

# Dispute Resolution Hotline

March 26, 2010

## ANOTHER WRIT PETITION FILED AGAINST FOREIGN LAW FIRMS AND LPO

Keeping in tune with the weather, the heat on practice of law by foreign advocates in India has just been turned up. Petitioner A.K. Balaji, a practicing advocate of Tamil Nadu ("**Petitioner**"), has filed a writ petition in High Court of Madras ("**High Court**") alleging non-action on part of various government bodies. The Petitioner has claimed that numerous foreign law firms are allegedly violating provisions of Indian Advocates Act, 1961 ("**Advocates Act**") by providing legal services in India.

Late last year, the Bombay High Court in its judgment in the case of Lawyers' Collective has held that the practice of law in India, as governed by Advocates Act, included both litigious and non-litigious practice. Our hotline in this matter was circulated to the international business community on December 24, 2009<sup>1</sup>.

## FACTS OF THE CASE

The Petitioner has filed a writ petition against Bar Council of India, Government of India, a business-process outsourcing firm and several well-known foreign law firms<sup>2</sup> ("**Respondents**") alleging violation of Advocates Act, Immigration laws and the Income Tax Act, 1961.

The Petitioner has claimed that the interpretation of the Advocates Act is to allow only an 'Advocate' registered under the Advocates Act to practice law anywhere in India. As such Advocates Act allows a foreign citizen to practice law in India only if the person possesses necessary educational qualification and the country of citizenship allows Indian citizens to practice law in their country on a reciprocal basis. In absence of a reciprocal arrangement, Indians are not allowed to practice law in most jurisdictions without taking further set of educational courses and other tests, such as QLTT in case of UK or the state bar examination in case of the US. No such requirement of taking a qualifying examination or program, apart from a qualifying legal education, is necessary for enrolling as an 'Advocate' under Advocates Act.

It is therefore prayed that in lack of a clear and fair reciprocal arrangement between India and a foreign country, no foreign law firm or advocate should be allowed to practice law in India.

The Petitioner has further claimed that the Respondents (lawyers) enter India in the guise of visitor's visas, however, with the intention to do indirect marketing and holding seminars. Petitioner has also alleged that foreign lawyers are earning in India by conducting arbitration proceedings in hotels, for which fees are directly paid into their foreign bank accounts.

The Petitioner has made various government bodies such as income tax department, ministries of finance and law, and other immigration offices responsible for not taking cognizance of the alleged violation of various laws by the Respondents. The Petitioner claims to have made a representation in the past to these agencies, and due to lack of responsiveness, has filed a writ petition with the High Court under Article 226 of the Constitution of India against the government and its agencies to take further action in this respect.

## OUR VIEW

We believe that the Bombay High Court judgment in the case of Lawyers Collective has clearly set out the distinction of what tantamounts to practice of law and what doesn't. Our commentary in form of our hotline circulated on December 24, 2009 also sets out that sporadic visits by foreign lawyers to India would not tantamount to practice of law.

It remains to be seen how the High Court will look at this matter. It is early to comment at this stage, however, we will keep the international business community informed of all critical developments in this matter.

- **Kabeer Shrivastava & Vivek Kathpalia**

1 Copy available at <https://nishithdesai.com/SectionCategory/33/Dispute-Resolution-Hotline/12/57/DisputeResolutionHotline/5508/6.html>

2 Rouse, Ashurst LLP, Kelley Drye & Warren LLP C/O Wakhariya & Wakhariya, Kennedys C/o Tuli & Co., DeHeng Law Office, White & Case LLP, Linklaters LLP, Freshfields Brackhaus Deringer, Allen & Overy, Clifford Chance, Wilmer Hale, Shearman & Sterling LLP, Herbert Smith LLP, Slaughter and May, Hogan and Hartson, Davis Polk & Wardwell, Eversheds, Akin Gump Strauss Hauer & Feld LLP, Paul, Weiss, Rifkin, Wharton & Garrison, Norton Rose LLP, Pillsbury Winthrop Shaw Pittman, Wilson Sonsini Goodrich Rosati, Arnold & Porter LLP, Covington & Burling LLP, Perkins Coie, Loyens & Loeff, Freehills, Clayton Utz, Mayer Brown LLP, Clyde & Co, Bird and Bird LLP (As listed in the writ petition)

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