

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 16.04.2019

Orders Pronounced on : 04.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.34676 of 2018
and
W.M.P.No.40224 of 2018

The Academic Society of Architects, (TASA),
A Registered Society,
Sl.No.108/2014,
on the file of the Registrar of Central Chennai,
having its Registered Office at
49/2, Residency Apartment, KB Dasan Road,
Teynampet, Chennai-600 018,
Represented by its Joint Secretary.

.. Petitioner

1. Council of Architecture (COA),
Represented by its Registrar-Secretary,
India Habitat Centre, Core-6A, 1st Floor,
Lodhi Road, New Delhi-110 003.
2. Ministry of Human Resource Development,
Represented by Deputy Secretary,
Department of Higher Education,
Govt. of India, Technical Education Bureau,
Shastri Bhawan, New Delhi-110 115.
3. Chennai Academy of Architecture and Design,
Rep. by its Director Mr.Vinodh Vijayakumar,
No.24, Thumbakkam,

Chennai Thirupathy Highway,
Near Periyapalayam Ammon Temple,
Chennai-601 102.

(Third Respondent impleaded, vide
Order of Court, dated 04.06.2019
passed in W.M.P.No.4477 of 2019
in W.P.No.34676 of 2018)

4. Marg Institute of Design and
Architecture Swarnabhoomi College,
Rep. by its Director Mrs.V.P.Rajini Reddy,
"Marg Swarnabhoomi",
Velur Village, Cheyyur Taluk,
Kancheepuram-603 302.

(Fourth Respondent impleaded, vide
Order of Court, dated 04.06.2019
passed in W.M.P.No.6493 of 2019
in W.P.No.34676 of 2018)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in the impugned communication, dated 31.10.2018 and 03.12.2018 and published Website Schedule and quash the same insofar as seeking to implement and enforce the "Minimum Standards of Architectural Education Regulations, 2017" even before the same is approved by the second respondent and published in the Gazette of India in terms of Section 45 of the Architects Act, 1972, thereby superseding the existing approved Regulations and consequentially direct the first respondent to accept the online applications for approval/renewal of the recognition only in terms of the existing approved Regulations.

For petitioner : Mr.E.Om Prakash, Senior Counsel for
M/s.Ramalingam and Associates

For respondents : Mr.K.Mahendran for R-1
Mr.S.Thiruvengadam, SPCCG for R-2
Mr.N.Balaji for R-3
Mr.J.Vinoth for R-4

ORDER

R.SUBBIAH, J

The petitioner-Society has filed the present Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in the impugned communication, dated 31.10.2018 and 03.12.2018 and the published Website Schedule and quash the same insofar as seeking to implement and enforce the "Minimum Standards of Architectural Education Regulations, 2017" even before the same is approved by the second respondent and published in the Gazette of India in terms of Section 45 of the Architects Act, 1972, thereby superseding the existing approved Regulations and consequentially direct the first respondent to accept the online applications for approval/renewal of the recognition only in terms of the existing approved Regulations.

2. The facts leading to filing of the Writ Petition are as follows:

(a) The petitioner is a Registered body of the Academic Architects and is a Society formed under the Tamil Nadu Societies Registration Act, and it has been duly registered with the Registrar of Central Chennai in Sl.No.108 of 2014. The members of the petitioner-Society are professional Architects, who have engaged themselves as Teaching Faculty. The Society Recognises four kinds of members, namely (i) Life Member -- Professor, registered with the first respondent-Council of Architecture (CoA) and being heads of institutions with ten years of teaching experience, (ii) Associate/Affiliate Member -- Teachers registered with CoA having less than ten years of teaching experience, (iii) Patron/Donor Member -- accomplished academicians and renowned teachers registered with CoA involved in Architectural education with 20 years of experience, and (iv) Institutional Member -- representing a college or school or institute of Architecture.

(b) The first respondent-CoA is an autonomous statutory body constituted in terms of Section 3 of the Architects Act, 1972. The members of the Council consists of: (i) 5 architects elected by the Indian Institute of Architects, (ii) 2 persons nominated by the All India Committee for Technical Education (AICTE), (iii) 5 persons elected from the heads of Architectural institutions in India, (iv) Chief Architects in the Ministries of Central Government relating to Railways, Defence and Public Works Department, (v) a nominee of Central Government, (vi) an Architect from each State nominated by the State Government, (vii) 2

persons nominated by the Institution of Engineers (India) and (viii) 1 person nominated by Institution of Surveyors of India. The said Council also functions through the Executive Committee as provided under the Architects Act, to be elected from the aforesaid members. The first respondent as the Apex Body of the Profession of Architecture, is vested with powers under the Statute to formulate the Regulations in educational standards, by prescribing the course and periods of study and of practical training, the subjects of examinations and the standards of professional conduct and etiquette, which shall be approved by the Central Government and published in the Gazette. The Regulations so made are required to be placed before the House of Parliament and will take effect on such modification if any, by the Parliament.

(c) The second respondent-Ministry of Human Resource Development is vested with the powers in formulating the policies relating to higher education, including the technical education, engineering and medical education and also relating to the Architectural education.

(d) The Government of India brought a Legislation called Architects Act, 1972 and accordingly, the privileges and responsibilities of an Architect is governed by the said Act. Under Section 21 of the said Act, the first respondent-CoA may prescribe the minimum standards of Architectural education required for granting recognised qualifications by colleges or institutions in India. Such minimum standards of Architectural education are to be brought into force by

way of Regulations. Section 45 of the said Act speaks about the powers of the CoA to make Regulations, which shall be with the approval of the Central Government by Notification in the Official Gazette. The Regulations are to be placed before the Parliament within six months of the publication.

(e) The said Act enables registration for carrying out the profession of Architect. The standards being set, the number of institutions imparting the education and the qualification to seek admission to Architectural course including admission test and course duration, are the areas for which the first respondent exercises the power. The standards as provided in the said Regulations, are required to be maintained by the institutions and the first respondent-CoA is empowered to appoint inspectors also to be a part of the Selection Committee of institutions in the selection of the faculty. Unless the nominee of CoA in the Selection Committee approves the selection of the faculty, the concerned institute cannot appoint a faculty for the Architectural course. The CoA is required to keep the Central Government informed of the standards being maintained by the institutions and is empowered to make the recommendations to the Government of India with regard to the recognition and de-recognition of a qualification.

(f) Further, any candidate seeking admission in the Architectural course, must have passed 10+2 or equivalent Higher Secondary/Pre-University Examinations in the Science group of any recognised University/Board with

Mathematics as a subject of examination with atleast 50% aggregate marks and is required to take up a qualifying examination known as National Aptitude Test in Architecture (NATA). The candidates with good academic background in Physics and Mathematics are considered to be suited for the study of Architecture, as the work involves complex designing problems, building economies and cost estimations. The Under-Graduate level Architectural course, namely B.Arch, shall be of minimum duration of 5 Academic years or 10 Semesters of approximately 16 working weeks each inclusive of 6 months. No candidate with less than 50% marks in aggregate, shall be admitted to the Architectural course and the institutions may subject the candidates seeking admission to the Architectural course to aptitude tests, specially designed to assess the aptitude of the candidates.

