IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2012

C O R A M

THE HON'BLE Mr. M.Y. EQBAL, CHIEF JUSTICE
and
THE HON'BLE Mr. JUSTICE T.S. SIVAGNANAM

W.P. No.5614 of 2010
and
M.P. Nos.1, 3 to 5 of 2010

A.K. Balaji .. Petitioner

versus

1. The Government of India,
rep. by its Secretary to Government,
Law Department,
4th Floor, A-Wing,
Shastri Bhawan,
New Delhi - 110 001.

2. The Government of India,
rep. by its Secretary to Government,
Home Department, North Block,
Central Secretariat,
New Delhi ┬ 110 001.

3. The Government of India,
rep. by its Secretary to Government,
Finance Department, North Block,
Lok Nayak Bhavan, New Delhi.

4. The Government of India,
rep. by its Secretary to Government,
Department of External Affairs,
Akbar Bhavan, New Delhi ┬ 110 021.

5. The Government of India,
rep. by its Secretary to Government,
Income Tax Department,
7th Floor, Mayur Bhavan,
Connaught Circle,
New Delhi ┬ 110 055.

6. The Reserve Bank of India,
Central Office,
Centre 1, Word Trade Centre,

Cuffe Parade, Colaba,
Mumbai 400 005.

7. The Bar Council of India,
21, Rouse Avenue,
Institutional Area,
New Delhi – 110 002.

8. The Bar Council of Tamil Nadu,
rep. by its Secretary,
High Court Campus,
Chennai – 600 104.

9. Rouse,
Cisons Complex,
1st Floor, 150/86,
Montieth Road, Egmore,
Chennai – 600 008, India.

10. Ashurst LLP,
New Delhi Liaison Office,
D-1, 6 – Aurangzeb Road,
New Delhi – 110 011.

11. Kelly Drye & Warren LLP,
C/o. Wakhariya & Wakhariya,
B-2, Taj Building, Wallace Street,
210, Dr.D.N.Road,
Mumbai – 400 001, India.

12. Kennedys,
C/o. Tuli & Co.,
148, Golf Links,
New Delhi – 110 003,
India.

13. De Heng Law Office,
C-9, Friends Colony East,
New Delhi – 110 003,
India.

14. White & Case LLP,
1214, 12th Floor,
Maker Chambers V,
Nariman Point,
Mumbai – 400 021,
India.

15. Integreon Managed Solutions Inc.,
Vatika Towers,
2nd Floor, Tower B,

Sector ┬ 54,
DLF Golf Course Road,
Gurgaon (Haryana ┬ 122 022,
India.

16. Linklaters LLP,
One Silk Street,
London,
EC2Y 8HQ,
United Kingdom.

17. Freshfields Bruckhaus Deringer,
65, Fleet Street,
London EC4Y 1HT,
United Kingdom.

18. Allen & Overy,
One Bishops Square,
London, E1 6AD,
United Kingdom.

19. Clifford Chance,
10, Upper Bank Street,
London E14 5JJ,
United Kingdom.

20. Wilmer Hale,
399, Park Avenue,
New York 10022,
United States of America.

21. Shearman & Sterling LLP,
801, Pennsylvania Avenue,
NW Suite 900,
Washington, DC 20004-2634,
United States of America.

22. Herbert Smith LLP,
Exchange House,
Primrose Street,
London, EC2A 2HS,
United Kingdom.

23. Slaughter and May,
One Bunhill Row,
London, EC1 Y 8 YY,
United Kingdom.

24. Hogan & Hartson,
555, Thirteenth Street, NW,
Washington, DC 20004,

United States of America.

25. Davis Polk & Wardwell,
    450 Lexington Avenue,
    New York, NY 10017,
    United States of America.

26. Eversheds,
    1 Wood Street,
    London, EC2V 7Ws, United Kingdom.
27. Akin Gump Strauss Hauer & Feld LLP,
    One Bryant Park,
    New York, NY 10036,
    United States of America.

28. Paul, Weiss, Rifkin, Wharton & Garrison,
    1285 Avenue of the Americas,
    New York, NY 10019-6064,
    United States of America.

29. Norton Rose LLP,
    3 More London Riverside,
    London, SE1 2AQ,
    United Kingdom.

30. Pillsbury Winthrop Shaw Pittman,
    1540 Broadway,
    New York, NY 10036 – 4039,
    United States of America.

31. Wilson Sonsini Goodrich & Rosati,
    650 Page Mill Road,
    Palo Alto, CA 94304,
    United States of America.

32. Arnold & Porter LLP,
    555 Twelfth Street, NW,
    Washington, DC 20004-1206,
    United States of America.

33. Covington & Burling LLP,
    The New York Times Building,
    620 Eighth Avenue,
    New York, NY 10018-1405,
    United States of America.

34. Perkins Coie,
    1888 Century Park E,
    Suite 1700, Los Angeles,
    California 90067-1721,
    United States of America.

35. Loyens & Loeff,
1, Avenue Franklin D.Roosevelt,
75008 Paris,
France.

36. Freehills,
MLC Centre,
19 Martin Place,
Sydney NSW 2000,
Australia.

37. Clayton Utz.,
Levels 19-35,
No.1 O↕ Connell Street,
Sydney NSW 2000,
Australia.

38. Mayer Brown LLP
71 S.Wacker Drive,
Chicago, IL 60606,
United States of America.

39. Clyde & Co.,
51, Eastcheap,
London,
EC3M 1JP,
United Kingdom.

40. Bird and Bird LLP
15, Fetter Lane,
London EC4A 1JP,
United Kingdom.

41. Women Lawyers↕ Association,
rep. by its Secretary Mrs.V.Nalini,
High Court Buildings,
Chennai ┬ 104.
(R41 impleaded as per order of Court dated 07.07.2010
in M.P.No.2 of 2010 in W.P.No.5614 of 2010)

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PRAYER : Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents 1 to 8 to take appropriate action against the respondents 9 ┬ 40 or any other Foreign Law Firms or foreign lawyers, who are illegally practising the profession of Law in India and forbearing them from having any legal practice either on the litigation side or in the field of non-litigation and commercial transactions in any manner within the territory of India, and pass such further or other orders.

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For Petitioner :: Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.R.Ezhilarasan &
Mr. N. Karthikeyan

For Respondents 1 to 6 :: Mr.M.Ravindran,
Addl. Solicitor General assisted by
Mr.P.Chandrasekaran, SCGC

For Respondent – 7 :: Mr.P.S.Raman, Senior Counsel
for Mr.K.Venkatakrishnan

For Respondent – 8 :: Mr.A.Navaneethakrishnan,
Advocate General
for Mr.S.Y.Masood

For Respondent – 9 :: Ms.P.T.Asha,
for M/s.Sarvabhauman Associates

For Respondents 10, 16, 19, 26, 39 & 40 :: Mr.Arvind P.Datar, Senior Counsel
& R.Muthukumarasamy,
Senior Counsel
for Mr.M.Rishi Kumar

For Respondent – 11 :: Mr.Satish Parasaran

For Respondent – 12 :: Notice Sent. Service Awaited.

For Respondents – 14, 20, 21, 24, 25, 27, 28 & 30 :: Dr.Abhishek M.Singhvi
for M/s.R.Senthil Kumar & Rahul Balaji

For Respondents – 31, 32, 33, 34 & 38 :: Mr.A.L.Somayaji, Senior Counsel
for M/s.R.Senthil Kumar & Rahul Balaji

For Respondent – 15 :: Mr.Sriram Panchu, Senior Counsel
for Mr.B.N.Suchindran

For Respondent – 23 :: Mr.R.Yashod Vardhan, Senior Counsel
for Mr.Sundar Narayanan

For Respondents – 22 & 29 :: Mr.R.Krishnamoorthy, Senior Counsel
for Mr.T.K.Bhaskar

For Respondent – 41 :: Ms.D.Prasanna

For Respondents – 36 & 37 :: Mr.K.S.Natarajan

For Respondents – 17 & 35 :: Mr.Vineet Subramani

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O R D E R

The Hon↕ ble the Chief Justice

This writ petition has been filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents 1 to 8 to take appropriate action against respondents 9 to 40 or any other Foreign Law Firm or Foreign Lawyers, who are illegally practising the Profession of Law in India, and for a further direction to forbear them from having any legal practice either on the litigation side or in the field of non-litigation and commercial transactions, in any manner whatsoever within the territory of India.

2. The grounds on which the writ petitioner places his reliance are summarized in a nutshell herein below :-

Enrolment :

(a) It is stated that the writ petitioner is an active practitioner of law having enrolled himself in the "State Roll" maintained by the Bar Council of Tamil Nadu as per Section 17 of the Advocates Act, 1961. It is stated that to practice the profession of law in India, a person should be a citizen of India and should possess a Degree in Law obtained from a Recognised University within the Territory of India. It is further stated that Nationals of any other country may also be admitted as an Advocate on the State Roll, if citizens of India duly qualified are permitted to practice law in such other country as per the rule of reciprocity contained under Section 47 of the Advocates Act, 1961. It is also stated that those persons who have obtained degree of law from any University outside the Territory of India may also be permitted to practice the profession of law in India provided that the said degree is recognised by the Bar Council of India and subject to such conditions as may be imposed by the Bar Council of India from time to time. The writ petitioner, prima facie, states that the Law Graduates from India are not allowed to practice the profession of law in United Kingdom, United States of America, Australia and various other foreign nations. That apart, the procedure for Indian Lawyers to practice in foreign countries is far more cumbersome and very costly, and there are also very many restrictions like qualifying tests, prior experience, work permits, etc., but no such procedures are contemplated in the Advocates Act, 1961 in respect of foreign lawyers who intend to practice law in India. The Act simply provides that a foreigner may be admitted as an Advocate, if Indian nationals are permitted to practice law in his/her country. It is stated that allowing entry of foreign law firms without any reciprocal arrangement similar to that of the arrangements prevailing in those foreign countries should not be entertained, and foreign law firms should not be allowed to exploit the Indian legal market without actually opening up their domestic markets to the Indian lawyers.
Legal Bar :

(b) It is stated that in the absence of enrolment in any of the State Bar Councils in accordance with the provisions of the Advocates Act, 1961, the foreigners are not entitled to practice the profession of law in India on account of the bar contained under Section 29 of the Advocates Act. While the legal position is such, under the guise of LPO and conducting seminars and arbitrations, the foreign lawyers are visiting India under Visitor↕ s Visa and are earning money from their clients in India. By doing so, they also violate the provisions of Income Tax Laws and Immigration Laws, and also cause loss of revenue to our country↕ s Exchequer. They have also opened up their offices in India and are actively doing legal practice in the fields of Mergers, Take-overs, Acquisitions, Amalgamations, etc.

