

Ref.No. UPAA / 8/1-80/2 / 2013

Dated: 30.01.2013

To,
 Managing Director,
 Samaj Kalyan Nirman Nigam,
 TC-46-V, Vibhuti Khand,
 Gomti Nagar,
 Lucknow

Sub: Sub – Empanelment of Architects in your department

Sir,

With reference to your advertisement for above captioned subject in different news papers we would like to draw your kind attention that there is a central Act known as “THE ARCHITECTS ACT –1972” which regulates the education and practice of Architecture in India. Under this parliamentary act, COUNCIL OF ARCHITECTURE, a regulatory body, has been formed to make rules and regulations to regulate the professional activities including standard conditions of engagement of Architects. The spirit of the Act is to maintain reasonability between Client and Architect during the rendering of professional Service. Prime object of making such regulations by the council of Architecture, is to ensure the optimum use of public/clients resources to be invested in the buildings, by employing the right consultant. In light of these facts, the association has observed following points in the conditions laid down by your Department in the prescribed form of application –

1. Point no.2 of the conditions is the registration fees of RS. 25000.00 for one year.

Such a high cost of registration is not justified as the same is not prevalent in any other profession, when they are invited to render their professional services. This empanelment is not a one way activity where Architects are the only beneficiaries or in other words this empanelment is not being done purely for the purpose of employment to the Architects but the department will also be part of the beneficiary out of the services of empanelled Architects. Hence, to impose such a big amount only for the registration purpose for one year is quite unfair, also because the value of works awarded may not be in consonance with the Proposed Registration Charges. It seems that the department is also taking this exercise as profit making activity because the department is not giving any kind of service or facility out of this amount of registration. It also restricts new comers to apply on financial grounds which are against the spirit of fair competition.

This condition is to be examined from the point of view of the provisions under “THE COMPETITION ACT 2002,” which reads as under -
 “Abuse of dominant Position”

1. No enterprise or group] shall abuse its dominant position.]
2. There shall be an abuse of dominant position

[Under sub-section

1. if an enterprise or a group].—

1. Directly or indirectly, imposes unfair or discriminatory—

1. condition in purchase or sale of goods or service; or
2. Price in purchase or sale (including predatory price) of goods or Service.

Explanation. — For the purposes of this clause, the unfair or discriminatory Condition in purchase or sale of goods or service referred to in sub-clause

1. (I) and Unfair or discriminatory price in purchase or sale of goods (including predatory Price) or service referred to in sub-clause
2. (ii) shall not include such discriminatory

Condition or price which may be adopted to meet the competition; or

1. Limits or restricts—

- (I) production of goods or provision of services or market therefore; or
- (ii) Technical or scientific development relating to goods or services to

The prejudice of consumers; or

- Indulges in practice or practices resulting in denial of market access [in any manner; or
- Makes conclusion of contracts subject to acceptance by other parties of

Supplementary obligations which, by their nature or according to Commercial usage, have no connection with the subject of such contracts;

Or

- uses its dominant position in one relevant market to enter into, or protect, Other relevant market.

Explanation.—for the purposes of this section, the expression—

1. "Dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to
 - (I) operate independently of competitive forces prevailing in the relevant market; or
 - (ii) Affect its competitors or consumers or the relevant market in its favour. ”

However you may have such conditions which helps you in selection of competent Architect in terms of professional competence, integrity, past experience, standing in the profession and ability to deal such projects but you cannot discriminate by putting financial constrains in terms of registration fees ,turnover ,EMD etc.

1. Point no.8 of the conditions for security deposite is also not justified as we are not the contractors. If any Architect is not rendering his services properly, you have the right to depanel him and appoint any other Architect for the remaining work at his risk and cost. Simultaneously the department can also lodge a complaint to the Council of Architecture for further action and punishment against the Architect. The council of Architecture even posses the right to cancel his registration also as an Architect
2. Point no. 14 of the conditions states that an advocate in state bar council is not entitle to be empanelled as an Architect which does not seems to be relevant for this empanelment
3. Point no. 16 of the condition is most objectionable to us as it reflects that the department presumes that the Architects are mafias ,anti social elements and are part of the organized criminal activities. They are also not the civilized and mentally sound citizens of the Nation and needs to be reminded to be lawful/ civilized before entrusting them any consultancy work. It is a common legal fact which applies to every citizen of the country, then why it is specially emphasized in the conditions of empanelment. Our fraternity feels that this is a deliberate action to mortify the Architects at large. There might be few examples which may be involved in such practices but the department cannot abuse the whole fraternity.

This is to bring your notice that an Architect is required to observe and uphold the Council's Conditions of Engagement and Scale of Minimum Charges as prescribed under Regulations 2(1) (xii) of the Architect (professional conduct) Regulations, 1989, while rendering Architectural services /consultancy. These regulations were published in the Gazette of India, part III section 4PP 562- 564 and 566 – 567, on 27th may 1989.

Hence we request you to kindly withdraw such conditions which are unfair, unethical in promoting healthy competitions and insulting to an Architect. Kindly do the needful towards reestablishing of Registration Process

We expect your co-operation and assure you of our co-operation in the matter.

Thanking you.

Yours Sincerely

Gen. Secretary

UPAA