

Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1987 of 2021

Pakistan Council of Architects & Town Planners (PCATP)
Versus
Capital Development Authority

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------	----------------------------	---

05. 03.10.2021. Mr. Arshad Zaman Kayani, Advocate for Petitioner.
Mr. Mohammad Akhtar, Advocate for Respondent.

The petitioner is aggrieved by notification dated 11.05.2020, whereby the respondent has issued a circular prescribing a fee of Rs.20,000/- for issuing of new licenses for Architects and prescribing a fee of Rs.10,000/- for renewal of licenses of Architects.

2. Learned counsel for the petitioner stated that the petitioner is a statutory authority that regulates Architects and Town Planners under the Pakistan Council of Architects and Town Planners Ordinance, 1983 ("**Ordinance of 1983**"). He stated that the petitioner is the sole authority vested with jurisdiction to regulate Architects and Town Planners. He further stated that the Capital Development Authority (CDA) is a regulator of land within Islamabad Capital Territory and invested with no authority under the Capital Development Authority Ordinance, 1960 ("**CDA Ordinance**") to regulate the employment of Architects and Town Planners or to issue

Certified to Be True Copy

28 OCT 2021

Examiner
Copy Dept. Section
Authorized to issue under Order 1984
Qandari
Islamabad High Court
Islamabad

licenses and consequently notification dated 11.05.2020 and all other actions of the respondent whereby it seeks to exercise regulatory authority in relation to Architects and Town Planner is devoid of legal authority and ultra-vires of the law and Constitution. He further submitted that the respondent has no jurisdiction under the CDA Ordinance to demand fee for issuance of new licenses or for their renewal in relation to Architects and Town Planners.

3. Learned counsel for the CDA submitted that CDA was not issuing licenses to Architects and Town Planners but was merely enlisting Architects and Town Planners pursuant to authority vested in CDA under Regulation 2(36) of Islamabad Building Regulations, 1963, which defined a licensed Architect and Engineer as a person licensed or registered by CDA. He submitted that such regulations had been framed in exercise of authority by CDA Board under Section 51 of the CDA Ordinance. He submitted that the CDA was charging registration fee on the basis of a summary proposed by the Architecture and Town Planner Directorate of CDA and approved by the Chairman of CDA keeping in view the paper work involved in registering Architects and Town Planners. His contention was that CDA is

Certified to Be True Copy

23 OCT 2021

Examiner
CDA, C-17, Station
Road, Islamabad
G.O. No. 1987 of
Islamabad High Court
Islamabad

not issued licenses to Architects and Town Planners but merely enlisting them and charging fee for such purpose.

4. The impugned notification issued by the CDA states that "competent authority has approved the license fee for Architects to do practice in Islamabad as an Architect within CDA limits", and the fee prescribed for issuance of a new license in such notification is Rs.20,000/- and fee for renewal is prescribed as Rs.10,000/-. The learned counsel for CDA when asked was unable to identify any provision of the CDA Ordinance that empowered CDA to determine who is eligible to provide services as an Architect or Town Planner in Islamabad and he was further unable to explain from where CDA derived the authority to impose a condition of registration on Architects and Town Planners subject to payment of fee without which they would be barred from performing services within Islamabad.

5. The CDA is a statutory body and can only exercise such powers as vested in it under the CDA Ordinance. The preamble of the CDA Ordinance states that the CDA has been created "for making all arrangement for planning and development of Islamabad". Neither Section 15 of the CDA Ordinance that

Certified to Be True Copy

28 OCT 2021

Examiner
Copy Control Section
Authorized to Certify under 15-87 of
Lahore High Court
Islamabad

deals with the powers of CDA nor any other provision of the CDA Ordinance vests in it the power to either license any professional or mandate professionals to seek registration or enlistment with CDA in order to dispense services within Islamabad Capital Territory. The CDA as a statutory authority is an organization endowed with the responsibility to undertake planning and development of Islamabad. It is, however, not empowered to license or regulate provision of services by professionals within Islamabad. Section 51 of the CDA Ordinance vests CDA with the authority to make regulations in order to carry out the purposes of the Ordinance. Any regulations enacted pursuant to the power vested in CDA under Section 51 of the Ordinance are products of exercise of delegated powers, which in order to be legal, must remain within the four corners of statutes. The CDA in exercise of delegated powers under Section 51 of the Ordinance cannot assume authority that does not flow from the CDA Ordinance itself.