Disciplinary Authority :

(c) It is further stated that the legal profession in India is governed by the various provisions of the Advocates Act, 1961 and, the disciplinary rules and regulations, code of conduct and professional ethics framed and practised from time to time. There is also a hierarchy of

disciplinary authorities such as the State Bar Council, Bar Council of India, Supreme Court, etc. These authorities can exercise their disciplinary authority/control only over the advocates who are on the Rolls maintained under the Advocates Act. Persons who are not on the Rolls would not be subject to the disciplinary jurisdiction of these authorities. As such, it is stated that if any person who is not subject to the disciplinary control of the above said authorities is allowed to practice the profession of law, he/she would go scot-free and would not be subject to the supervision and disciplinary jurisdiction of the above said authorities. Therefore, they should not be permitted to practice the profession of law in our country.

Noble Profession :

(d) It is also stated that in India, legal profession is considered as a noble profession, intended to serve the society, and not treated as a business venture. But, it is not so for the foreign law firms, which are treating it as a trade and business venture for earning money. It is submitted that here in India, the lawyers are prohibited from advertising, canvassing and soliciting work. No lawyer in India is permitted, either through print media or through electronic media or in any other form, to canvass or solicit work or market the profession. Whereas the foreign law firms, who are impleaded here as respondents 9 to 40, are glaringly advertising through their websites about their capabilities and they also canvass and solicit work by assuring results. It clearly shows that they are treating the legal profession as nothing short of a trade or business, far different from the nobility attributed to it by Indian lawyers.

Reciprocity :

(e) It is stated that even though Indian lawyers are allowed to practice in U.K. and U.S.A., the same is subject to enormous conditions and restrictions and subject to passing of further tests conducted in the respective countries. As such, it is not reciprocity in the real sense, as permitted under Section 47 of the Advocates Act. It is stated that since the law degree conferred by any University outside the Territory of India has not been recognised by the Bar Council of India, nor the Bar Council of India has framed any rules and regulations under Section 42(2) of the Advocates Act in this regard, until such time, there is absolutely no scope for any foreign lawyer or foreign law firm to practice the profession of law in India. It is stated that the Advocates Act not only regulates the practice of advocates in courts alone, but it also regulates the practice of legal profession in various other forms such as giving legal opinion, drafting, chamber work, documentation, arbitration, mergers, take-overs, acquisitions, incorporations and so on and so forth. But, in spite of the restrictions, respondents 9 to 40 are carrying on their practice in utter disregard to the provisions of the Advocates Act and the relevant rules and regulations framed in this connection.

Causing loss to the Exchequer :

(f) Such foreign law firms did not get any permission either from the Government of India or from the Bar Council of India, from any State Bar Council, from the Tax Department or the Reserve Bank of India for transacting business within the country and repatriating the funds out of the country.

On the above stated grounds, the writ petitioner submits that the practice of legal profession by the respondent foreign law firms or any individual foreign lawyer is illegal and impermissible, and therefore, he seeks immediate action. In this connection, it is stated that the writ petitioner, through Association of Indian Lawyers, in which he is also one of the members, sent a detailed representation on 18.01.2010 to official respondents 1 to 8, to take suitable action against

respondents 9 to 40 herein. The writ petitioner further stated that since the said official respondents did not take any action, he was constrained to file the present writ petition seeking the prayer stated herein above.

3. The first respondent Union of India filed four counter affidavits on 19.08.2010, 24.11.2010, 19.04.2011 and 17.11.2011. In one of the counter affidavits, it is stated that the Bar Council of India, which has been established under the Advocates Act, 1961, regulates the advocates who are on the "Rolls", but law firms as such are not required to register themselves before any statutory authority, nor do they require any permission to engage in non-litigation practice. Exploiting this loophole, many accountancy and management firms are employing law graduates who are rendering legal services, which is contrary to the provisions of the Advocates Act. It is stated that the Government of India along with the Bar Council of India is considering this issue and is trying to formulate a regulatory framework in this regard. The 1st respondent in his counter warns that if the foreign law firms are not allowed to take part in negotiations, settling up documents and arbitrations in India, it will have a counter productive effect on the aim of the government to make India a hub of International Arbitration. In this connection, it is stated that many arbitrations with Indian Judges and Lawyers as Arbitrators are held outside India, where both foreign and Indian Law Firms advise their clients. If foreign law firms are denied entry to deal with arbitrations in India, then India will lose many of the arbitrations to Singapore, Paris and London. It will be contrary to the declared policy of the government and against the national interest. In the counter affidavit filed on 19.04.2011, it is stated that a proposal to consider an amendment to Section 29 of the Advocates Act, 1961 permitting foreign law firms to practice law in India in non-litigious matters on a reciprocity basis with foreign countries is under consultation with the Bar Council of India. Finally, in the counter filed on 17.11.2011, it is stated that the Government of India has decided to support the stand of the Bar Council of India that the provisions of the Advocates Act, 1961 would apply with equal force to both litigious and non-litigious practice of law, and it is only persons enrolled under Section 24 of the Act, who can practice before the Indian Courts.

4. The Bar Council of India, which is the 7th respondent herein, in its counter stated that the issue involved in the present writ petition is no longer res integra and has been settled by the Bombay High Court by holding that practice of law would include even non-litigious practice, and therefore, foreign lawyers i.e., lawyers not enrolled as Advocates under the provisions of the Advocates Act, 1961 would not be entitled to practice law in India (In W.P.No.1526 of 1995 by order dated 16.12.2009 in the matter of **Lawyers Collective Vs. Bar Council of India**). It is further stated that since against the said judgment of the Bombay High Court no appeal was preferred, it attained finality, and consequently, the present writ petition deserves to be dismissed. It is stated that as per the provisions contained in Sections 24 and 29 of the Advocates Act only persons who are citizens of India are eligible to be enrolled under Section 24 of the Act to practice the profession of law before the Indian Courts. However, the counter makes it clear that Bar Council of India has got the power under Section 47(2) read with Section 49(1)(e) to provide for relaxation of such a condition. The counter further makes it clear that the practice of foreign law within the territory of India would also be subject to the regulatory powers of the Bar Council of India. It is stated that in a Joint Consultative Conference of the Members of the Bar Council of India and the Chairmen, Vice-Chairmen, and Executive Committee Members of the State Bar Councils held at Kochi on 17th and 18th November, 2007 it was decided not to relax any of the statutory norms for practice of law in India by exercising the powers conferred to the Bar Council of India under Section 47(2) read with Section 49(1)(e) of the Advocates Act, 1961. Finally, it is stated that the provisions of the Advocates Act, 1961 would apply with equal force to both litigious and non-litigious practice of law, and only persons enrolled under Section 24 of the Act can engage in the same.

5. The 9th respondent law firm in its counter clarified that it is not Rouse as mentioned in the writ petition, and it is Rouse India Pvt. Limited which is a part of a group of companies called ‼ Rouse & Co. International Limited a U.K. based Corporation. It is stated that it is not a law firm as stated in the writ petition, but it is a duly incorporated and registered company under the provisions of the Indian Companies Act, 1956 carrying on consultancy/support services in the field of protection and management of intellectual, business and industrial proprietary rights, carrying out market surveys and market research, and publication of reports, journals, etc. It is neither rendering any legal service, including advice in the form of opinion, etc. nor does it appear before any courts or tribunal anywhere in India, and hence, cannot be said to be engaging in the ‼ practice of law¶ . Therefore, it is claimed that the 9th respondent is not a necessary party to the writ petition, and accordingly, it is prayed that the name of the 9th respondent be deleted from the array of parties in the writ petition.

6. The 10th respondent in its counter clearly stated that it is a limited liability partnership incorporated under the laws of England. It provides legal services through law offices in a number of countries of the world including the United States of America, Spain, Germany, France, Singapore, etc. But it does not have a law office in India and also it does not give advice to its clients on Indian Laws. It is stated that the writ petition was not filed in public interest, whereas it is a publicity seeking writ petition. This is very clear from the act of the petitioner hosting a copy of the petition on the website www.legallyindia.com immediately after filing the same before the Court. Since, the contents of the affidavit deal with the subjects which are within the domain of policy decisions of the Government of India, the writ petition deserves to be dismissed in limine with exemplary costs. Further, the writ petitioner is not able to show violation of any constitutional right or any other legal right within the territorial jurisdiction of this Court. It is stated that in England, foreign lawyers are free to advice on their own system of law or on English law (except in respect of certain defined legal activities such as probate, immigration, conveyancing and litigation), or any other system of law without any nationality requirement or the need for being qualified in England. It is further stated that for those wanting to re-qualify in England as Solicitors or advocates, there is no requirement of being a national of the United Kingdom. But, they have to appear for an examination conducted in this regard. Regarding refusal of work permits to the Indian lawyers, it is stated that there are lot of Indian lawyers practising in English Courts after their re-qualification as English solicitors. Therefore, it is false to say that work permits to Indian lawyers are almost always being refused. It is further stated that the issue of reciprocity is in the realm of the policy of the Government of India and it cannot and ought not to be agitated before this Court.

7. The 11th respondent in its counter prima facie stated that neither it has any office in India nor it practice law before any Courts in India. As such, no cause of action arises in India involving the 11th respondent. It is stated that the 11th respondent is an American Law Firm having its offices at New York, Washington DC, Los Angeles, Chicago, Stamford, Parsippany and Brussels. It has clients with diverse international legal issues, who require legal advice from different countries, for which the 11th respondent developed working relationships with local law firms in different countries. It is stated that for Indian clients requiring legal advice in India, the 11th respondent refers the work to various Indian lawyers and law firms located in cities where such advice is required. All such Indian lawyers are enrolled with various State Bar Councils in India. In respect of reciprocity, it is stated that the U.S. does not prevent or discriminate against Indian citizens practising law in U.S. and it is further stated that the American Bar Association Model Rule for the Licensing and Practice of Foreign Legal Consultants provides that an Indian advocate of good standing in an Indian Bar Council may be licensed to practice law in the U.S. without undergoing any examination. It is stated that several Indian advocates practice law in the U.S. by associating

with U.S. licensed lawyers. These Indian lawyers frequently travel to the U.S. on a temporary basis for consultations on Indian law issues. Hence, the petitioner↕ s submission in respect of lack of reciprocity was denied in the counter. It is stated that the Advocates Act, 1961 and the Bar Council Rules govern the practice of Indian law only and they do not apply to the practice of foreign or non-Indian law. Foreign lawyers, who are licensed in their jurisdictions, are not restrained by the Advocates Act, 1961 from advising their Indian clients on foreign law issues. As regards the allegation in respect of participation in seminars and conferences would amount to practising law, it is stated that participation in a seminar or conference does not constitute practising law, and in fact, several Indian lawyers participate in seminars and conferences around the world, and this in no way constitutes practising law. On the aspect of absence of regulating authority, it is stated that the rules and regulations of the regulating authority in a country will generally apply to lawyers even when they are working outside their home countries. In U.S. every State has its own rules which govern the practice of law in that jurisdiction. U.S. lawyers are governed by their State↕ s regulatory bodies and the lawyers registered in that State must conform to its rules regardless of where they practice law. The practice of law and ethics is strictly supervised in the U.S. Further, it is denied that the practice of law is treated as a business venture in the U.S.