(g) Though there are many entrance Examinations conducted in National level as well as in State level for assessing the eligibility of the candidates to pursue the course, the National Aptitude Test in Architecture (NATA) still remains the compulsory test for candidates willing to take Architecture as their profession. The aforesaid NATA examination is required for admission in private colleges recognised by Universities. If a candidate wanted to get admission in the National Institute of Technology (NIT) or Indian Institute of Technology (IIT), the candidate has to attend Joint Entrance Examination (JEE), which constitutes two parts, JEE Main and JEE Advanced. Though the Architects Act is silent in

respect of conducting any such test by first respondent-CoA, first respondent had been pioneering the same and had made it mandatory. This has led to certain litigations and at present, first respondent is conducting the said test pursuant to an interim order of Supreme Court of India in SLP arising from a decision of Bombay High Court and the said SLP is pending before Apex Court.

(h) Earlier, first respondent-CoA had formulated Regulations relating to the Minimum Standards of Architectural Education in the year 1983, and the same having been notified in the Gazette of India, dated 26.03.1983 and 27.08.1983, first respondent had also come up with Regulations relating to professional conduct and the same are also in force. When things stood thus, first respondent-CoA sought to levy and collect inspection/extension of approval fee from institutes on an annual basis. By letter dated 13.03.2009, the same was not approved by the second respondent, by clearly pointing out that any collection can be only in terms of Statute and that the Regulations govern the field, which clearly stipulates that inspection is once in five years and not on an annual feature. Further, first respondent in the year 2016, sought approval of second respondent for exclusive conduct of NATA and to be the basis for admission to B.Arch. programme throughout the Country. Second respondent, by communication dated 02.11.2016, expressed the view that proposal may not be possible unless relevant Regulations are amended and further stated that the matter regarding the conduct of NATA has already been

challenged by the first respondent before the Supreme Court of India. The second respondent accordingly called upon the first respondent to seek for final order in the pending case or withdraw the same and submit a proposal to the Ministry regarding amendment to the existing Regulations.

(i) While so, all of a sudden, the first respondent-CoA suddenly came forward with a fresh Regulations called "Minimum Standards of Architectural Education Regulations, 2017" and had approved the same in its 67th meeting held on 11.03.2017. By communication in Ref.CA/5/2017/Academic, dated 19.04.2017, addressed to the Heads of the Architectural Institutions and also published in the Website, the first respondent sought to implement the said new Regulations even before the same is approved by the Government of India and published in the Gazette by way of Notification. It appears that the said Regulations were placed before the Government as a proposal by the first respondent. By communication, dated 30.10.2017 of the second respondent in F.No.4-59/2015-T.S. VI, the second respondent rejected the said proposal. The following is the extract of the letter by the second respondent to the first respondent:

"I am directed to refer to your letter No.CA/28/2017/MS (Regulations) dated 3rd July 2017 on the subject mentioned above and to state that the proposal the Council was examined in consultation with AICTE and UGC. It is clarified that it is AICTE's mandate to regulate the technical education in India and also set the norms and standards for quality education in technical education including

Architecture. While regulating the Architecture education, AICTE will consult CoA. Government is very clear that there should be no overlapping in the Jurisdiction of regulators. CoA may however, focus on the growth of Architecture Profession and set norms and standards for Architecture profession."

(j) Further, by letter in Ref.No.CA/28/2017/MS (Regulation), dated 17.11.2017, the first respondent had reiterated its request for approval by the Central Government in respect of the proposed "Minimum Standards of Architectural Education Regulations, 2017" and till date, the second respondent has not approved the said Regulations and the same is also not notified. Unless the same is notified as required under the Statute, the Regulations cannot have any statutory force. However, it appears that the first respondent is going about enforcing the new Regulations. Such conduct is seen from one such communication, dated 23.05.2018, wherein the first respondent had called upon the institutions to submit security deposit for inspection/renewal of approvals. The first respondent referred to its 69th meeting held on April 13 and 14, 2018, wherein it is claimed that the new Regulations have been approved and decision taken to request all the institutions to comply with the same. Accordingly, by further communication, dated 05.09.2018, the first respondent sent a reminder to the institutes to submit the security deposit. The first respondent seeks to achieve what it cannot achieve directly by merely referring to the decision of the

Council when the same is not yet approved by the second respondent.

(k) The first respondent is going about implementing the new Regulations in respect of all aspects even without the approval of the Government and more particularly, when the second respondent had earlier pointed out that certain overlapping in the jurisdiction of the Regulators is likely to arise. Such situation would jeopardise the functioning of the institutes imparting the Architectural education. Further, the first respondent is seeking to implement the new Regulations also in respect of the staff in the colleges/institutes in a retrospective manner. Even when the enactment of 1972 came into force, the then prevailing rights of the parties were protected and it was made only prospective. Likewise, any stipulation of qualification, experience or the cadre of faculty in college, can be made only prospectively and not retrospectively, affecting the existing rights of such faculty members. Unmindful of the said situation, the first respondent, by two communications dated 31.10.2018 and 03.12.2018, had again called upon the Heads of the institutions specifying the approval process and to apply for the same in the website. The communication clearly indicates to comply with the new Regulations. This anomaly was brought to the notice of the first respondent and no action is taken as on date to rectify the same.

(l) Further, every year, the first respondent had been insisting upon the colleges/institutes to submit application for renewal of approval by online and accordingly, a schedule would be provided by them as to the dates by which the

same has to be complied with. While submitting the application, the institute Heads concerned are bound to submit the entire staff strength, student intake, etc. The schedule for the present year was published in the first week of December and uploaded in the website of the first respondent-CoA. According to the said schedule, the last date for submission of application for extension of approval by existing institutions which are due for inspection, is on 07.01.2019. Similar schedules are also provided for other categories.

(m) Shockingly, when the submission of the application is attempted in the online window of the first respondent, it is seen that the new Regulations are made mandatory and unless the requirements under the new Regulations are provided, the submission is not accepted and the same is showing up as an error. The new Regulations brings in drastic changes, which needs the approval of the Government and in any case, they cannot be made applicable retrospectively. In the case of the staff strength with student ratio, qualifications and experience, changes are made, which affect the presently working staff. The acceptance of new Regulations would leave many staff ineligible to continue, degrade a few and further disqualify, those who had been otherwise qualified and had been discharging their duties.

