as Architects may still be free to do the work which is ordinarily done by the Architects and it would be open for the Corporations to regulate licensing in favour of such qualified engineers."

49. Before referring to the decision of the Madhya Pradesh High Court on the same issue, I deem it appropriate to deal with the order dated 14.02.2017 of the Hon'ble Supreme Court in the case of ***Manohar Krishnaji Ranade (supra)***, wherein the Supreme Court, while upholding the judgment of the Bombay High Court in ***Pimpri Chinchwad (supra)***, clarified that a person cannot practice as an *architect* (emphasis supplied), without registration under the Act. Mr. Nath contends that the Supreme Court, vide the aforementioned order, clarified that the Act precludes the provision of architectural services by persons other than those registered under the Act. However, upon a careful perusal of the

said order, I find that the Supreme Court did not, in any way, prohibit the *practice of architecture* by persons other than those registered under the Act. Instead, it essentially echoed the intent of the Act by holding that the use of the title of 'architect' was the exclusive privilege of natural persons registered with the COA. In my considered opinion, the emphasis of the Supreme Court's clarification is that unregistered persons or companies/LLPs providing architectural services, do not do so as 'architects', the use of which title is the exclusive privilege of natural persons registered with the COA.

50. Similarly, a Division Bench of the Madhya Pradesh High Court in ***Mukesh Kumar Manhar and Anr. v. State of Madhya Pradesh and Ors.*** [2006 (1) MPLJ 238], while interpreting the provisions of the Act, held as follows:

"11. In contrast, the Architects Act, 1972 does not prohibit persons other than those who are registered as Architects from practising the profession. As noticed above, Section 37 only prohibits any person other than a registered architect using the title and style of Architect. It does not prohibits a person, who is not a registered as an Architect with the Council of Architecture from carrying on or discharging any function that can be carried or by a registered Architect. The functions normally associated with Architects are : (i) taking instructions from clients and preparing designs; (ii) site evaluation, (iii) design and site development, (iv) design of structure, (v) design of sanitary, plumbing, drainage, water supply and sewage, (vi) design of electrification, communications, (vii) Incorporation of appropriate heating, ventilation, air-conditioning and other mechanical systems, fire detection and fire protection systems and security systems, and (viii) periodic inspection and evaluation of the construction work.

12. The statement of objects and reasons of the Architects Act states that the legislation is intended to protect the title of 'architects', but does not intend to make the design, supervision and construction of

buildings as an exclusive responsibility of architects. It clarifies that other professions like engineers will be free to engage themselves in their normal vocation in respect of building construction work provided that they do not style themselves as 'Architects'. Thus, as contrasted from the Advocates Act and the Medical Council Act, the Architects Act merely provides for registration of 'architects' and matters connected therewith, and does not contain any prohibition against those who are not registered or enrolled performing the duties of Architects. The provisions of the Architects Act makes it clear that persons who are not registered as Architects, can carry on and discharge the functions which the Architects normally discharge, provided they do not call themselves as Architects."

51. Once I find that the Act itself has a limited scope and only applies to natural persons registered as architects with the COA, it is a necessary corollary thereof that, even the rules, codes of conduct and regulations framed thereunder, including the 1989 Regulations, are only applicable to such persons. It has been contended that the non-applicability of the Act to unregistered persons, including juristic entities, renders them unaccountable for the services they provide, since they are not bound by the code of ethics and regulations framed under the Act. However, I am of the view that this is a completely unfounded apprehension. I find merit in Mr. Gupta's submission that unregistered natural persons and juristic entities are bound by their contractual obligations to their clients and are accountable to them under the same. I also find that the Act and the regulations framed thereunder are applicable to all architects, whether in practice or in employment, thereby taking care of the situation where architects are employed by companies or other unregistered entities. In this regard, it may be useful to refer to Regulations 2(1) and 2(2) of the 1989 Regulations, the relevant portions of which read as under:-

*“2(1) Every architect, **either in practice or employment**...shall:*

2(2) In a partnership firm of architects, every partner shall ensure that such partnership firm complies with the provisions of the sub-regulation (1).”

52. Once the 1989 Regulations are applicable to all architects, whether in practice or employment, it can be safely said that all juristic entities carrying out architectural services through registered architects in their employment, are also accountable on a second level, since the registered architects in their employment are bound by the Act and the rules/codes/regulations framed thereunder.

53. Thus, the inevitable conclusion is that the Act only prohibits the use of the title and style of 'architect' by unregistered natural persons or juristic entities. It does not prevent unregistered persons, including juristic entities, from rendering architectural services or mentioning the same as one of their objectives in their MOA. I may now deal with the issue as to whether RSP India contravened any Indian laws so as to warrant a cancellation of RSP Singapore's FIPB approval. In view of my aforesaid conclusion, I find that RSP India cannot be said to have violated any Indian law when it rendered architectural services or mentioned the same as one of its objectives.