8. The respondent 14 in its counter denied the existence of its office in India and its practising Indian law. It stated that the High Court does not have jurisdiction over the 14th respondent, as also no cause of action arises involving the 14th respondent. It is stated that since the writ petitioner has relied upon a representation given by the Association of Indian Lawyers to the official respondents herein, and because the alleged inaction of the said respondents is the basis for the writ petition, the petition ought to have been filed by the Association itself and the writ petitioner has no locus standi to file the present writ petition. It is stated that the Advocates Act and the Rules govern the practice of Indian law only, and they do not govern the practice of foreign or non-Indian law. Therefore, as per prevailing law, foreign lawyers, including lawyers from the 14th respondent law firm, are not required to and cannot enrol as Advocates to practice non-Indian law. As per prevailing law, such lawyers are not restrained from advising on foreign law within the territory of India. As stated in the counter of the 11th respondent, the 14th respondent also in its counter denied the allegation that the lawyers from India are restrained from practising law in the U.S.A. and it is stated that in fact, Indian lawyers are practising law in the U.S.A. in different forms, viz., opening permanent office in U.S.A. by submitting (without examination) application certifying qualification to practice law in India and also concurrently associating with the U.S. licensed lawyers on specific matters on a fly-in and fly out basis to consult on Indian law issues. It is denied in the counter that the 14th respondent is owning or operating LPOs in India. It is further stated that the lawyers from the 14th respondent fly in and fly out of India on need basis to advise the clients on international transactions, to which there is an India component. To the extent Indian law is involved, such matters are addressed by Indian lawyers enrolled under the Advocates Act, 1961. It is stated that the absence of disciplinary control by the Bar Council of India/State Bar Council or the Supreme Court does not qualify as a valid reason, in law, to restrain or prevent foreign lawyers from advising on foreign law within the territory of India, as they are governed by the disciplinary control of the concerned jurisdiction in the United States, where they enrolled as advocates. Respondent ┬ 14 also denied the allegation that they are doing the practice of law as a business venture. Finally, it is stated that if foreign lawyers and law firms are prevented from advising on foreign law, within the territory of India in relation to transactions with an Indian connection, the transaction costs for Indian clients will increase considerably.

9. The 15th respondent in its counter stated that it is not at all practising law in India. It is not licensed to and does not practice law in any jurisdiction in the world, much less in India. It is a

BPO company providing wide range of customised and integrated services and functions to its customers like word processing, secretarial support, transcription services, proof-reading services, travel desk support services, etc. Therefore, it is stated that they are neither a necessary party nor a proper party to the present writ petition, and therefore, prayed for the dismissal of the writ petition insofar as the 15th respondent is concerned.

10. The 16th respondent in its counter, like the previous counters filed by the other respondents, raised a preliminary objection stating that the writ petitioner ought to have approached the Bar Council of India, which is the regulating authority in respect of legal profession in India, before filing the present writ petition. Hence, it prayed for the dismissal of the writ petition on the ground of availability of efficacious alternative remedy. Like other respondents, the 16th respondent also stated that it has no office in India and therefore, the official respondents viz., respondents 1 to 8 do not have the authority to exercise any control over the 16th respondent. The 16th respondent also claimed that this is a publicity seeking writ petition. It is stated that since the writ petitioner fails to show violation of any constitutional or other legal right within the territorial jurisdiction of this Court, and since he places reliance on the general statements, the writ petition is liable to be dismissed in limine. Like other respondents, the 16th respondent also narrated the procedures adopted in England for a foreign lawyer to enter the legal field in India, in order to show that there is no curb on the Indian lawyers to enter and practice the profession of law in England.

11. The 18th respondent in its counter, like other respondents, challenged the writ petition on the grounds of cause of action and locus standi of the petitioner. The 18th respondent stated in its counter that it is an international legal firm, having offices in 26 countries around the world, but it does not have an office in India and it does not practice the profession of law in India. It is stated that the Advocates Act and the other Rules framed thereunder relate solely to the practice of Indian law and they do not concern itself with the practice of non-Indian law or seek to regulate the practice of the profession of law by foreign lawyers on non-Indian law. Therefore, foreign lawyers who do not practice Indian law cannot seek to be enrolled as Advocates. There is no legal restriction that prevents or prohibits lawyers from advising or practising non-Indian law within the territory of India. Further, it is stated that the lawyers from UK have not been prohibited from practising law in India by the Central Government by issuing a notification under Section 47(1) of the Advocates Act. It is stated that the activities of the 18th respondent in India do not amount to practising the profession of law¶ in India. Further, it is stated that the respondent 18 does not own or operate LPOs in India.

12. The respondent Nos.19, 26, 39, and 40 in their its counter affidavits filed separately, however, on the same lines, inter alia state that they are limited liability partnerships incorporated under the laws of England and they provide legal services through law offices in a number of countries of the world including U.S., Spain, Germany, France, Singapore, Hong Kong etc. either through its branch offices located there or through various legal entities. It is stated that they did not have a law office in India and they did not give advice to its clients on Indian law. Like other respondents, these respondents also pleaded dismissal of the writ petition on the grounds of availability of efficacious alternative remedy, and the same being premature and a publicity seeking writ petition. These respondents also pleaded dismissal of the writ petition on the ground that the issue involved in the writ petition clearly comes within the domain of policy decision of the Government of India, and therefore, it cannot be agitated before law courts. It is further stated that merely on general statements, no writ can be issued. Like other respondents, these respondents also narrated the position in England in respect of foreign lawyers practising law in England and contended that participation in seminars and conferences does not amount to practising law in India.

13. Respondents Nos.20, 21, 24, 25, 27, 28, 30, 31, 32, 33, 34 and 38 filed separate counter affidavits on the same lines stating, inter alia, that they do not have offices in India and they do not practice Indian law, and hence, there is no cause of action against them and consequently, this Court does not have jurisdiction over them. Like other respondents, these respondents have also pleaded dismissal of the writ petition on the grounds of it being premature, publicity seeking and availability of efficacious alternative remedy. They state that their lawyers do not practice Indian law, and therefore, they have not sought enrolment as advocates under the Advocates Act, 1961, based on their foreign legal qualification or otherwise. It is stated that the Advocates Act and the Rules framed thereunder only govern the practice of Indian law and they do not apply or govern the practice of foreign or non-Indian law. Therefore, the lawyers from the respondent-law firms are not required to enrol their name under the provisions of the Advocates Act. That apart, as per the prevailing law, such lawyers are not restrained from advising on foreign law within the territory of India. Answering the contention of the writ petitioner that the Indian lawyers are not allowed to or subjected to cumbersome procedure for practising law in United States of America, it is stated that the lawyers from India are not restrained from practising law in USA and very many of them have opened their offices in USA and many more of them are practising law on a fly in and fly out basis. It is stated that no examination as such is conducted in USA for practising law by foreign nationals. It is denied that the respondents violated any Indian law, much less Indian Income Tax Law. On the allegation of running LPOs in India, it is stated that the said respondents does not own or operate LPOs in India. It is further stated that the lawyers from the respondents fly in and fly out of India on need basis to advise the clients on international transactions or other U.S. or international related matters, to which there is an Indian component. To the extent Indian law is involved, such matters are addressed by Indian lawyers enrolled under the Advocates Act. Regarding regulating authority, it is stated that they are governed by the regulations prevailing in their own country viz., U.S. It is finally stated that the prayers sought for by the petitioner are couched in broad terms and if granted, would cause irreparable hardship and prejudice to the, apart from being contrary to public interest.

14. The respondent ┬ 22 in its counter stated that it is an International Law Firm having offices at London, Abu Dhabi, Bangkok, Beijing, Brussels, Dubai, etc. But it does not have an office in India, nor does it have any interest in any Indian Law Firm, whether by shareholding, partnership or affiliation. It neither represents parties in the Indian Courts nor does it advise on Indian law. The only document produced by the petitioner with respect to respondent 22 is the webpage of its India practice group. It is submitted that the said India Practice Group advices its clients only on commercial matters, involving an "Indian Element" relating to mergers, acquisitions, capital markets, projects, energy and infrastructure, etc., from an international legal perspective and it does not amount to practice in Indian law. It is stated that the pleadings are vague and there is no cogent proof pointing out that the respondent No 22 is practising law in a manner contravening Indian regulations. Therefore, the said respondent sought the dismissal of the writ petition in limine.

15. The respondent No. 23 in its counter categorically stated that it has no establishment of any kind India, much less a LPO. It is an international law firm with offices in London, Brussels, Hong Kong and Beijing. It has clients throughout the world with international business interests. However, the scope of legal practice of respondent No 23 is a restricted one i.e., advising only on matters of English, European Union and Hong Kong laws. It has working relationships with leading law firms in major jurisdictions worldwide and instructs appropriate local law firms to provide local law advice where such advice is required. It has never advised on matters of Indian law, either from within India or outside India. It has no formal or exclusive relationships, including in respect of referral arrangements, with any Indian law firm. Therefore, it is stated that

the allegations levelled in the affidavit accompanying the writ petition in connection with respondent No 23 are misconceived, incorrect and made without any basis. Therefore, it is prayed for the dismissal of the writ petition, insofar as respondent ┬ 23 is concerned.

16. Respondent ┬ 29 in its counter affidavit categorically stated that the writ petition is liable to be dismissed for want of territorial jurisdiction, as none of the alleged unauthorised acts of the respondents has occurred within the jurisdiction of this Court. It is stated that respondent ┬ 29 is a limited liability partnership registered in England and Wales and is regulated by the Solicitors Regulation Authority of England. It has its group offices worldwide, but not in India. It does not have any office in India, including a liaison office. It does not also have any interest in any Indian law firm, either by partnership, shareholding or affiliation. The only document produced by the petitioner with respect to respondent ┬ 29 is an extract from its website. The extract does not show that respondent ┬ 29 carries on the practice of law in India in contravention of Indian regulations. It does not outsource any work to India. It does not represent parties in Indian courts nor does it advise on Indian law. It is submitted in respect of arbitration, that respondent ┬ 29 is not giving advice to parties in International Arbitrations on Indian arbitral law. It clearly stated that attending seminars and conferences does not amount to legal practice in India. Regarding LPO, it is stated that respondent ┬ 29 does not have any LPO either in India or outside India. Respondent ┬ 29 stated that none of its activities amounts to practice of law in India, and therefore, it cannot be subjected to the disciplinary control of Indian authorities.