(n) The selection of the existing faculty in all the colleges had been done with the member of the first respondent as part of the Selection Committee who had duly approved the same. By seeking to implement the new Regulations, the

duly selected faculty, presently employed in the institutions, are sought to be deprived of their selection and livelihood. While formulating the new Regulations, the views of the stakeholders or the existing members were not taken into account. No broad based consultation was done by the first respondent and in any case, the Regulations said to have been approved by the Council in its 69th meeting, cannot have statutory force until the same is notified and duly approved by the Central Government. The Minutes of 69th meeting only refer to proposal and request made to the Government which is pending consideration. The said Minutes clearly establish that there is no decision to implement and further, the required approval from the Government is not given as on date.

(o) In the above circumstances, the petitioner-Society addressed a representation, dated 19.12.2018 to the first respondent to consider the grievance. The first respondent had not given due consideration to the said representation and has not come forward to set right the anomaly in the submission of applications by online process. In the absence of rectification and the last date for submission being 07.01.2019, the various stakeholders are likely to suffer and the same would affect the forthcoming academic year admissions for fresh students. Unless the communications of the first respondent referring to the new Regulations are set aside and the first respondent is directed to permit the submission of application based on the approved existing Regulations of the year 1983, the interest of the members of the Society would be seriously

affected. Hence, the petitioner-Society has filed the present Writ Petition for the relief stated supra.

3. When the Writ Petition is taken up for consideration, the learned Senior Counsel appearing for the petitioner-Society submitted that Section 21 of the Architects Act being the enabling provision, empowers the first respondent to lay down Minimum Standards of Architectural Education Regulations" for granting recognised qualifications by colleges or institutions in India and except the first respondent-CoA, no other body has any right to prescribe the said Regulations. Such Minimum Standards of Architectural Education are to be brought into force by way of Regulations. Section 45 of the said Act provides for Regulation making power to be vested with the first respondent and the said Regulations have to be approved by the Central Government and also published in the Official Gazette. The Regulations are to be placed before the Parliament within six months of the publication. The Regulations which are in force as on date, are with due approval of the Government and duly published, which are the "Minimum Standards of Architectural Education Regulations, 1983" framed under Section 45(2)(e)(g)(h)(i) and (j) read with Section 21 of the Architects Act. When the said Regulations are in force, now, the first respondent has sent a communication to all the Heads of Architectural institutions on 19.04.2017 clearly stating that 1983 Regulations alone are in force, which were approved and

notified by the Central Government as per Section 45 of the Act. Now, all of a sudden, the first respondent came with fresh Regulations for the year 2017 which are framed and yet to be approved by the Government of India and have not even been published in the Gazette by way of Notification. But even without the approval of the Notification, the first respondent-CoA sought to implement the fresh Regulations of the year 2017.

4. In the above scenario, according to the learned Senior Counsel appearing for the petitioner-Society, a representation dated 19.12.2018 has been made by the petitioner-Society to the first respondent, making a request with regard to the new Regulations (Minimum Standards of Architectural Education Regulations, 2017) which are proposed by Council of Architecture (CoA), that they should be implemented in exercise of the powers conferred by Clauses (e), (g), (h), (i) and (j) of sub-section (2) of Section 45 read with Section 21 of the said Act, with the approval of the Central Government. Thus, the petitioner-Society sought implementation of the new Minimum Standards of Architectural Education Regulations, 2017, which should be with a consideration for a time period of atleast three years from the date on which the new Regulations are published in the Official Gazette of the Government of India with the approval of the Central Government. As the said representation is not yet considered, the petitioner-Society has come forward with the present Writ Petition and hence, learned Senior Counsel appearing for the petitioner-Society prayed to allow the

Writ Petition.

5. The learned counsel appearing for the first respondent-CoA, by filing detailed counter affidavit, submitted that the impugned communications are challenged by the petitioner-Society, which are addressed to the Architectural institutions and the petitioner is a Society consisting of individuals and they are no way connected or aggrieved by the said communications. Therefore, according to the learned counsel appearing for the first respondent, the petitioner-Society has no locus-standi to file the present Writ Petition and the same is an abuse of process of law and it is filed to espouse the cause of some defaulting institutions which do not meet the minimum standards laid down by the respondents, resulting in imparting sub-standard education to students and thereby, affecting the interest of the society and the nation as a whole and thus, no rights of the members of the petitioner-Society are affected.

6. The learned counsel appearing for the first respondent-CoA further submitted that the first respondent is an academic authority to determine the Minimum Standards of Architectural Education required for grant of recognised qualification by colleges or institutions in India by virtue of Section 21 of the Architects Act. The impugned communications relate to the architectural institutions and are no way connected with the individual Architects. If at all any person is aggrieved by the said communications impugned in the Writ Petition, it can only be the Architectural institutions, but none of the Architectural

institutions had come forward to challenge the said communications. In this regard, the learned counsel appearing for the first respondent relied upon a Full Bench decision of the Supreme Court reported in 2000 (2) SCC 81 (Ranji Thomas Vs. Union of India), wherein the Supreme Court observed as follows:

"5. The learned Attorney General appearing for the Union of India submits that this public interest litigation is not maintainable at the instance of the petitioner, since none of the Governors or Lt.Governors have approached this Court or protested against their being asked to resign and that the petitioner cannot challenge an act which the party affected does not wish to nor intend to challenge. He relies upon the observations made by this Court in the case of *S.P.Gupta Vs. Union of India* (1981 Supp SCC 87 = 1982 (2) SCR 365)."

7. Further, the learned counsel appearing for the first respondent submitted that the writ petitioner-Society has not shown any prejudice being caused to its members by the impugned communications. In this context, learned counsel appearing for the first respondent relied on a decision of the Supreme Court reported in 1974 (2) SCC 738 (State of A.P. Vs. K.Jayaraman), wherein the Supreme Court observed as follows:

"10. Furthermore, as the petitioners Nos.1 to 5 were held to have come to the State of Andhra Pradesh as Upper Division Clerks on November 1, 1956, they could not show how they would be adversely affected by the application of the relevant A.T.A. Rule. Thus, the petitioners concerned, who are respondents before us, failed to prove that they were

even "aggrieved" persons."

8. By relying upon the abovesaid judgment of the Supreme Court, the learned counsel appearing for the first respondent emphatically submitted that the petitioner-Society having not shown any prejudice being caused to its members by the impugned communications, has got no locus-standi to maintain the Writ Petition.