6. The Architects and Town Planners are regulated by Pakistan Council of Architects and Town Planners ("**Council**") established under the Ordinance of 1983. Section 8 of the said Ordinance defines the functions of the Council

Certified to Be True Copy

28 OCT 2021

Examiner
Copy Supply Section
Authorized Under Article-87 of
Supreme Court Order 1984
Islamabad High Court
Islamabad

which includes, *inter-alia*, registration of Architects and Town Planners, recognition of their qualifications, determination of their standard of conduct, the authority to take disciplinary action and levy and collect fee for registration and licensing of Architects and Town Planners etc. The Ordinance of 1983 is a special law that vests in the Council the exclusive authority to administer and oversee the licensing and regulation of Architects and Town Planners, subject to levy and collection of the prescribed fee. Any action of CDA to assume the authority to license or register Architects and Town Planners upon payment of fee would tantamount to the usurpation of the authority of the Council vested in it under the Ordinance of 1983.

7. There is no conflict between the provisions of CDA Ordinance and the Ordinance of 1983 as there is no overlapping subject matter between the two statutes. As aforesaid, the CDA Ordinance vests no authority in CDA to regulate, license or register Architects and Town Planners or charge any fee in lieu thereof. But even in the event that there were a conflict between the two statutes, the principles of statutory interpretation mandate that special law trumps general law and in case of two special laws the later in time prevails.

Certified to Be True Copy

28 OCT 2021

Examiner
Copy Supply Section
Authorised Under article-87 of
Muqon-e-Shahadat Order 1984
Islamabad High Court
Islamabad

The Ordinance of 1983 is a special law and was also promulgated later in time than the CDA Ordinance. However, let us not dwell on this any further as it has already been noted that there is no conflict between the two statutes in question.

8. The controversy arises in view of the definition of a licensed Architect/Engineer as provided under the Islamabad Building Regulations, 1963, the Islamabad Capital Territory Residential Sectors Zoning (Building Control) Regulations, 2005, and the Islamabad Capital Territory Residential Sectors Zoning (Building Control) Regulations, 2020. In all these sub-statutory instruments enacted by the CDA, in exercise of its authority under Section 51 of the Ordinance, a licensed Architect has been defined as someone to whom a license or registration or enlistment has been granted by the CDA. As has already been held above, the CDA Ordinance vests in the CDA Board no authority to license or register or enlist Architects or Town Planners or to charge any fee in lieu thereof. When the parent statute does not create legal authority for a certain purpose and vest it in the CDA Board, the CDA Board in exercise of its delegated authority under Section 51 of the Ordinance can certainly not confer on itself

Certified to Be True Copy

28 OCT 2021

Examiner
Copy Supply Section
Authorised Under Article 87 of
Constitution of Islamabad
Islamabad Capital Territory

such authority that does not flow from the CDA Ordinance. Thus to the extent that the aforementioned regulations seek to appropriate any authority for CDA for purposes of licensing or registration or enlistment of Architects and Town Planners or charging them any fee for such purpose, the said regulations are ultra-vires the CDA Ordinance as well as the Ordinance of 1983 and are declared to be without lawful authority and of no legal affect. Pursuant to Article 4 of the Constitution, a public body only has such authority as vested in it by law. As the law in the present case vests no authority in the CDA Board or Chairman CDA to license or register or regulate Architects and Town Planners or impose a condition that in order to dispense services within the Islamabad Capital Territory such professionals must first seek enlistment or registration from CDA subject to payment of fee, the exercise of such authority falls foul of Article 4 of the Constitution.

9. For the aforesaid reasons, the instant petition is **accepted** and notification dated 11.05.2020 issued by CDA is declared to be ultra-vires the CDA Ordinance, the Ordinance of 1983 and the Constitution and is accordingly set-aside. To the extent that the definition of an Architect or Town Planner is defined in the

Certified to Be True Copy

23 OCT 2021

Member
Section
Order 17 of
1984
High Court

Islamabad Capital Territory Residential Sectors Zoning (Building Control) Regulations, 2020, as an Architect or Town Planner licensed or registered by CDA, the said definition is also declared ultra-vires the CDA Ordinance and the Ordinance of 1983 to such extent. The question of whether or not CDA can impose additional conditions on Architects and Town Planners who are rendering services in relation to projects being administered by CDA is not a question before this Court in the instant petition and consequently can be addressed by a Court in an appropriate case. This Court is, therefore, not expressing any opinion in such record.

Certified to Be True Copy
23 OCT 2021
Examiner

M.A. Raza

(BABAR SATTAR)
JUDGE