17. Respondent ┬ 35 in its counter affidavit stated that it does not maintain an office in India. It is stated that the issue involved in the writ petition is a policy matter which comes under the domain of the Executive, and hence, this Court has no jurisdiction to decide the same. It is stated that the 35th respondent is an international law firm providing legal services to its international clientele. As such, some Indian businesses that have international legal requirements may consult respondent ┬ 35 relying upon its international expertise and presence in various jurisdictions. But all such consultations and legal services rendered are in relation only to the laws of the specific international jurisdiction where such clients may have businesses, and respondent ┬ 35 is legally entitled to provide legal advice. As such, it is not practising the profession of law in India. The writ petitioner has not made any specific or particularised allegation against respondent ┬ 35. The existence of a legal right and the violation of such a right is absent in this case, and hence, the discretionary jurisdiction under Article 226 of the Constitution of India cannot be exercised in this case. Respondent ┬ 35 is not organised under the laws of India nor does it maintain an office within the territory of India. It is neither a "State" nor an "authority" within the meaning of Article 12 of the Constitution of India. Respondent ┬ 35 does not perform any public function and is not a delegate of any public authority. As such, no writ under Article 226 of the Constitution ought to be issued against the respondent ┬ 35.

18. The 36th respondent in its counter affidavit stated that since the Advocates Act and Rules govern only with regard to practice of Indian law and not on the practice of foreign law within the territory of India, the 36th respondent↕ s lawyers are not enrolled themselves as advocates under the Advocates Act. It is stated that respondent ┬ 36 does not have an office in any part of India or elsewhere, and it does not operate or own any LPO in India. Therefore, the writ petition is thoroughly misconceived. It is further stated that the lawyers from respondent ┬ 36 fly in and fly out of India on a need basis to advise the clients on international transactions or other matters involving Australian laws or international ventures, to which there is an Indian component, whereas the working of the Indian law is always entrusted with an Indian lawyer, enrolled under the provisions of the Advocates Act. It is stated that the petitioner↕ s apprehension is not justified since respondent ┬ 36, who has no office in India, can never deprive the petitioner of any work that the petitioner is competent and capable of carrying.

19. The 37th respondent in its counter, like other respondents denied the fact of having an office in India, or running LPO in India. It is further stated that it does not undertake litigation or non-litigation practice in Indian Law, and only advises is clients with respect to regulatory laws, trade, investment and market access issues, and intellectual property issues with regard to Australia alone. The matters involving Indian law are entrusted to the Indian advocates.

20. Respondent ┬ 33 has filed a rejoinder to the counter affidavit filed by the 7th respondent viz., the Bar Council of India. In the said rejoinder, respondent ┬ 33 denied the stand taken by the Bar Council of India that the issue involved in the present writ petition is squarely covered by the Bombay High Court↕ s judgment dated 16.12.2009 in the case of **Lawyers Collective Vs. Bar Council of India** reported in 2010 (112) Bombay Law Reports 32. In the said case, the Bombay High Court rejected the contention that practice of law, as per Section 29 of the Advocates Act, is confined to litigation practice and on the contrary, held that the expression "to practice the profession of law" in Section 29 encompasses practice in relation to both litigation and non-litigation. The said judgment does not hold that the Advocates Act applies to the practice of foreign law or international law within the territory of India. Further, the said judgment does not support the contention that only advocates can practice foreign law or international law in the territory of India as contended by the petitioner in the writ petition. It is stated that the Advocates Act, in its present form, does not deal with or prescribe the qualifications for or provide for the regulatory framework for the practice of foreign law or international law within the territory of India. It is also denied in the rejoinder that only Indian citizens, who are duly qualified as per Section 24 of the Advocates Act, are entitled to practice foreign or international law within the territory of India. In fact, foreign law, including English and US law are not taught in Indian Law Colleges. Therefore, lawyers with Indian law degrees clearly do not have the knowledge to practice foreign law. On the contrary, most persons with the requisite knowledge in foreign law will be non-citizens with a law degree from a foreign university. As per the prevailing provisions of the Advocates Act, such persons will not be entitled to enrol as advocates without the special dispensation of the Bar Council. Therefore, the only reasonable interpretation of the Advocates Act will be that it is a statute which governs the practice of Indian law. It is stated that respondent ┬ 33 is not liable to be restrained from practising foreign law or international law within the territory of India on the basis of the resolution of the Bar Council of India or otherwise, because any such restriction would be without a statutory mandate, besides being unreasonable. It is stated that rendering of legal advice on foreign law or international law by foreign lawyers on a fly in and fly out basis would not amount to "practice of law" i.e., Indian law, as contemplated under the Advocates Act, especially in the light of the fact that neither the Advocates Act nor the Rules regulate practice of foreign law within the territory of India. If a narrow and restrictive interpretation is given to the term "practice of law", there is a grave risk of an adverse reaction by foreign jurisdictions/countries, including the risk that some foreign countries may restrict or even prohibit the practice Indian law by Indian lawyers in their territories, thus closing their markets to Indian lawyers.

21. Mr. AR.L. Sundaresan, learned senior counsel appearing on behalf of the writ petitioner, while reiterating the grounds raised in the writ petition, extensively relied on the provisions of the Advocates Act, 1961. According to him, an "advocate" as defined in Section 2(a) of the Act means an advocate entered in any roll. Section 24 makes it amply clear as to who may be admitted as an advocate on a State roll, in that it refers to only a citizen of India. However, the proviso to this Section states that a national of any other country may also be admitted as an advocate on a State roll, if only duly qualified citizens of India are permitted to practise law in that country. The proviso, therefore, does not give unfettered rights to citizens of other country to be admitted as advocates on a State roll and it is to be done purely on the basis of the principle of

reciprocity that the other country also allows Indian nationals to practise in their country. As per Section 29, one class of persons is entitled to practise the profession of law and that is, the advocates. Section 30 mandates that every advocate whose name is entered in the State roll shall be entitled as of right to practise in all judicial forums throughout the country, including the Supreme Court. Section 33 creates a bar, in that it insists that no person who is not enrolled as an advocate under this Act would be entitled to practise in any Court in the country. Admittedly, none of the foreign lawyers represented by the respondent-law firms have been enrolled as advocates on any State rolls in this country. Section 47 of the Act elaborates on the proviso contained in Section 24 referred to above, and it specifically states that any country which prevents the citizens of India from practising the profession of law or subjects them to unfair discrimination in that country shall not be entitled to practise the profession of law in India. Sub-section (2) empowers the Bar Council of India to prescribe conditions, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognised for the purpose of admission as an advocate under the Act. According to the learned senior counsel, the Bar Council of India has not framed any regulations of the kind referred to in Section 47 of the Act and therefore, citizens of other countries are barred from practising the profession of law in India. Learned senior counsel placed reliance on the Division Bench judgment of the Bombay High Court in the case of Lawyers Collective vs. Bar Council of India reported in 2010 (112) Bom. L.R. 32.

22. It is interesting to note that in that case, the Bar Council of India as well as the Bar Council of Maharashtra & Goa had adopted the arguments advanced on behalf of the writ petitioner. The Union of India had submitted that there was no proposal back then to allow foreign lawyers to practice Indian law in Indian Courts and that the Government was still in the process of consulting all the stake holders, and any decision would be taken only after due consultations with all concerned. However, it was stated on behalf of the Government that for the purposes of drafting legal documents or giving legal opinion on aspects of foreign or international law, one need not be on the roll of the Bar Council, given the fact that the Act incorporates penal provisions only in respect of persons illegally practising in judicial forums in India, while it does not provide any penal provision for breaches committed by persons practising in non-litigious matters, which goes to show that persons practising in non-litigious matters are not governed by the provisions of the Act.

23. Learned senior counsel submitted before the Bombay High Court, the Union of India took a different stand and supported the case of the writ petitioner therein, in that it was opposed to permitting the foreign law firms to open their branch offices in India. However, in this case, it has adopted the stand taken by the Bar Council of India. According to him, if foreign law firms are allowed to practice in India, there shall be no control in the matter of practice and consequently, the Indian advocates would be discriminated against, since they are to be enrolled in the State rolls for practising as advocates and also abide by the regulations framed by the Bar Council of India.

24. Mr. Abhishek Manu Singhvi, learned counsel appearing on behalf of some of the respondent-law firms based in the United States began his arguments by putting forth two questions – whether foreign lawyers can come to India for the purpose of offering legal advise to their clients here on foreign law and whether any provision of law prohibits practice of foreign law in India. He submitted that both the above issues have not been decided by the Division Bench of the Bombay High Court in the aforementioned judgment. Before the Bombay High Court, the challenge was only to Section 29 of FERA. Hence, the question whether there is any specific prohibition for practice of foreign law in India needs to be answered in the case on hand. According to the learned counsel, International Arbitration is going on big time in India as well as

in almost all the countries across the globe. India is a signatory to the World Trade Agreement, which has opened the gates for many international business establishments based in different parts of the world to come and set up their respective businesses in India. In such a scenario, these international establishments entering into trade agreements would require to consult legal experts on the implications of such agreements on their country↕ s laws, and advocates practising Indian law would not be competent to offer them advise on their laws. Therefore, this makes it utmost necessary for foreign legal experts to visit India, stay here and offer advice to their clients in India on their respective laws, and there is no specific provision in the Act prohibiting a foreign lawyer to visit India for a temporary period to advise his/her clients on foreign law. According to the learned counsel, practising Indian law in India is implicit in the Act and advising foreign law is not at all barred. He submitted that there can be no two opinions about the fact that if any of the foreign law firms allowed to practise in India in non-litigious matters indulge in practising in litigious matters, then the penal provisions of the Advocates Act would automatically be attracted and the offenders are liable to be punished. He further submitted that the principle of reciprocity should be given its due, given the fact that no country in the world prohibits practice of Indian Law in their respective country, wherever necessary. Mr. Singhvi tried to distinguish the judgment of the Bombay High Court in Lawyers Collective↕ s case (cited supra). According to him, in that case, only two points were argued and decided ┬ whether practising in chamber will amount to practice and whether there is a business liaison under Section 29 of FERA when such practice is allowed, and no issue was remotely argued on the advisory practice of foreign law by foreign firms for a limited period, which is the issue on hand. He quoted various paragraphs from the aforesaid judgment in support of his submission. According to the learned counsel, by the present writ petition, the petitioner wants a ban by way of judicial legislation on the entry of foreign law firms in India, especially when there is no statutory ban in this behalf. This, he states, would have serious consequences on foreign investment in the country, in this ever expanding era of global economy.

25. The preliminary objection raised by Mr. Singhvi is that his clients are not practising Indian law. According to him, none of his clients has an office in India and in view of the fact that the US law firms do not practise Indian law, the lawyers from these firms have not applied for enrolment as advocates under the Advocates Act. The learned counsel referred to the Arbitration and Conciliation Act, 1996 where a specific provision is contained in Section 2(1)(f) which provides for international commercial arbitration for resolving disputes arising out of legal relationships where at least one of the parties is an individual or a body corporate of a foreign origin. Even the Preamble to the aforesaid Act states that the General Assembly of the United Nations having recommended that all countries give due consideration to the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) and the UNCITRAL Conciliation Rules, the parties are required to seek amicable settlement of disputes arising in the context of international commercial relations by recourse to conciliation. According to the learned counsel, this necessitates the involvement of foreign legal experts having knowledge of foreign law. Learned counsel referred to the judgment rendered by the Supreme Court in the case of Vodafone International Holdings B.V. vs. Union of India in S.L.P. (C) No.26529 of 2010, which extensively dealt with issues relating to the impact of foreign investment and inflow of foreign currency on Indian economy, as also other issues involving fiscal implications on the economic development of the country vis-`-vis international commercial transactions.