9. With regard to the merits of the case, the learned counsel appearing for the first respondent submitted that the first respondent-Council of Architecture being the academic authority under Section 21 of the Architects Act, is well within its powers to issue the Regulations/Guidelines in the matter. It is further contended by the learned counsel appearing for the first respondent-CoA that the Architects Act does not prescribe that the exercise of powers by way of Guidelines, has to be notified in the Official Gazette of the Central Government. Admittedly, from the year 2008, the Council of Architecture (CoA) is prescribing the Minimum Standards of Architectural Education by exercise of powers under Section 21 of the said Act. The Central Government nominees are the members of the first respondent-Council of Architecture, and therefore, the Central Government is well aware of the same. The power to prescribe the Minimum Standards of Architectural Education by the Central Regulating Body, is admittedly derived by virtue of Section 21 of the said Act. Wherever the

Parliament felt it necessary that the power has to be exercised only by issuance of the Regulations, it has mentioned so. Therefore, wherever it is not mentioned, it is to be understood as excluded based on the principle "Expressio Unius Est Exclusio Alterius", i.e. whatever has not been included, has, by implication been excluded. In this regard, reliance was placed on the decision of the Supreme Court reported in 2007 (3) SCC 184 (Raja Ram Pal Vs. Honourable Speaker, Lok Sabha) wherein the Supreme Court held as follows:

"386. Article 122(1) thus must be found to contemplate the twin test of legality and constitutionality for any proceedings within the four walls of Parliament. The fact that *U.P. Assembly case (Special Reference No. 1 of 1964)* [AIR 1965 SC 745 : (1965) 1 SCR 413 sub nom Keshav Singh, In re] dealt with the exercise of the power of the House beyond its four walls does not affect this view which explicitly interpreted a constitutional provision dealing specifically with the extent of judicial review of the internal proceedings of the legislative body. In this view, Article 122(1) displaces the English doctrine of exclusive cognizance of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction. Any attempt to read a limitation into Article 122 so as to restrict the court's jurisdiction to examination of the Parliament's procedure in case of unconstitutionality, as opposed to illegality would amount to doing violence to the constitutional text. Applying the principle of "expressio unius est exclusio alteriu" (whatever has not been included has by implication been excluded), it is plain and clear that prohibition against examination on the touchstone of "irregularity of procedure" does not make taboo judicial review on findings of illegality or unconstitutionality."

10. The learned counsel for the first respondent further submitted that in respect of the issue as to whether AICTE controls the Universities, the Supreme

Court, in the judgment reported in 2001 (8) SCC 676 (Bharathidasan University Vs. All India Council for Technical Education) held that when there is a conspicuous omission of an activity or a word, the same cannot be just roped in. Therefore, the word "Regulation" cannot be imported into Section 21 of the Architects Act. The learned counsel for the first respondent also stated that when there is a power, there is nothing in the Architects Act which holds that the Guidelines/Regulations if not notified in the Official Gazette, would be invalid. When that being so, the instructions given by the first respondent to the Architectural institutions to implement the new Regulations of the year 2017, do not suffer from any illegality. In support of this submission, the learned counsel for the first respondent placed reliance on the decision of the Supreme Court reported in 2003 (12) SCC 738 (Prohibition and Excise Supdt. Vs. Toddy Tappers Co-op. Society).

11. The learned counsel for the first respondent further submitted that when there is a vacuum in the field and as there is requirement for the upgradation of the standards of education of Architecture, the first respondent-CoA is duty bound to fill it up, which has been duly done by virtue of Section 21 of the Architects Act. Even assuming without admitting that the exercise of the power is under a different provision, the same does not invalidate it. In support of this submission, the learned counsel for first respondent relied on the decision of the Supreme Court reported in 1991 (4) SCC 243 (State of Sikkim Vs. Dorjee

Tshering Bhutia).

12. The said 2017 Regulations/norms/Guidelines were adopted all over India by the Council of Architecture as well as by the Universities and the Universities have followed the said Regulations/norms/Guidelines for grant of affiliation and for extension of affiliation. The institutions have adopted the 2017 Regulations by appointing faculty as per the standards prescribed, which require slightly higher qualification and the same cannot be undone, which would only result in chaos. Moreover, the 2017 Regulations were passed by the first respondent-Council of Architecture (CoA) in the presence and concurrence of nominee of the Central Government and only at his suggestion, the CoA also furnished a comparative statement of 1983 Regulations and 2017 Regulations showing proposed changes along with reasons and justifications so that the Central Government can approve the proposed Regulations expeditiously.

13. The learned counsel appearing for the first respondent also submitted that the Writ Petitioner-Society has not come before this Court with clean hands and recourse to the present Writ Petition is an abuse of process of law and laches and prayed for dismissal of the Writ Petition.

14. Learned counsel appearing for the impleaded respondents 3 and 4 are the institutions that got themselves impleaded in this Writ Petition. It is their stand that the impugned communication is the one issued by the CoA addressed to all the Architectural institutions. The members of the petitioner-Society are no

way connected or aggrieved by the said communication. In fact, many of them were Heads of the institutions who accepted and followed the said norms in their respective institutions for the Academic Year 2018-2019. In fact, the institutions in which the members of the writ petitioner-Society are connected, also duly followed the said 2017 Educational Standards prescribed by the CoA. All the members of the petitioner-Society are completely aware of the said Regulations and they have not come forward with clean hands before this Court. The writ petitioner-Society's institutions are not institutions offering Architectural education and cannot espouse the cause of the institutions or that of the students or that of the faculty whom they claim would be affected, without providing any details of such faculty or necessary pleading in this behalf.

15. With regard to the merits of the case, the learned counsel appearing for the impleaded respondents 3 and 4 submitted that the argument raised on behalf of the writ petitioner that, since Section 45(2) of the Architects Act contemplates in sub-section (e) and (f) the power to make Regulations in respect of what is covered under Section 21, the only manner to prescribe the Minimum Standards of Architectural Education is by resorting to the framing of Regulations under Section 45, followed by the approval of the second respondent, and Notification in the Official Gazette being then placed before the Parliament, is without any merit. The mere fact that what is stated in Section 45(2)(g) of the said Act is also found in Section 21, does not circumscribe, qualify or otherwise

restrict the powers of the first respondent-CoA. The first respondent may have "ex-abundant cautela", i.e., by way of abundant caution, the first respondent-CoA also forwarded the Regulations as norms, which in no manner detracts from the legal position that Section 21 is a power vested in the first respondent to prescribe the Minimum Standards of Architectural Education Regulations. There is no requirement in Section 21 of the said Act that such standards must be approved by the second respondent and notified in the Official Gazette before they take effect. Learned counsel appearing for the impleaded respondents 3 and 4 further submitted that the Parliament, in its infinite wisdom, thought it fit to omit the reference to approval and Notification in Section 21. Wherever the Parliament intended something to be done only by Regulations or Rules, it incorporated the language, which reads the requirement into the responsibility. Wherever the Notification was deemed necessary, the language of the Statute incorporated that requirement. When the Statute contemplated sanction/approval of the Government, it said so and wherever the Parliament thought consultation was required, it so prescribed. As could be seen from the plain language of Section 21 of the Act, there is no reference to Regulation, Notification, approval or consultation, which can be found in other Sections. Applying the legal maxim "Expressio Unius Est Exclusio Alterius", the only inference which could be drawn from the fact that other functions are so described/circumscribed, i.e. which is not the case with Section 21 of the Act, is

that the Parliament did not intend that the power of the first respondent-CoA to prescribe the Minimum Standards of Architectural Education, be subject to the elaborate pre-condition of casting the same as Regulations with consultation or approval of the State Government and the post-approval Notification of the standards in the Official Gazette and laying of these norms in the form of Regulations before the Parliament. By virtue of Section 21 of the Architects Act, the first respondent-CoA is empowered to issue the guidelines/Regulations. Absolutely, there is no need for any approval or Notification by the Central Government. Thus, the learned counsel appearing for the impleaded respondents 3 and 4 prayed for dismissal of the Writ Petition.

