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## CASE COMMENT ON BAR COUNCIL OF INDIA V. AK BALAJI & OTHERS (2018)

Aradhaya Singh

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## **CASE COMMENT ON BAR COUNCIL OF INDIA V. AK BALAJI & OTHERS (2018)**

Aradhaya Singh<sup>1</sup>

**Case Analysis:** Foreign law firms in India

**Case Name:** Bar Council of India vs A.K. Balaji and Ors.

**Court:** Supreme Court of India

**Order dated:** 13<sup>th</sup> March, 2018

**Bench:** Adarsh Kumar Goel, J

Civil Appeal No.7170 Of 2015

(Association of Indian Lawyers versus M/s. London Court of  
International Arbitration (LCIA) and Ors.)

(Petitioner)

AND

Civil Appeal No. 8028 Of 2015

(Global Indian Lawyers versus Bar Council of India & Ors.)

(Respondent)

### **INTRODUCTION**

The Advocates Act of 1961 entails that a foreigner cannot be made to entitle to practice the law under the restrictions mentioned in the above said act. However, in India many foreign lawyers continued to conduct conferences and seminars. The legal profession is being practiced in India by the foreign law firms violating the provisions of the Act.

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<sup>1</sup> Law Student, 4<sup>th</sup> Year, Lloyd Law College, Greater Noida.

Regarding the above said issue, the writ petitions were filed in the High Court of Madras in case of *AK Balaji vs Government of India*<sup>2</sup> and in the case of *Lawyers Collective vs Bar Council of India*<sup>3</sup> in the High Court of Bombay.

After keeping all this in mind, the Hon'ble Supreme Court of India passed a judgement regarding the same for regulating the foreign lawyers and law firms that are starting business in India by setting up their offices. This judgement by the Hon'ble Supreme Court of India has allowed for these foreign lawyers and firms to establish offices in India for a temporary period. To ensure that foreign lawyers or law firms do not venture into the practice of law in India this judgement has also been imposed on BPO.

Here, we will study more about the facts of the case, the issues involved in the case, the reasoning of the court in the case followed by the judgement given by the Hon'ble Supreme Court of India and last but not the least, the comments/conclusion regarding the case.

## **FACTS**

- In this case, a writ petition was filed by Mr. AK Balaji, an advocate, who was enrolled with the Bar Council of Tamil Nadu.
- As per the provisions mentioned in the Advocates Act 1961, in order to practice the legal profession in India, he must be an Indian citizen and along with this he must also hold a degree in the field of law from a well recognised university or institution that is recognised in India as contained in Section 29<sup>4</sup> of the Advocates Act, 1961.

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<sup>2</sup> A.K Balaji vs Government of India, AIR (2012) Mad 124.

<sup>3</sup> Lawyers Collective vs Bar Council of India and Others, Writ Petition No. 1526 of (1995).

<sup>4</sup> The Advocates Act, 1961, § 29, No. 25, Acts of Parliament, 1961.

- If the Indian citizens are granted the right to or we can say permission to practice in other foreign countries then only a foreign citizen or national can be admitted as an advocate in India. If a degree is from a foreign university which is located outside India, it requires a recognition for the Bar Council of India.
- If an Indian Advocate is holding a degree for a university in India, then he is not permitted to practice in the countries of USA, UK, and Australia till the time he fulfils the requirements of various qualifying tests which are mandatory for him in order to practice there. Also, an advocate of India is expected to possess qualifying experiences and also the work permits to practice in foreign countries other than India.
- The legal profession in India is considered as a noble profession because it serves society at large. This is not that type of profession which is considered as a business that is focused on earning profits. However, for the foreign law professionals who are practicing in India the perception of this legal profession is opposing because these foreign law professionals treat the profession as a business venture and also a trade to earn more money and out of this to generate more of the profit.
- After looking all this, made A.K. Balaji believed and to submit the argument that besides the same right as enjoy foreign lawyers should not be allowed to practice the legal profession in India without the same right as enjoyed by legal white collars in India, the foreign lawyers should not be allowed to practice the legal profession in India. Also, the privileges being reciprocated by foreign countries should not be there. Therefore, he filed a writ petition to seek directions limiting the moving in of foreign lawyers and law firms in India.

## **ISSUES**

With regards to this case, these are the following issues in A.K Balaji vs The government of India which were taken up at the High Court of Madras. These are as follows:

- Whether in case of litigation and mercantile transactions the foreign lawyers and law firms can practice law in India?
- Whether to carry on the practice in non-litigious matters without being enrolled as Advocates under the Advocates Act, 1961 the foreign law firms can open liaison offices in India?