26. Mr. P.S. Raman, learned senior counsel appearing on behalf of the Bar Council of India submitted that the issue raised in this writ petition is no longer res integra and has been settled by the judgment cited supra, wherein it has been held that the practice of law would include even non-litigious practice and therefore, foreign lawyers not enrolled as advocates under the Act

would not be entitled to practice. The said judgment of the Bombay High Court, not having been appealed against, has attained finality. Mr. Raman highlighted Section 17 of the Advocates Act, whereunder the State Bar Councils are enjoined to maintain the roll of advocates, as also Section 24(1)(c)(iv) of the Act which provides that a person may be qualified to be enrolled if he has obtained such other foreign qualification in law as is recognised by the Bar Council of India for such purpose. According to the learned senior counsel, the conditions prescribed under Section 24(1) of the Act are clearly cumulative. Mr. Raman pointed out that the Bar Council of India, being the statutory body for the representation and regulation of the legal profession in the country, has decided not to relax any of the statutory norms for practice of law in India by exercise of its powers under Section 47(2) read with Section 49(1)(e) of the Act, nor have been any explicit regulations made in this behalf. Learned senior counsel submitted that a resolution to the said effect was taken at the Joint Consultative Conference of the Members of the Bar Council of India and the Chairmen, Vice-Chairmen and Chairmen, Executive Committee of the State Bar Councils held at Kochi on the 17th and 18th of November, 2007 and the decision was arrived at after consultations with the representatives of the respective State Bar Councils. Learned senior counsel submitted that the term ◄practice of law↕ under Chapter IV of the Act encompasses myriad functions performed by a lawyer and is not confined to mere appearance/argument before judicial forums. Quoting the observations of the Supreme Court in the case of Ex-Capt. Harish Uppal vs. Union of India reported in (2003) 2 S.C.C 45 that ‼ the right of the advocate to practice envelopes a lot of acts to be performed by him in discharge of his professional duties, and apart from appearing in the courts, he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator¶, Mr. Raman pointed out that it would not be correct to state that non-litigious practice would not be regulated by the provisions of the Act. According to the learned senior counsel, the provisions of the Act would apply with equal force to both litigious and non-litigious practice of law and it is only persons enrolled under Section 24 who can engage in the same.

27. Mr. M. Raveendran, learned Additional Solicitor General appearing for the Union of India submitted that the proposal to consider an amendment of Section 29 of the Advocates Act to permit foreign law firms to practice law in India in non-litigious matters on reciprocity basis with foreign countries is under consideration, in consultation with the Bar Council of India.

28. Mr. R. Krishnamoorthy, learned senior counsel appearing for a couple of law firms based in the United Kingdom submitted that the Bar Council of India regulates the advocates enrolled in India, and law firms as such are not required to register themselves before any statutory authority or require permission to engage in non-litigation practise. In other words, Indian law firms are operating in a free environment without any regulation and the oversight of the Bar Council with regard to such non-litigation activities of law firms is virtually non-existent. By exploiting this loophole, many accountancy and management firms are employing law graduates who are rendering legal services which are contrary to the Act. In such circumstances, it is high time an appropriate framework for regulating law firms is put in place. Learned senior counsel further submits that the petitioner↕ s contention that foreign law firms should not be allowed to take part in negotiations, settling up documents and arbitrations will be counter-productive, because international arbitrations are not confined to a single country and many arbitrations with Indian Judges and lawyers as arbitrators are being held outside India, where both foreign and Indian law firms advise their clients. If foreign law firms are denied entry to deal with arbitrations in India, then the country will stand to lose many of the arbitrations to Singapore, Paris and London. This is clearly contrary to the declared policy of the Government and will be against the national interest, especially when the Government wants India to be a hub of International Arbitration.

29. Mr. Krishnamoorthy also raised a question with regard to the maintainability of the writ petition. He immediately drew the Court↕ s attention to the judgment of the Supreme Court in the case of Kusum Ingots and Alloys Ltd. vs. Union of India reported in (2004) 6 S.C.C. 254, wherein the Supreme Court has dealt with the question as to what cause of action, vis-`-vis a case is. According to the Supreme Court, it implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action; if not, the plaint or the writ petition, as the case may be, shall be rejected summarily. Relying on these observations, the learned senior counsel contends that there arose no cause of action for the petitioner in the State of Tamil Nadu for seeking the relief as done in this writ petition. In that case, the Supreme Court also dealt with the applicability of Section 141 of the Code of Civil Procedure to a writ proceedings. According to the Supreme Court, the phraseology used in Section 20(c) of CPC and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of CPC shall apply to writ proceedings also. It was further observed that the entire bundle of facts pleaded need not constitute a cause of action, as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression "material facts" is also known as integral facts. Learned senior counsel also relied upon the judgment rendered by the Supreme Court in the case of Neetu vs. State of Punjab reported in A.I.R. 2007 S.C. 758, where it was observed that courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. It was further observed that no litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public. According to the learned senior counsel, no public interest is really involved in this writ petition and therefore, the Court would do well in dismissing the same.

30. Mr. A.L. Somayaji, learned senior counsel appearing for a few other respondents ┬ some foreign and some local law firms, contended that his clients neither have any office in India, nor do they practice Indian law through offices in India or in any other country. These respondents categorically assert that they have not violated Indian income tax law or any other law. According to the learned senior counsel, the respondents do not own or operate L.P.Os. in India. It is the case of these respondents that their lawyers fly in and out of India on need basis, to advise their clients on international transactions, to which there is an India component and their Indian counterparts, who are enrolled under the Advocates Act, are always there to advise them on aspects involving Indian law. Learned senior counsel submitted that the relief sought for in the writ petition is only for a direction to respondents 1 to 8 to take action against respondents 9 to 40 or any other Foreign Law Firms or foreign lawyers who are illegally practising the profession of Law in India and to forbear them from having any legal practice either on the litigation side or in the field of non-litigation and commercial transactions in any manner within the territory of India, and since none of his clients fall in that category, there is no question of granting the relief as against these respondents. According to the learned senior counsel, in the absence of a mandatory provision in this behalf, such a mandamus cannot at all be issued. He submitted that the respondent-law firms only advise their clients on the question of interpretation

of foreign law, which can be done only by foreign law firms which have the expertise in the respective laws and since there is no specific prohibition in this behalf in the Advocates Act, the writ petition for the aforesaid relief cannot stand even a minute↕ s scrutiny.

31. Mr. Sriram Panchu, learned senior counsel appearing for the 15th respondent submitted that his client is not a law firm and is a Business Process Outsourcing (BPO) or a Knowledge Process Outsourcing (KPO) company, whose business primarily involves importing jobs that are normally done by its clients abroad into India and having them executed by the 15th respondent, which is a separate and distinct legal entity incorporated and registered under the Companies Act, 1956. The respondent provides a wide range of customized and integrated services and functions to its customers which, inter alia, include word processing, secretarial support, transcription services, proof-reading services, presentation graphics, pitch support, concierge and travel desk support services, knowledge management, CRM database management and reporting, business development, IT training and support, HR administration, trend awareness, finance & accounting, billing, accounts payable, and general ledger, management reporting and analysis, payroll management, hiring and intake administration, project management etc. The respondent, having agreed to provide such services, has contractual agreements/self-owned data processing units in several locations worldwide, which ensures that the contracted services are provided. The said services are not in the nature of practice of law in any manner whatsoever. It is the specific case of the 15th respondent that their firm does not practice law in any jurisdiction in the world, much less in India. It is categorically stated that the respondent does not take instructions, render any legal advice in the form of opinions etc. akin to that which is expected from a lawyer or a law firm and hence, the respondent cannot be said to be engaging in the "practice of law". It is further stated that the customers of the 15th respondent firm neither consider them as a law firm nor does the firm appear before any courts, tribunals etc. anywhere in the world. Learned senior counsel pointed out that it would be relevant to note that no reply has been filed by the petitioner to the counter affidavit filed on behalf of this respondent and moreover, since no issues involving the BPOs has ever been raised in this writ petition, the writ petition cannot be sustained as far as the 15th respondent is concerned.

32. Mr. Aravind P. Datar, learned senior counsel appearing for some other foreign law firms also questioned the maintainability of the writ petition. According to him, the writ petition does not state as to how the cause of action has arisen within the jurisdiction of the State of Tamil Nadu. He submitted that the tests laid down by the Supreme Court in the judgment in State of Uttaranchal vs. Balwant Singh Chaufal reported in (2010) 3 S.C.C. 402, have not been satisfied in the instant writ petition. In the said case, the Supreme Court observed that courts must consider the following factors before entertaining Public Interest Litigations ┬ the credentials of the petitioner, the genuineness and bona fides of the PIL ┬ substantial public interest must be involved and the PIL should be aimed at redressal of a genuine public harm or injury; the court should prima facie verify the contents of the petition before entertaining the same and the courts should deter petitions by busybodies for extraneous and ulterior motives by imposing exemplary costs. According to the learned senior counsel, any petitioner who applies for a writ of mandamus should, in compliance with the well known rule of practice, ordinarily first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before applying to a court. This principle has been laid down in the case of State of Haryana vs. Chanan Mal reported in A.I.R. 1976 1654 as also in Saraswati Industrial Syndicate Ltd. vs. Union of India reported in A.I.R. 1975 S.C. 460. A distinction was sought to be made by the learned senior counsel to the judgment in Lawyers Collective↕ s case (supra), in that it involved the provisions of FERA, 1973 and at that time, under Section 29 of the said Act, there was a complete restriction, which was sought to be changed in the year 1999, when the FEMA came into force. Moreover, the Bombay High Court

in the aforesaid judgment, has not considered the issue vis-`-vis various other statutory provisions. According to Mr. Datar, the prayer sought for in the writ petition, if granted, will lead to drastic consequences and will have the effect on other statutes. Learned senior counsel also placed reliance on the provisions of the Arbitration and Conciliation Act and contended that the issue has to be seen from the global perspective and the writ petition, dismissed.