16. The learned Senior Panel Counsel for the Central Government, appearing for the second respondent submitted that the Minimum Standards of Architectural Education Regulations, 2017, had not been approved by the Central Government as required under Sections 45 and 21 of the Architects Act, and before framing and implementing the Minimum Standards of Architectural Education Regulations, 2017, prior approval of the Central Government from the Ministry of Human Resource Development, is required to be sought. Hence, action of first respondent to implement Minimum Standards of Architectural Education Regulations, 2017, without prior approval of the Central Government, is illegal "*ab-initio*". The proposal submitted by first respondent for approval of the Minimum Standards of Architectural Regulations, 2017, is under examination

by the Ministry, and till date, the approval has not been granted by the Central Government to implement the Minimum Standards of Architectural Education Regulations, 2017. Thus, the learned Senior Panel Counsel for the Central Government, appearing for the second respondent prayed for dismissal of the Writ Petition.

17. Heard both sides and perused the materials available on record. In view of the submissions made by the learned counsel appearing for the parties, and though very many contentions have been raised, the following questions fall for consideration in this Writ Petition and if these questions are answered, that would suffice to dispose of the present Writ Petition:-

- (i) Whether the petitioner-Society has locus-standi to maintain the present Writ Petition ?, and
- (ii) Whether the first respondent-CoA is empowered to frame and implement the Minimum Standards of Architectural Education Regulations, 2017, without the prior approval and publication of the said Regulations in the Central Government's Official Gazette as required under Clauses (e), (g), (h) and (i) of sub-section (2) of Section 45 read with Section 21 of the Architects Act ?

18. With regard to the first question, namely maintainability of the Writ Petition, it is the sum and substance of the submissions made by the learned counsel appearing for the first respondent-CoA that the impugned

communications issued by the first respondent are addressed to all the Architectural institutions and the members of the petitioner-Society are no way connected or aggrieved by the said communications, and therefore, they have no locus-standi to maintain the Writ Petition. But according to the learned Senior Counsel appearing for the petitioner-Society, the members of the petitioner-Society are professional Architects who have engaged themselves as teaching faculty and the Society recognises four kinds of members, namely, (i) Life Member -- Professor, registered with the first respondent-Council of Architecture (CoA) and being heads of institutions with ten years of teaching experience, (ii) Associate/Affiliate Member -- Teachers registered with CoA having less than ten years of teaching experience, (iii) Patron/Donor Member -- accomplished academicians and renowned teachers registered with CoA involved in Architectural education with 20 years of experience, and (iv) Institutional Member -- representing a college or school or institute of Architecture. Hence, the learned Senior Counsel appearing for the petitioner-Society submitted that the Society has various aims and objects and hence, they are entitled to maintain the present Writ Petition questioning the said Regulations of the year 2017.

19. In the above context, learned Senior Counsel appearing for the petitioner invited the attention of this Court to the Memorandum of the Academic Society of Architects and the following are the aims and objects of the petitioner-Society:

"(a) To bring all Architects into contact with another with a view to establish relations of friendship

and goodwill towards another so that they can have exchange of thoughts and views;

(b) To improve, study, regulate and promote the cause of education and research in the field of Architecture and related fields of housing, urban and regional planning, urban design, landscape Architecture, environmental planning and design, interior design, Architectural conservation, building construction and sustainable development through creating general awareness among the students, faculty and citizens;

(c) To collect and disseminate the information in the various fields of Architecture and to compile and publish the same;

(d) To arrange conferences, meetings, seminars, workshops, lectures, exhibitions on the issues in Architecture and related fields and organize study tours of the member institutions, Government and other Architecture institutions;

(e) To conduct career guidance programmes in willing High Schools creating more awareness about Architectural education among High School students aspiring to become Architects and about the NATA (National Aptitude Test in Architecture) conducted by the NIASA (an Academic unit of the Council of Architecture, Ministry of HRD, Government of India);

(f) To work for the betterment and expansion of the educational and research activities of the

member institutions. To maintain library and resource centres for the use of Architectural Institutions and make them available; the literature, books, Government Orders, Court decisions related to education and the rights guaranteed to the private unaided institutions and other educational resources;

(g) To encourage students and faculty in Architectural schools by organising activities, competitions and instituting awards and scholarships;

(h) To publish newsletters, journals and magazines in the field of Architectural education and distribute the same;

(i) To prepare audio visual materials such as slide presentation, films and videos etc. to reach out the students, faculty and citizens on the issues in Architecture, and

(j) To do all such acts, deeds and things that may be incidental, necessary or conducive to the furtherance of all or any of the above mentioned Aims and Objects."

सत्यमेव जयते

20. On a reading of the abovesaid aims and objects of the petitioner-Society, we are of the opinion that the petitioner-Society and its members are academic/professional Architects and when the first respondent-Council of Architecture is attempting to implement the new Regulations of the year 2017 without prior approval of the Central Government and notifying the same in the

Official Gazette of the Union of India as required under Section 45 of the Architects Act, the petitioner-Society is having every right to question the same.

21. Further, as stated above, since the petitioner is a Society and the members of the petitioner-Society are academic/professional Architects, we are of the opinion that the petitioner-Society will fall within the purview of the aggrieved and affected person. The first respondent-Council of Architecture (CoA) is seeking to implement and enforce the "Minimum Standards of Architectural Education Regulations, 2017" even before the same is approved by the second respondent-Government of India and published in the Gazette of the Union of India in terms of Section 45 of the Architects Act, 1972, thereby superseding the existing approved Regulations. Since the action of the first respondent-CoA is not in accordance with law and the Statute governs the field, it affects the rights of the members of the petitioner-Society. Moreover, the issues relating to the "vires" of the Regulations framed by the first respondent-CoA, is under challenge and therefore, the petitioner-Society has "locus-standi" to challenge the new Regulations and it is entitled to maintain the Writ Petition.