54. The question, however, remains whether RSP India violated any provisions of the Act when it used the expression 'architect' in its name. Since section 37 of the Act in its current form only protects the title and style of 'architect', it is imperative to consider the connotations of the terms 'title' and 'style'. I find that, as per Black's Law Dictionary, the expression 'title' means an appellation of dignity or distinction or name

denoting the social rank of a person. The expression 'style' effectively refers to the same thing as title. The question, thus, would be whether the use of the term 'architect' or its derivatives in one's name amounts to the use of the expression as a title/style.

55. In my considered view, once the use of the title and style of 'architect' is the exclusive privilege of natural persons registered as architects under the Act, juristic entities/individuals not registered under the Act cannot be allowed to use the term or its derivatives in their name. The use of the term 'architect' or its derivatives in one's name would not only mislead the public but, in my considered opinion, would also be in the teeth of the Supreme Court's decision in *Manohar Krishnaji Ranade (supra)*. Permitting a person/juristic entity, who is not registered under the Act to use the term 'architect' in their/its name, would amount to permitting something which the Act wanted to prohibit. I find that the intent of Section 37 is that the public should not be misled to believe that persons/juristic entities that use the title/style of architect or its derivatives are registered architects, even when they are not. Therefore, in my considered opinion, persons/juristic entities cannot be allowed to use the style/title of architect or its derivatives in their names, unless they are registered as architects with the COA.

56. There can be no doubt that when RSP Design Consultants India Pvt. Ltd. was initially registered as RSP Architects Planners Engineers India Pvt. Ltd., it definitely ran afoul of the provisions of the Act. However, when the FIPB approval was granted to RSP Singapore, there was admittedly no clarity on whether the use of the expression 'architect' in the title/style/name of a juristic entity was prohibited by the provisions

of the Act. Further, RSP Singapore's subsidiary has now already changed its name to RSP Design Consultants India Pvt. Ltd., by removing the word architect from the same in conformity with the provisions of the Act. Therefore, I find no reason to grant the prayer seeking cancellation of the FIPB approval granted to RSP Singapore.

57. Now, I may analyze the legality of the Impugned Circulars issued by the Ministry of Corporate Affairs, and the Impugned Notice issued by the COA. The Impugned Circular No. 1, while stating that only a registered architect or firm of architects (a partnership firm under the Partnership Act, 1932 comprising of all registered architects) can use the title and style of 'architect' or practice the profession of an architect, directs that, the Registrar of Companies/Registrar of LLPs cannot permit the incorporation of companies/LLPs having one of their objects to carry on the business of architect, till the matter is under the examination of the Ministry of Corporate Affairs and pending the final decision of the Central Government. I find that in continuation of the aforesaid interim Impugned Circular No. 1, the Impugned Circular No. 2 was issued on 01.03.2012. It is this Impugned Circular No. 2 which directs that, where one of the objects of any company or LLP is to carry on the business/profession of architecture, the concerned Registrar of Companies/Registrar of LLPs shall incorporate the same only on the production of an in-principle approval/NOC from the concerned regulator, i.e. the COA.

58. I find that the first part of the Impugned Circular No. 1, whereby entities/persons who are not registered as architects are prohibited from using the title/style of architect, is in consonance with the scheme of the

Act and promotes the intent of the Act by ensuring the title of an architect is not misused by unregistered persons. Therefore, I see no reason to interfere with the said part of the circular. However, when I examine the second part of the Impugned Circular No. 1 and the Impugned Circular No. 2, I find that they, instead of only prohibiting unregistered persons/entities from using the style and title of 'architect', also effectively prohibit the incorporation of companies/LLPs that include the rendering of architectural services as one of their objectives, even if such juristic persons do not use the title and style of 'architect'. Furthermore, in the Impugned Circular No. 2, the Ministry of Corporate Affairs wrongly equates the provisions of the Architects Act with those of the CA Act, Cost and Works Accountants Act, 1959 and Company Secretariats Act, 1980, each of which specifically ban the practice of their respective professions by companies (whether incorporated in India or elsewhere) and provide punishment for contravention of the said provisions. As noted above, no such provision can be found in the Architects Act. On the contrary, specific provisions can be found in the Architects Act, which allow for the employment of architects in companies, which would not be allowed if the legislative intent was to restrict the practice of architecture to private persons and partnerships.

59. Having examined the Impugned Notice dated 20.05.2013 issued by the COA, I am of the opinion that no infirmity can be found in the first part of the same, whereby it has been stated that no unregistered LLP, company or person, can use the title/style of architect or derivatives thereof or use the same in their names. Insofar as the second part of the said notice is concerned, I find no justifiable reason for directing that

companies or LLPs, which include providing architectural services as one of their objectives, should not be incorporated without an approval/NOC from the COA.

60. In my considered opinion, the second part of the Impugned Circular No. 1 dated 10.10.2011, Impugned Circular No. 2 dated 01.03.2012 and second part of the Impugned Notice dated 20.05.2013 in imposing the aforementioned restrictions, are contrary to the provisions of the Act, and are, therefore, quashed.

61. The writ petitions alongwith pending applications are disposed of in the aforementioned terms with no orders as to costs.

(REKHA PALLI)
JUDGE

APRIL 25, 2018

sr/ss

न्यायमेव जयते