33. Mr. K.S. Natarajan, learned counsel appearing for respondents 36 and 37, which are Australian law firms, submitted that the Advocates Act and Bar Council of India Rules govern the field only with regard to practice of Indian law, and his clients are not enrolled as advocates under the Act based on the foreign legal qualification and therefore, his clients and their lawyers are not required to enrol themselves under the Act to practice foreign law within the territory of India. According to him, there are many law graduates from India who have further qualified themselves to practice legal profession in Australia. It is stated that these respondents do not have any office in any part of India and they do not practice Indian law through any offices in India or elsewhere, nor do they operate or own any LPO in India. It is the case of these respondents that their lawyers fly in and out of India on a need basis to advise their clients on international transactions or other matters involving Australian laws or international ventures to which there is an Indian component and the working of the Indian law is always entrusted to an Indian counterpart, from whom advise is sought with regard to the extent Indian law is applicable in the given circumstances. He submitted that the averments made in the writ petition with regard to the disciplining of Indian lawyers will not apply to the Australian firms. It is further submitted that these respondents have adhered to the law applicable with regard to advertising, canvassing and soliciting work and maintaining their website. According to the learned counsel, the statement that practice of law with respect to the Indian law has been misunderstood by the petitioner and it only conveys that these respondents also take up the work with regard to international subjects, which also involve Indian law. It is submitted that the respondents do not undertake litigation or non-litigation practice in Indian law. It is reiterated that there is no restriction on the practice of foreign law within the territory of India and the principle of reciprocity between India and Australia in the profession of legal services is a matter for the Governments concerned to decide as a matter of policy and cannot be the basis for the present writ petition. The respondents deny the very locus standi of the petitioner to file this writ petition, in that the petitioner has relied upon an alleged representation said to have been given by an Association of Indian lawyers to respondents 1 to 8 and the alleged inaction of the said respondents on the said representation is the basis for the writ petition. According to the learned counsel, this Court lacks the jurisdiction to entertain the writ petition as against these respondents since these respondents are not carrying on any business activity within the territorial limits of India and within the limits of this Court and moreover, there is no cause of action against these respondents. The petitioner has not made any specific claim as against the 37th respondent in relation to the maintenance of an office and/or the practice of the profession of law by the 37th respondent within Tamil Nadu or even in India and as such, the present writ petition against this respondent is not maintainable. The learned counsel would submit that law can never be static and be confined in the hands of a restricted group or individuals, especially in the present context of developing global economy. The apprehension of the petitioner is not justified, since these respondents, who do not have any office in India, can never deprive the petitioner of any work that he is competent and capable of carrying.

34. Mr. Satish Parasaran, learned counsel appearing for the 11th respondent submitted that his client does not practice law in India and does not have a physical presence here. It is an American law firm founded in the year 1836 having more than 300 lawyers and other professions and its offices are located in New York, Washington DC, Los Angeles, Chicago, Stamford, Parsippany and Brussels, Belgium. It is got clients with diverse international legal issues who

require legal advice from different jurisdictions and different practices and countries. The respondent has developed working relationships with local law firms in different countries and jurisdictions, to whom it refers matters and cases for getting advice for its clients. In situations where the clients of this respondent require legal advise in India, they refer work to various Indian lawyers and law firms in India located in cities where such advice is required. It has referred legal questions involving Indian law to senior counsel and law firms in Delhi and Mumbai which are enrolled with the respective Bar Councils. The respondent denies the petitioner↕ s contention that Indian lawyers in the United States are not permitted to practice law there or are subjected to unfair discrimination in the matter of practice of law, thus precluding reciprocity with India. In fact, many Indian lawyers practice law in the U.S. and the American Bar Association Model Rule for the Licensing and Practice of Foreign Legal Consultants provides that an Indian advocate of good standing of an Indian Bar Council may be licensed to practice law in the U.S. without giving any examination and he only needs to submit an application certifying qualification to practice law in India, besides paying a modest fee. The variant of such Model rule has also been emulated by various States, which itself is testimony is that it is not discriminatory. According to the respondent, several Indian advocates also practice law in the U.S. by associating with U.S. licensed lawyers on specific matters and these lawyers frequently travel to the U.S. on a temporary basis for consultations on Indian legal issues. Thus, the petitioner↕ s main argument against disallowing U.S. law firms on the ground of lack of reciprocity is denied as being incorrect. It is the case of this respondent that the petitioner has misinterpreted the Advocates Act and the Bar Council Rules, which govern the practice of Indian law. As a corollary, the Act and Rules do not apply to the practice of foreign or non-Indian law. Foreign lawyers, who are licensed in their respective jurisdiction, are not restrained by the Act from advising their Indian clients on foreign law issues. Hence, lawyers from the 11th respondent are entitled to advise their Indian clients on foreign or U.S. legal issues, as long as they are qualified and licensed in their respective jurisdictions. The contention that persons who are not governed by disciplinary rules of Indian Bar Councils would not be subjected to supervision or be governed by rules, regulations and ethics is denied and it is stated that the rules of a Bar Council would equally apply to lawyers even when they are working outside their home countries. Every State in the U.S. has rules which govern the practice of law in that jurisdiction and U.S. lawyers are governed by their State↕ s regulatory bodies. Lawyers registered in that State must conform to its rules regardless of where they practice law. The American Bar Association↕ s Model Rules of Professional Conduct serve as models for the ethics rules of most States. In New York, for instance, the New York State Bar Association has approved ethics and disciplinary rules for lawyers, called the New York Rules of Professional Conduct, which have been adopted by the Appellate Division of the New York Supreme Court. The lawyer is subject to these rules regardless of where he/she practices law.

35. Ms. P.T. Asha, learned counsel appearing for the 9th respondent submitted that her client is neither incorporated/registered as a law firm nor does it render legal services including advice in the form of opinions or appear before any courts or tribunals anywhere in India and hence, cannot be said to be engaged in the "practice of law". According to her, her client has consulted Indian law firms whenever it has been required to provide legal services in India for its clients. More importantly, as on date, the 9th respondent company has terminated services of all its employees by way of redundancy and only the Director of the company continues to act for the company as required, without compensation from the company, with advice from professional legal and accounting advisors in order to ensure that the firm meets their statutory obligations in India.

36. Mr. R. Yashod Vardhan, learned senior counsel appearing on behalf of the 23rd respondent submitted that his client is an international law firm, as is the case with most of the other respondents herein, having offices in London, Brussels, Hong Kong and Beijing. It has got

clients throughout the world with international business interests. However, the scope of the 23rd respondent↕ s practice is such that it advises only on matters of English, European Union and Hong Kong Law. According to him, his client has working relationships with leading law firms in major jurisdiction worldwide and it instructs appropriate local law firms to provide local law advise wherever it is required. Learned senior counsel submitted that no specific allegation has been made by the petitioner against this respondent and hence, no relief could be granted as against this respondent.

37. In reply, Mr. AR.L. Sundaresan, learned senior counsel appearing for the writ petitioner submitted that the provision contained in Section 47(2) of the Advocates Act is subject to Section 47(1), in that it makes no distinction between foreign law and Indian law. Section 29 enables only one class of persons, i.e. advocates, to practise the profession of law. Section 33 makes it mandatory that a person who is enrolled as an advocate under this Act is only entitled to practise in any Court in the country, which includes practice in matters of arbitration. Therefore, the contention on behalf of the petitioners that they are not appearing before any judicial forum in India cannot be sustained. Similarly, the respondents cannot also be heard to contend that they are entitled to carry on with their practice in arbitration proceedings by placing reliance on the Preamble to the Arbitration and Conciliation Act.

38. Learned senior counsel placed reliance on the resolution passed by the Bar Council of India in the Proceeding of the Consultative Conference held at Kochi on the 17th and 18th of November, 2007, wherein it was unanimously resolved with regard to the entry of foreign law firms and foreign lawyers into India as follows :-

> "This joint consultative conference of the Bar Council of India and the Chairmen, Vice-Chairmen and Chairmen, Executive Committee of all State Bar Councils in India hereby unanimously resolve to support and affirm the resolution of the Bar Council of India No.17/2006 dated 12.2.2006 and further resolves to request the Government of India not to open up Indian Legal profession to foreign lawyers or foreign law firms at this juncture and not to permit the entry of foreign lawyers or foreign law firms into India for function or practice in any form in India as advocates, lawyers or solicitors. It is further resolved to authorize the Bar Council of India to continue the dialogue and interaction with the Government of India, represented by Ministry of Law and Justice and also the Ministry of Trade and Commerce and with the Law Councils and Law Societies of the foreign countries, i.e. the counterparts of the Bar Council of India in the respective countries to ponder into the principle of reciprocity in this subject and to ascertain the details procedure of reciprocal arrangements and the restriction imposed for Indian lawyers to practice in the respective countries. It is further resolved to authorize the Bar Council of India to take the final decision in the matter in consultation with all the State Bar Councils in due course of time and at the appropriate stage as to whether entry of foreign lawyers and law firms could be permitted into the legal practice in India in any form or manner and subject to any limitations and restrictions imposed in the changed circumstances and as and when the situation ripens and in the best interest of the legal profession of India and that of the country and people. It is further resolved to protest against the Government of India↕ s attitude in filing a counter affidavit in the Mumbai High Court adopting the stand that the Advocates Act has nothing to do with and does not bar the practice of foreign lawyers in India, while they are simultaneously in dialogue with the Bar Council of India and seeking the views of the Bar Council of India in the matter. Therefore, it is further resolved to request the Government of India not to take any final decision in the matter of entry of foreign lawyers and foreign law firms into

India without being consulted with and obtaining the approval of the Bar Council of India."

39. Before we decide the issue involved in the instant case, we would first like to discuss the ratio decided by the Bombay High Court in the case of Lawyers Collective vs. Bar Council of India, 2010 (112) Bom LR 32. In the Bombay High Court, the writ petition was filed by a society as a Public Interest Litigation challenging the permission granted by the Reserve Bank of India to some foreign law firms to open liaison offices in India, as the same being illegal and in violation of the provisions of the Advocates Act, 1961. In that case, the respondents, which were foreign law firms practising the profession of law in UK/USA and having branch offices in different parts of the world, had applied to the RBI during the period 1993-1995 seeking permission to open their liaison offices in India. While granting such permission, the RBI made it clear that the permission granted to the foreign law firms in that case was limited for the purpose of Section 29 of the Foreign Exchange Regulation Act, 1971 and that the said permission should not be construed in any way regularizing, condoning or in any manner validating any violations, contraventions or other lapses, if any, under the provisions of any law for the time being in force.

40. In other words, the challenge before the Bombay High Court was to the permission granted by the Reserve Bank of India to foreign law firms to establish their liaison offices in India under Section 29 of FERA, 1973, and assuming such permission was valid, whether these foreign law firms could carry on their liaison activities in India only on being enrolled as advocates under the Advocates Act, 1961. There, a distinction was sought to be made between a person who is said to be practising in non-litigious matters when he represents to be an expert in the field of law and renders legal assistance to another person by drafting documents, advising clients, giving opinions etc., as opposed to a person who is said to be practising in litigious matters when he renders legal assistance by acting, appearing and pleading on behalf of another person before a judicial forum. The question raised in that case was, whether a person who wants to practise in non-litigious matters should have been enrolled as an advocate under the Act. The case of the petitioner therein was that the Advocates Act is a complete code for regulating the practice of law in India and since the expression "to practice the profession of law" includes both practise in litigious as well as non-litigious matters, foreign law firms could not have carried on practise in non-litigious matters without being enrolled as advocates under the Act. It was contended that the right to practice the profession of law cannot be confined to physical appearances in judicial forums, but it necessarily includes giving legal advice to a client, drafting and providing any other form of legal assistance.