22. With regard to the merits of the case, it is the submission of the learned Senior Counsel appearing for the petitioner-Society that the Minimum Standards of Architectural Education Regulations, 1983, are framed under Section 45(2)(e)(g)(h)(i) and (j) read with Section 21 of the Architects Act. The said Regulations of the year 1983 were framed on 26.03.1983 and 27.08.1983,

which were brought in exercise of power conferred by Clauses (e)(g)(h)(i) and (j) of sub-section (2) of Section 45 of the Architects Act with the approval of the Central Government. In fact, an amendment was made under Clause 4(1) of the 1983 Regulations in the year 2006. Even the said amendment was notified and approved by the Central Government and published in the Gazette on 07.01.2006, which is evident from the foot-note of the Minimum Standards of Architectural Education Regulations, 1983.

23. While so, the first respondent-CoA sent a communication dated 19.04.2017 to all the Heads of Architectural Institutions imparting 5-year B.Arch course in the country. The first respondent-CoA has come forward with fresh Regulations, namely Minimum Standards of Architectural Education Regulations, 2017 based on 67th meeting that was held on 11.03.2017 and the first respondent-CoA sought to implement the new Regulations of the year 2017 even before the same is approved by Government of India and published in Gazette by way of Notification. It is the contention of the learned Senior Counsel appearing for the petitioner that unless the said Regulations of the year 2017 are notified as required under the Statute, the Regulations cannot have any statutory force. But the first respondent is trying to implement the new Regulations of the year 2017. In this regard, learned Senior Counsel appearing for the petitioner-Society invited the attention of this Court to one of the communications, dated 23.05.2018 sent by the first respondent-Council of

Architecture (CoA) to all the Architectural Institutions approved by the CoA, wherein the first respondent-CoA called upon the institutions to submit security deposit for inspection/renewal of the approvals. In the said communication, the first respondent-CoA referred to its 69th meeting held on 13.04.2018 and 14.04.2018 and claimed that the new Regulations have been approved and decision taken to request all the institutions to comply with the same. Thus, the learned Senior Counsel appearing for the petitioner-Society demonstrated before this Court that unmindful of the approval not being accorded by the Central Government for the Regulations to have statutory force, the first respondent, by two communications dated 31.10.2018 and 03.12.2018, had again called upon the Heads of the institutions specifying the approval process and to apply for the same in the web-site. Thus, the learned Senior Counsel appearing for the petitioner submitted that without the approval of the Central Government, and notifying the same in the Gazette, the first respondent is trying to implement the 2017 Regulations, when the fact remains that 1983 Regulations are already in force.

24. It is the reply of the learned counsel appearing for the first respondent-CoA that the Council of Architecture (CoA) being the academic authority under Section 21 of the Architects Act, is well within its powers to issue Regulations/Guidelines and the said Act does not prescribe that the exercise of powers by way of Regulations/Guidelines, has to be notified by the Central

Government in its Official Gazette. Admittedly, right from the year 2008, the Council of Architecture is prescribing the Minimum Standards of Architectural Education by exercise of its powers under Section 21 of the Architects Act and the Central Government nominees are the members of the CoA and therefore, the Central Government is well aware of the same. Hence, under Section 21 of the said Act, the first respondent-CoA has ample power to implement and issue any Regulations/Guidelines and since the said 2017 Regulations were issued only in exercise of its powers under Section 21 of the said Act, the same cannot be found fault with.

25. In view of the above submission made by the learned counsel appearing for the first respondent-CoA, it would be appropriate to extract Sections 21 and 45 of the Architects Act, as follows:

"Section 21: Minimum standard of architectural education: The Council may prescribe the minimum standards of architectural education required for granting recognised qualifications by colleges or institutions in India."

"Section 45: Power of Council to make regulations:

(1) The Council may, with the approval of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act, or the rules made thereunder, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for--

(a) the management of the property of the Council;

(b) the powers and duties of the President and

the Vice-President of the Council;

(c) the summoning and holding of meetings of the Council and the Executive Committee or any other committee constituted under section 10, the times and places at which such meetings shall be held, the conduct of business thereat and the number of persons necessary to constitute a quorum;

(d) the functions of the Executive Committee or of any other committee constituted under section 10;

(e) the courses and periods of study and of practical training, if any, to be undertaken, the subjects of examinations and standards of proficiency therein to be obtained in any college or institution for grant of recognised qualifications;

(f) the appointment, powers and duties of inspector;

(g) the standards of staff, equipment, accommodation, training and other facilities for architectural education;

(h) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;

(i) the standards of professional conduct and etiquette and code of ethics to be observed by architects;

(j) any other matter which is to be or may be provided by regulations under this Act and in respect of which no rules have been made.

(3) Every regulation made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case

may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

26. On a careful reading of Section 21 of the said Act, it is seen that it speaks only of general power of the first respondent-CoA to prescribe the minimum standards of Architectural education and Section 21 being the enabling provision, specifically empowers the first respondent to lay down the Minimum Standards of Architectural Education and as such, no other body has any other right in that regard. Section 45 of the Act speaks about the power of the first respondent-Council of Architecture to make the Regulations. The Minimum Standards referred to in Section 21 are to be brought into force by way of Regulations. As stated above, Section 45 of the Act speaks of the regulation making power vested with the first respondent-CoA, but however, it makes it clear that such Regulations have to be approved by the Central Government and published in the Official Gazette. Further, it is seen that the Regulations are to be placed before the Parliament within six months of the publication of the Regulations. The Architects Act enables the registration for carrying out the profession of Architect and the standards being set, the number of institutions imparting the education and the qualification to seek admission to Architectural course including admission test and course duration, are the areas which the first respondent exercises the power.

27. In the above scenario, it is appropriate to refer a decision of a Division Bench of the Calcutta High Court reported in reported in AIR 2015 Calcutta 360 = 2015 SCC Online Calcutta 4615 (Council of Architecture and others Vs. Mala Mukherje), wherein it is held by the Division Bench as follows:

"12. That apart, Section 21 cannot be read in isolation. It must be read in conjunction with the regulation making powers under Section 45 of the Act which provide that COA may frame regulations with the approval of the Central Government for carrying out the purposes of the Act including matters pertaining to standards of architectural education. Even if it is accepted for argument's sake that the enabling provision under Section 21 of the Act empowers COA to issue administrative directions for prescribing the minimum standards of education for granting degrees in architecture, such executive powers can support and not supplant the scheme laid down by the provisions of the Act or the regulations framed with the approval of the Central Government under the Act. Exercise of executive powers under Section 21 of the Act to prescribe a competence/viva voce test in respect of candidates enrolled in IIA after 2002 and possessing 'recognized qualification' therefrom virtually amounts to derecognizing such qualification by negating its efficacy in obtaining registration on the strength of such qualification. Efficacy of a recognised degree, particularly a

professional one, is the conferment of the right on the holder to get himself registered as a professional under the relevant statute and to practise such a profession (Professor Yashpal Vs. State of Chhattisgarh- 2005 (5) SCC 420). To put a restriction on such right to registration amounts to negation of its efficacy and deeds to virtual derecognition of such qualification."