## **REASONING OF COURT**

The final stand was taken by the Madras High Court on 17<sup>th</sup> November 2011. The summary of the Judgement given in this case is as follows:

- Firstly, the Union of India being the respondent at the first place had filed four counter-affidavits. In one such affidavit, the Union of India mentioned that the Advocates Act has made to establish the Bar Council of India that regulates the Advocates in courts that are on the “Rolls” of the Bar Council of India (BCI). But, at the same time, it has not been made mandatory for law firms to register themselves before any authority is statutory, and also it is not required for them to get any permission to engage in any non-legal action procedure.
- Secondly, the loophole which is mentioned above has been exploited by the advocates and due to this many accounting and management firms employ the services of lawful white collars which are contradicting the provisions of the Advocates Act. The counter affidavit which was presented by the Union of India in the court mentions about that if law firms which belong to foreign that is other than India are not authorized to take part in the

non-legal action and negotiable proceedings in India, then this will result in a negative effect on the attempts taken by the Government in order to alter our country India into a cynosure of international negotiation. Further, the Union of India also stated that there is a need to amend section 29<sup>5</sup> of the Advocates act of 1961 to allow law firms to carry out their practice in non-litigation matters with countries outside India on a reciprocal basis.

- Thirdly, the Madras High Court held that there will be no restriction on foreign lawyers or legal professionals and their law firms to carrying out the practice of negotiations, arbitrations, and also settling documents in India. Also, foreign lawyers are also not restricted from providing services of consultation and support services and such services cannot be considered on par with the practice of law. We all know that foreign parties are provided with the right to have lawyers from their own country. Also, to carry out their service of offering advice to their clients these foreign lawyers will also be allowed to travel in and out of India. If there are actions which are carried out by the firms against the Advocate's Act, 1961 then it will be penalized by the Bar Council of India.
- Fourthly, it was decided by the Bombay High Court in the case of *Lawyers Collective vs Bar council of India*<sup>6</sup>. The usage of the phrase "to practice the profession of law" in section 29 of the Advocates Act has the wide scope and it is enough to include the policy of the legal occupation in litigation and non-litigation. After all this the Bombay high court had also made for the decision that the permission granted by the Reserve Bank of India to the foreign law firms is nowhere justified. In order for the foreign law

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<sup>5</sup> The Advocates Act, 1961, § 29, No. 25, Acts of Parliament, 1961.

<sup>6</sup> Supra 3.

firms to open liaison offices in India the above-mentioned permission was granted by the Reserve Bank of India (RBI).

## **JUDGMENT**

In this case, it was held by the Hon'ble Supreme Court held that the phrase incorporated in Section 29 of the Advocates Act, 1961 that the phrase "*practice of the occupation*" is all which is inclusive of sustaining the legal occupation through legal action and non-legal action procedure. For the understanding of this phrase, it has been expounded in a broader sense to embrace the provision of lawful beliefs, negotiation, and recommendatory amenities.

The court also held that the legal white collars, law firms, and companies carrying out non-litigation exercises are also conditional to the essential of the governmental substructure of the Act and the Bar Council of India rules. This being the first and foremost instance at which the companies and firms carrying out the legal profession are being acknowledged. The Bar Council of India has been directed to design appropriate rules on this said matter. Also, this shall be applicable to foreign lawyers and foreign law firms. The court held that there will be no complete preclude on foreign law firms from conducting international mercantile negotiations.

The Court was also of the resolution that overseas lawyers and law firms may come upon India to grant legal guidance. It should be provided that their visit to India is not for a casual purpose. The reason or purpose of each visit will be determined on a case-to-case basis. Lastly, the court held that there is no strict violation of the process of business outsourcing providing integrated services that are covered under the Advocates Act, 1961.

## **COMMENTS/ CONCLUSION**

If we look through all this case or when we study this case, this case proves to be a landmark judgement regarding the matter of the foreign lawyers and law firms entering into India to carry out the legal profession and enjoying the financial benefits through this. The Act is a very necessary step taken towards ensuring equal opportunity to the Indian legal professionals and law firms with regards to foreign countries firms and their professionals of law field.

According to me, with regards to this case, the judgment given by the Hon'ble Supreme Court of India recognizes the existences and includes all the law firms and companies which are also an essential and integral part to regulate the practice of the legal profession in India.