41. The petitioner before the Bombay High Court was not averse to foreign law firms practising the profession of law in India, but its main grievance was that such firms cannot be permitted to practise even in non-litigious matters without being enrolled as advocates under the Act. The Bar Council of India, being a regulatory body, has been constituted with a view to keep a check on the lawyers who render services to their clients in litigious as well as non-litigious matters. The case of the petitioner therein was that no country in the world permits unregulated practise of law and therefore, the permission granted by the RBI to foreign law firms to open a liaison office in India amounts to permitting them to open their branch offices in India and practise the profession of law without being enrolled as advocates under the Act. In view of the permission granted by the RBI, the foreign law firms stood to gain an unfair advantage over the advocates practising in India, because the Indian advocates practising in non-litigious matters were being subjected to the provisions of the Act as well as the rules framed by the Bar Council, whereas their foreign counterparts were neither being subjected to the Act nor the rules framed by the Bar Council.

42. The Division Bench of the Bombay High Court formulated the following two questions for determination ┬

(i) Whether the permission granted by the RBI to respondents 12 to 14-foreign law firms to establish their place of business in India (liaison office) under Section 29 of FERA is legal and valid?
(ii) Assuming such permissions are valid, whether these law firms could carry on their liaison activities in India only on being enrolled as advocate under the Advocates Act, 1961?
In specific, the question was, whether practising in non-litigious matters amounts to "practising the profession of law" under Section 29 of the Advocates Act.

43. After thoroughly examining the widespread ramifications of the issue involved, the Division Bench held as follows :-

> "40. In the present case, the core dispute is with reference to the permission granted by RBI to the respondents No. 12 to 14 to open their liaison offices in India under Section 29 of the 1973 Act. The respondent No. 12 to 14 are the foreign law firms practising the profession of law in U.K. / U.S.A. and other parts of the word. However, even after establishing the liaison offices in India, the said foreign law firms have not enrolled themselves as advocates under the 1961 Act.
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> 41. The first question to be considered herein is, what were the liaison activities carried on by the foreign law firms in India ' In the affidavit in reply, these foreign law firms have stated that they have opened the liaison offices in India mainly to act as a coordination and communications channel between the head office / branch offices and its clients in and outside India. Since the Head Office and the branch offices of the foreign law firms are engaged in providing various legal services to their clients carrying on wide range of businesses all over the world, the liaison activity carried on in India, namely, to act as a coordination and communication channel would obviously be relating to providing legal services to the clients. The respondent No. 12 has further claimed in its affidavit in reply that their liaison activity inter alia included providing "office support services for lawyers of those offices working in India on India related matters" and also included drafting documents, reviewing and providing comments on documents, conducting negotiations and advising clients on international standards and customary practice relating to the client's transaction etc. It is contended by the respondent No. 12 to 14 that they never had and has no intention to practise the profession of law in India. Thus, from the affidavit in reply, it is evident that the liaison activities were nothing but practising the profession of law in non litigious matters.
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> 42. The question then to be considered is, whether the foreign law firms could carry on the practise in non litigious matters in India by obtaining permission from R.B.I. under Section 29 of the 1973 Act ' Section 29 of the 1973 Act provides that without the permission of RBI, no person resident outside India or a person who is not a citizen of India but is resident in India or a Company which is not incorporated in India shall establish in India a branch office or other place of business, for carrying any activity of a trading, commercial or industrial nature. Foreign law firms engaged in practising the profession of law in the foreign countries cannot be said to be engaged in industrial, commercial and trading activities. The liaison activities of respondent Nos. 12 to 14 in India being activities relating to the profession of law, no permission could be granted to the foreign law firms under Section 29 of the 1973 Act. The Apex Court in the case of M.P. Electricity Board v. Shiv Narayan reported in (2005) 7 Supreme Court Cases 283

has held that there is a fundamental distinction between the professional activity and the activity of a commercial character. The Apex Court has further held that to compare the legal profession with that of trade and business would be totally incorrect. Therefore, in the facts of the present case, the RBI could not have granted permission to carry on the practise in non litigious matters by opening liaison offices in India under Section 29 of the 1973 Act.

43. It is not the case of the foreign law firms that the activity carried on by their liaison offices in India are different from the activity carried on by them at their head office and the branch offices world over. In fact, it is the specific case of respondents No. 12 to 14 that the main activity at their liaison offices in India was to act as a coordination and communication channel between the head office / branch office and its clients in and outside India. Thus, the activity carried on by the foreign law firms at their Head Office, branch offices and liaison offices in India were in extricately linked to the practise in non litigious matters. Section 29 of the 1973 Act relates to granting permission for business purposes and not for professional purposes and, therefore, the RBI could not have granted permission to these foreign law firms under Section 29 of the 1973 Act.

44. It appears that before approaching RBI, these foreign law firms had approached the Foreign Investment Promotion Board (FIPB for short) a High Powered body established under the New Industrial Policy seeking their approval in the matter. The FIPB had rejected the proposal submitted by the foreign law firms. Thereafter, these law firms sought approval from RBI and RBI granted the approval in spite of the rejection of FIPB. Though specific grievance to that effect is made in the petition, the RBI has chosen not to deal with those grievances in its affidavit in reply. Thus, in the present case, apparently, the stand taken by RBI & FIPB are mutually contradictory.

45. In any event, the fundamental question to be considered herein is, whether the foreign law firms namely respondent Nos. 12 to 14 by opening liaison offices in India could carry on the practise in non litigious matters without being enrolled as Advocates under the 1961 Act?

47. The argument of the foreign law firms is that Section 29 of the 1961 Act is declaratory in nature and the said section merely specifies the persons who are entitled to practise the profession of law. According to the respondent Nos. 12 to 14, the expression 'entitled to practise the profession of law' in Section 29 of the 1961 Act does not specify the field in which the profession of law could be practised. It is Section 33 of the 1961 Act which provides that advocates alone are entitled to practise in any Court or before any authority or person. Therefore, according to respondent Nos. 12 to 14 the 1961 Act applies to persons practising as advocates before any Court / authority and not to persons practising in non litigious matters. The question, therefore, to be considered is, whether the 1961 Act applies only to persons practising in litigious matters, that is, practising before Court and other authorities?¶

44. As noticed above, the fact of the case before the Bombay High Court were that the respondents which were foreign law firms practising the profession of law in US/UK sought permission to open their liaison office in India and render legal assistance to another person in all litigious and non-litigious matters. The Bombay High Court, therefore, rightly held that establishing liaison office in India by the foreign law firm and rendering liaisoning activities in all forms cannot be permitted since such activities are opposed to the provisions of the Advocates

Act and the Bar Council of India Rules. We do not differ from the view taken by the Bombay High Court on this aspect.

45. However, the issue which falls for consideration before this Court is as to whether a foreign law firm, without establishing any liaison office in India visiting India for the purpose of offering legal advice to their clients in India on foreign law, is prohibited under the provisions of the Advocates Act. In other words, the question here is, whether a foreign lawyer visiting India for a temporary period to advise his client on foreign law can be barred under the provisions of the Advocates Act. This issue was neither raised nor answered by the Bombay High Court in the aforesaid judgment.

46. In the instant case, most of the respondent law firms have been carrying on consultancy/support services in the field of protection and management of intellectual, business and industrial proprietary rights, carrying out market surveys and market research, and publication of reports and journals without rendering any legal service including advice in the form of opinion. The respondents have categorically stated that foreign lawyers visit India for giving advice on their own system of law or on English law. It appears that the 11th respondent has neither any office in India, nor does it practice law before any Court in India. It is an American Law Firms having its offices at New York, Washington, Los Angeles and other countries. It has clients dealing with diverse international legal issues, who require legal advice from different countries, for which the 11th respondent developed working relationship with local law firms in different countries. The 11th respondent has stated that for Indian clients requiring legal advice in India, it refers the work to various Indian lawyers and law firms located in cities where such advice is required. The 14th respondent is not owning or operating any LPOs in India. According to this respondent, the lawyers from the said foreign law firm "fly in and fly out of India" on need basis to their clients on international transactions, to which there is an Indian component. To the extent Indian law is involved, such matters are addressed by Indian lawyers enrolled under the Advocates Act, 1961.

47. Other foreign law firms have also categorically stated that the lawyers from the respondent-foreign law firms "fly in and fly out" of India on need basis to advice their clients on international transactions or other international related matters, to which there is an Indian component. To the extent Indian law is involved, such matters are addressed by the Indian lawyers enrolled under the Advocates Act.

48. It is the case of the 22nd respondent that the "India Practising Group" is advising its clients only on commercial matters involving Indian elements relating to merger, acquisition, capital market, projects, energy and infrastructure, etc. from an international legal perspective.

49. Similarly, the 35th respondent stated, inter alia, that it is an international law firm providing legal services to its international clients. Some Indian businesses that have international legal requirements consult this respondent relying upon its international expertise, and all such consultations and legal services rendered are in relation only to the laws of the specific international jurisdiction.

50. According to the 36th respondent - foreign law firm, their lawyers "fly in and fly out" of India on need basis to advise its clients on international transactions and other matters involving Indian laws and international ventures, to which there is an Indian component.

51. We find force in the submission made by the learned counsel appearing for the foreign law firms that if foreign law firms are not allowed to take part in negotiations, for settling up

documents and conduct arbitrations in India, it will have a counter productive effect on the aim of the Government to make India a hub of International Arbitration. According to the learned counsel, many arbitrations with Indian Judges and Lawyers as Arbitrators are held outside India, where both foreign and Indian law firms advise their clients. If foreign law firms are denied entry to deal with arbitrations in India, then India will lose many of the arbitrations to foreign countries. It will be contrary to the declared policy of the Government and against the national interest. Some of the companies have been carrying on consultancy/support services in the field of protection and management of intellectual, business and industrial proprietary rights, carrying out market surveys and market research and publication of reports, journals, etc. without rendering any legal service, including advice in the form of opinion, but they do not appear before any courts or tribunals anywhere in India. Such activities cannot at all be considered as practising law in India. It has not been controverted that in England, foreign lawyers are free to advice on their own system of law or on English Law or any other system of law without any nationality requirement or need to be qualified in England.

52. Before enacting the Arbitration and Conciliation Act, 1996 the Law Commission of India, several representative bodies of trade and industry and experts in the field of arbitration have proposed amendments to the Act to make it more responsive to contemporary requirements. It was also recognised that the economic reforms in India may not fully become effective if the law dealing with settlement of both domestic and international commercial disputes remains out of tune with such reforms. The United Nations Commission on International Trade Law (UNCITRAL) adopted in 1985 the Model Law on International Commercial Arbitration. The Arbitration and Conciliation Act is, therefore, consolidated and amended to the law relating to domestic and international commercial arbitration as well as for the enforcement of foreign arbitral award. The Act was enacted as a measure of fulfilling India↕ s obligations under the International Treaties and Conventions. On account of the growth in the international trade and commerce and also on account of long delays occurring in the disposal of suits and appeals in courts, there has been tremendous movement towards the resolution of disputes through alternative forum of arbitrators.