Thus, it is clear that Sections 21 and 45 of the Architects Act cannot be read in isolation and it should be read in conjunction with each other.

28. Therefore, we are of the opinion that it is mandatory under Section 45 of the Architects Act to get the approval of the Central Government with regard to the Regulations/Guidelines framed and that unless the Regulations/Guidelines are approved by the Central Government, they will not have any legal sanctity and when there is no legal sanctity, they cannot be implemented in letter and spirit. Further, when a Statute requires that a particular thing is to be in a particular manner, it shall be done in that manner, as enunciated by the Supreme Court in the decision reported in 1993 (3) SCC 161 (Shiv Kumar Chada Vs. Municipal Corporation and others).

29. In the above context, aid can also be taken from the judgment of the Supreme Court reported in 2019 SCC Online SC 460 = 2019 (5) SCALE 629 =

MANU/SC/0454/2019 (Dharani Sugars and Chemicals Ltd. Vs. Union of India),
wherein the Apex Court observed as follows:

"45. He also referred to the Statement of Objects and Reasons of the Amendment Act, 1956, which brought in Section 35A (Banking Regulation Act) in order to tighten up control over banking companies so as to enable the RBI to give directions to banking companies in relation to matters of policy or administration affecting the public interest.

46. There is no doubt that Sections 21 and 35A do confer very wide powers on the RBI to give directions when it comes to the matters specified therein. However, this does not answer the precise question before us. This question can only be answered by referring to Sections 35AA and 35AB.

47. Section 35AA makes it clear that the Central Government may, by order, authorise the RBI to issue directions to any banking company or banking companies when it comes to initiating the insolvency resolution process under the provisions of the Insolvency Code. The first thing to be noted is that without such authorisation, the RBI would have no such power. There are many Sections in the Banking Regulation Act which enumerate the powers of the Central Government vis-à-vis the powers of the RBI. Thus, Section 36ACA(1) provides as follows:

"36ACA. Supersession of Board of Directors in certain cases.--

(1) Where the Reserve Bank is satisfied, in consultation with the Central Government, that in the public interest or for preventing the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or any banking company or for securing the proper management of any banking company, it is necessary so to do, the Reserve Bank may, for reasons

to be recorded in writing, by order, supersede the Board of Directors of such banking company for a period not exceeding six months as may be specified in the order:

Provided that the period of supersession of the Board of Directors may be extended from time to time, so, however, that the total period shall not exceed twelve months.

....."

.....

54. A conspectus of all these provisions shows that the Banking Regulation Act specifies that the Central Government is either to exercise powers along with the RBI or by itself. The role assigned, therefore, by Section 35AA, when it comes to initiating the insolvency resolution process under the Insolvency Code, is thus, important. Without authorisation of the Central Government, obviously, no such directions can be issued.

55. The corollary of this is that prior to the enactment of Section 35AA, it may have been possible to say that when it comes to the RBI issuing directions to a banking company to initiate insolvency resolution process under the Insolvency Code, it could have issued such directions under Sections 21 and 35A. But after Section 35AA, it may do so only within the four corners of Section 35AA.

56. The matter can be looked at from a slightly different angle. If a statute confers power to do a particular act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner other than that which has been prescribed. This is the well-known Rule in Taylor vs. Taylor, (1875) 1 Ch.D. 426, which has been repeatedly followed by this Court. Thus, in State of U.P. vs. Singhara Singh, MANU/SC/0082/1963 : (1964) 4 SCR 485, this Court

held:

"The Rule adopted in Taylor vs. Taylor [(1875) 1 Ch.D 426, 431] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the Rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him."

(at pp.490-491)

57. Following this principle, therefore, it is clear that the RBI can only direct banking institutions to move under the Insolvency Code if two conditions precedent are specified, namely, (i) that there is a Central Government authorisation to do so; and (ii) that it should be in respect of specific defaults. The Section, therefore, by necessary implication, prohibits this power from being exercised in any manner other than the manner set out in Section 35AA."

30. A reading of the above judgment of the Supreme Court shows that

if a Statute confers power to issue Regulations/Guidelines, the same has to be done only in the manner specified under the Statute and not in any other manner. Therefore, the dictum laid down in the said decision of the Supreme Court, will squarely apply to the facts of the present case. Further, Section 21 of the Architects Act gives power to the Council of Architecture to prescribe the minimum standards of Architectural education required for granting recognised qualifications by colleges or institutions in India and such prescription of the Regulations cannot be done independently by the first respondent-Council of Architecture. Thus, the Minimum Standards of Architectural Education Regulations are to be brought into force only by way of due approval of the same by the Central Government and issuance of the same in the Official Gazette of the Union of India as provided under Section 45 of the Act. In the absence of such approval by the Central Government, the said "Minimum Standards of Architectural Education Regulations, 2017", do not have any statutory force and they cannot be implemented. In the present case, the prescription of the Minimum Standards of Architectural Education Regulations, 2017 are being discussed in the meetings of the Council of Architecture. But it is clear that the said 2017 Regulations have not yet been approved by the Central Government till date and only the earlier Regulations of the year 1983 are in force. Under such circumstances, the attempt made by the first respondent-Council of Architecture by issuance of impugned communications dated 31.10.2018 and

03.12.2018 to the Architectural institutions, is not legally sustainable. Therefore, the impugned communications are liable to be quashed, since the first respondent-CoA is trying to enforce the Regulations of the year 2017 even before the same are approved by the second respondent-Central Government.

31. Hence, for the reasons stated above, the Writ Petition is allowed as prayed for. Consequently, W.M.P. is closed. No costs.

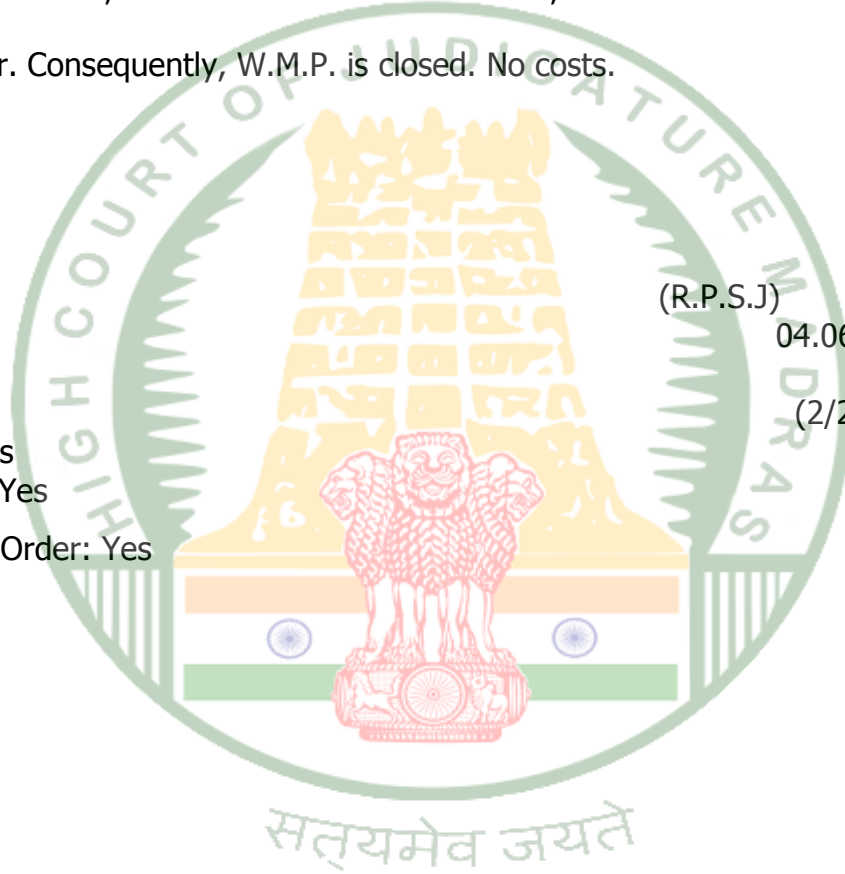
(R.P.S.J)

(K.R.J)

04.06.2019

(2/2)

Index: Yes
Internet: Yes
Speaking Order: Yes
cs



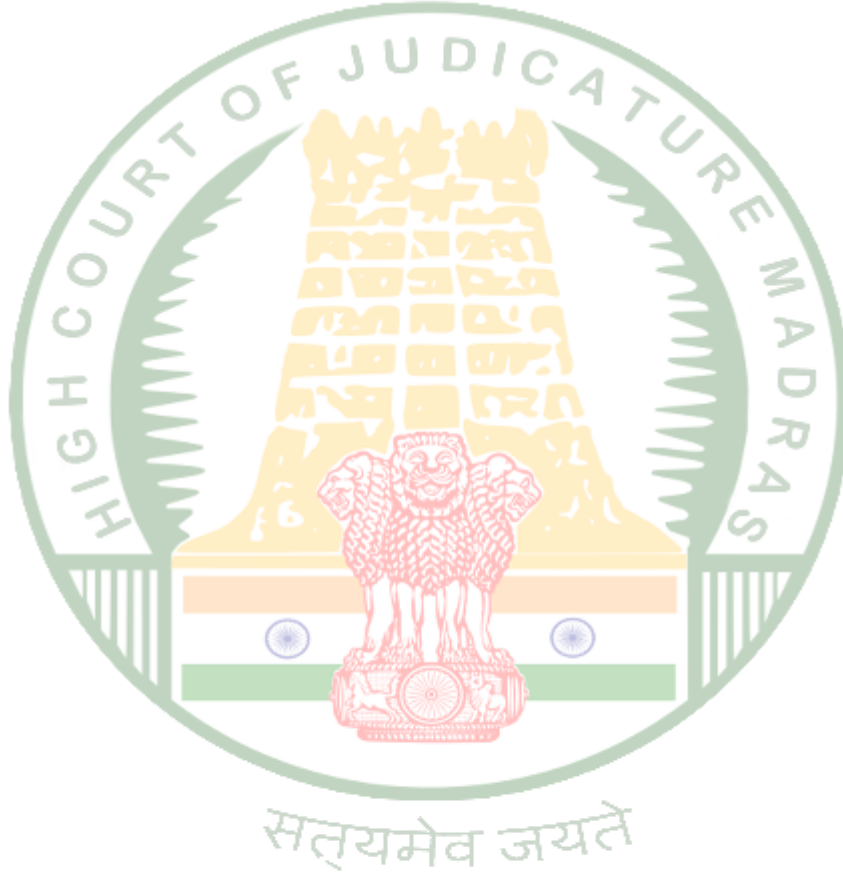
WEB COPY

To

1. Council of Architecture (COA),
Represented by its Registrar-Secretary,
India Habitat Centre, Core-6A, 1st Floor,

Lodhi Road, New Delhi-110 003.

2. Ministry of Human Resource Development,
Represented by Deputy Secretary,
Department of Higher Education,
Govt. of India, Technical Education Bureau,
Shastri Bhawan, New Delhi-110 115.



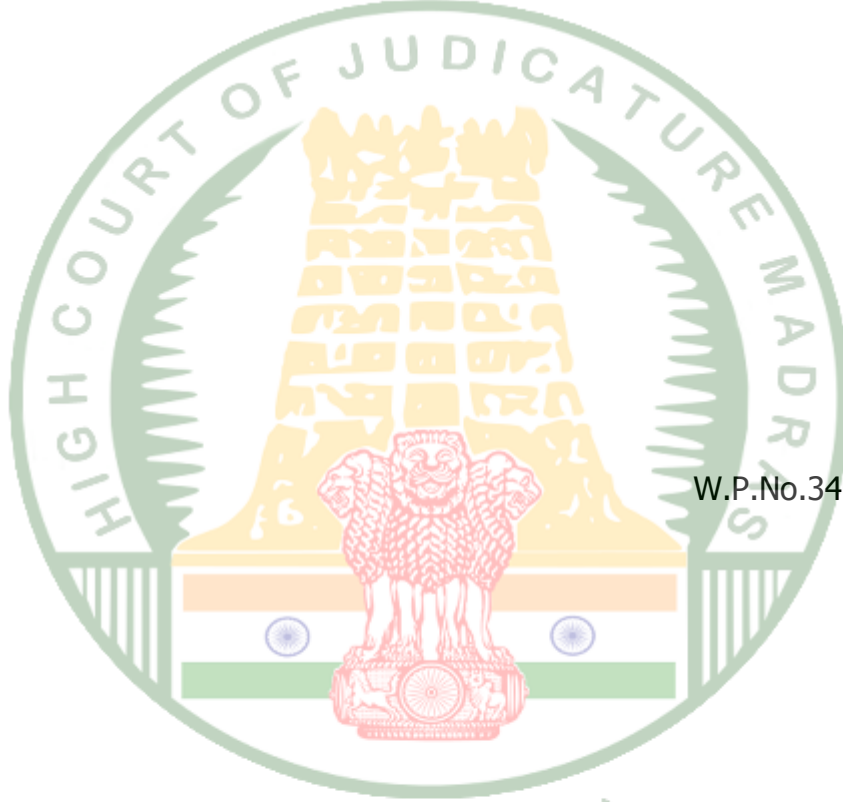
WEB COPY

R.SUBBIAH, J

and

KRISHNAN RAMASAMY, J

CS



Order in
W.P.No.34676 of 2018

सत्यमेव जयते

04.06.2019

WEB COPY