53. Section 2(1)(f) of the Act defines the term "International Commercial Arbitration" as under:-

> "(f) International Commercial Arbitration means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is ┬
> (i) an individual who is a national of, or habitually resident in, any country other than India; or
> (ii) a body corporate which is incorporated in any country other than India; or
> (iii) a company or an association or a body of individuals whose central management and control is exercised in any country other than India; or
> (iv) the Government of a foreign country."

54. From the above definition, it is manifestly clear that any arbitration matter between the parties to the arbitration agreement shall be called an "international commercial arbitration" if the matter relates to the disputes, which may or may not be contractual, but where at least one of the parties habitually resides abroad ┬ whether a national of that country or not. The New York Convention will apply to an arbitration agreement if it has a foreign element or flavour involving international trade and commerce, even though such an agreement does not lead to a foreign award.

55. International arbitration is growing big time in India and in almost all the countries across the globe. India is a signatory to the World Trade Agreement, which has opened up the gates for

many international business establishments based in different parts of the world to come and set up their respective businesses in India.

56. Large number of Indian Companies have been reaching out to foreign destinations by mergers, acquisition or direct investments. As per the data released by the Reserve Bank of India during 2009, the total out ward investment from India excluding that which was made by Banks, had increased 29.6% to U.S. Dollar 17.4 billion in 2007-08 and India is ranked third in global foreign direct investment. Overseas investments in joint ventures and wholly owned subsidiaries have been recognized as important avenues by Indian Entrepreneurs in terms of foreign exchange earning like dividend, loyalty, etc. India is the 7th largest, the second most populated country and the fourth largest economy in the world. Various economic reforms brought about have made India grow rapidly in the Asia-Pacific Region, and the Indian Private Sector has offered considerable scope for foreign direct investment, joint-venture and collaborations. Undoubtedly, these cross-border transactions and investments would give bigger opportunities for members of the legal fraternity, in order to better equip themselves to face the challenges. It is common knowledge that in the recent past, parties conducting International Commercial Arbitrations have chosen India as their destination. The arbitration law in India is modelled on the lines of the UNCITRAL Model Law of Arbitration and makes a few departures from the principles enshrined therein. The Arbitration and Conciliation Act 1996, provides for international commercial arbitration where at least one of the parties is not an Indian National or Body corporate incorporated in India or a foreign Government.

57. Institutional Arbitration has been defined to be an arbitration conducted by an arbitral institution in accordance with the rules of the institution. The Indian Council of Arbitration is one such body. It is reported that in several cases of International Commercial Arbitration, foreign contracting party prefers to arbitrate in India and several reasons have been stated to choose India as the seat of arbitration. Therefore, when there is liberalization of economic policies, throwing the doors open to foreign investments, it cannot be denied that disputes and differences are bound to arise in such International contracts. When one of the contracting party is a foreign entity and there is a binding arbitration agreement between the parties and India is chosen as the seat of arbitration, it is but natural that the foreign contracting party would seek the assistance of their own solicitors or lawyers to advice them on the impact of the laws of their country on the said contract, and they may accompany their clients to visit India for the purpose of the Arbitration. Therefore, if a party to an International Commercial Arbitration engages a foreign lawyer and if such lawyers come to India to advice their clients on the foreign law, we see there could be no prohibition for such foreign lawyers to advise their clients on foreign law in India in the course of a International Commercial transaction or an International Commercial Arbitration or matters akin thereto. Therefore, to advocate a proposition that foreign lawyers or foreign law firms cannot come into India to advice their clients on foreign law would be a far fetched and dangerous proposition and in our opinion, would be to take a step backward, when India is becoming a preferred seat for arbitration in International Commercial Arbitrations. It cannot be denied that we have a comprehensive and progressive legal frame work to support International Arbitration and the 1996 Act, provides for maximum judicial support of arbitration and minimal intervention. That apart, it is not in all cases, a foreign company conducting an International Commercial Arbitration in India would solicit the assistance of their foreign lawyers. The legal expertise available in India is of International standard and such foreign companies would not hesitate to avail the services of Indian lawyers. Therefore, the need to make India as a preferred seat for International Commercial Arbitration would benefit the economy of the country.

58. The Supreme Court in a recent decision in **Vodafone International Holdings B.V. vs. Union of India and another**, SLP(C) No.26529 of 2010, dated 20.01.2012, observed that every

strategic foreign direct investment coming to India, as an investment destination should be seen in a holistic manner. The Supreme Court observed that the question involved in the said case was of considerable public importance, especially on Foreign Direct Investment, which is indispensable for a growing economy like India. Therefore, we should not lose site of the fact that in the overall economic growth of the country, International Commercial Arbitration would play a vital part. The learned counsel appearing for the foreign law firms have taken a definite stand that the clients whom they represent do not have offices in India, they do not advise their foreign clients on matters concerning Indian Law, but they fly in and fly out of India, only to advise and hand-hold their clients on foreign laws. The foreign law firms, who are the private respondents in this writ petition, have accepted the legal position that the term "practice" would include both litigation as well as non-litigation work, which is better known as chamber practice. Therefore, rendering advice to a client would also be encompassed in the term "practice".

59. As noticed above, Section 2(a) of the Advocates Act defines 'Advocate' to mean an advocate entered in any roll under the provisions of the Act. In terms of Section 17(1) of the Act, every State Bar Council shall prepare and maintain a roll of Advocates, in which shall be entered the names and addresses of – (a) all persons who were entered as an Advocate on the roll of any High Court under the Indian Bar Council Act, 1926, immediately before the appointed date and (b) all other persons admitted to be Advocates on the roll of the State Bar Council under the Act on or after the appointed date. In terms of Section 24(1) of the Act, subject to the provisions of the Act and the Rules made thereunder, a person shall be qualified to be admitted as an advocate on a state roll if he fulfils the conditions – (a) a citizen of India, (b) has completed 21 years of age and (c) obtained a degree in Law. The proviso to Section 24(1)(a) states that subject to the other provisions of the Act, a National of any other country may be admitted as an Advocate on a State roll, if a citizen of India, duly qualified is permitted to practice law in that other country. In terms of Section 47 (1) of the Act, where any country specified by the Central Government by notification prevents citizens of India practicing the profession of Law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practice the profession of Law in India. In terms of Sub-Section (2) of Section 47, subject to the provision of Sub-Section (1), the Bar Council of India may prescribe conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognized for the purpose of admission as an Advocate under the Act. Thus, Section 47 deals with reciprocity. As per the statement of objects and reasons of the Advocates Act, it was a law enacted to provide one class of legal practitioners, specifying the academic and professional qualifications necessary for enrolling as a practitioner of Indian Law, and only Indian citizens with a Law Degree from a recognized Indian University could enrol as Advocates under the Act. The exceptions are provided under the proviso to Section 24(1)(a), Section 24(1)(c) (iv) and Section 47(2). In the light of the scheme of the Act, if a lawyer from a foreign law firm visits India to advice his client on matters relating to the law which is applicable to their country, for which purpose he "flies in and flies out" of India, there could not be a bar for such services rendered by such foreign law firm/foreign lawyer.

60. We are persuaded to observe so, since there may be several transactions in which an Indian company or a person of Indian origin may enter into transaction with a foreign company, and the laws applicable to such transaction are the laws of the said foreign country. There may be a necessity to seek legal advice on the manner in which the foreign law would be applied to the said transaction, for which purpose if a lawyer from a foreign law firm is permitted to fly into India and fly out advising their client on the foreign law, it cannot be stated to be prohibited. The corollary would be that such foreign law firm shall not be entitled to do any form of practice of Indian Law either directly or indirectly. The private respondents herein, namely the foreign law firms, have accepted that there is express prohibition for a foreign lawyer or a foreign law firm to

practice Indian Law. It is pointed out that if an interpretation is given to prohibit practice of foreign law by a foreign law firms within India, it would result in a manifestly absurd situation wherein only Indian citizens with Indian Law degree who are enrolled as an advocate under the Advocates Act could practice foreign law, when the fact remains that foreign laws are not taught at graduate level in Indian Law schools, except Comparative Law Degree Courses at the Master's level.

61. As noticed above, the Government of India, in their counter affidavit dated 19.08.2010, have stated that the contention raised by the petitioner that foreign law firms should not be allowed to take part in negotiating settlements, settling up documents and arbitrations will be counter productive, as International Arbitration will be confined to a single country. It is further pointed out that many arbitrations are held outside India with Indian Judges and Lawyers as Arbitrators where both foreign and Indian Law firms advise their clients. It has been further stated if foreign law firms are denied permission to deal with arbitration in India, then we would lose many arbitrations to other countries and this is contrary to the declared policy of the Government and will be against the National interest, especially when the Government wants India to be a hub of International Arbitration.

62. At this juncture, it is necessary to note yet another submission made by the Government of India in their counter. It has been stated that law firms as such or not required to register themselves or require permission to engage in non-litigation practice and that Indian law firms elsewhere are operating in a free environment without any curbs or regulations. It is further submitted that the oversight of the Bar Council on non-litigation activities of such law firms was virtually nil till now, and exploiting this loop hole, many accountancy and management firms are employing law graduates, who are rendering legal services, which is contrary to the Advocates Act. Therefore, the concern of the Government of India as expressed in the counter affidavit requires to be addressed by the Bar Council of India. Further, it is seen that the Government in consultation with the Bar Council of India proposes to commission a study as to the nature of activities of LPOs, and an appropriate decision would be taken in consultation with the Bar Council of India.

63. After giving our anxious consideration to the matter, both on facts and on law, we come to the following conclusion :-

(i) Foreign law firms or foreign lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfil the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.

(ii) However, there is no bar either in the Act or the Rules for the foreign law firms or foreign lawyers to visit India for a temporary period on a "fly in and fly out" basis, for the purpose of giving legal advise to their clients in India regarding foreign law or their own system of law and on diverse international legal issues.

(iii) Moreover, having regard to the aim and object of the International Commercial Arbitration introduced in the Arbitration and Conciliation Act, 1996, foreign lawyers cannot be debarred to come to India and conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration.

(iv) The B.P.O. Companies providing wide range of customised and integrated services and functions to its customers like word-processing, secretarial support, transcription services, proof-reading services, travel desk support services, etc. do not come within the purview of the

Advocates Act, 1961 or the Bar Council of India Rules. However, in the event of any complaint made against these B.P.O. Companies violating the provisions of the Act, the Bar Council of India may take appropriate action against such erring companies.

64. With this conclusion, this writ petition stands disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(M.Y.E., C.J.) (T.S.S., J.)

February 21, 2012

sm/ab

The Hon'ble the Chief Justice
and
T.S. Sivagnanam, J.