

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.1526 OF 1995**

LAWYERS COLLECTIVE, a Society registered under the Societies Registration Act and under the Bombay Public Trusts Act, having its office at 4th Floor, Jalaram Jyot, 63, Janmabhoomi Marg, Fort, Bombay – 400 001 (India)

.....Petitioners

V/s.

1. Bar Council of India, established under the provisions of the Advocates Act 1961, and having its office at 21 Rouse Avenue, Deendayal Upadhyaya Marg, New Delhi – 110 002/
2. Bar Council of the State of Maharashtra and Goa having its Office at High Court Extension, Bombay – 400 032.
3. Bar Council of the State of Delhi, having its address at High Court Building, New Delhi – 110 003.
4. Bombay Incorporated Law Society, having its office at High Court New Building, North Wing, Bombay – 400 001.
5. Bar Association of the Supreme Court of India, having its office at Supreme Court

- of India, Tilak Marg, New Delhi – 110 001.
6. Bar Association of India, having its office at 93, Lawyers Chambers, Supreme Court of India, Tilak Marg, New Delhi – 110 001.
 7. Union of India,
 8. Reserve Bank of India, being a body constituted under the provisions of the Reserve Bank Act, 1934 having its principal office at Horniman Circle, Bombay – 400 023.
 9. Directorate of Enforcement, Reserve Bank of India, having its office at Janmabhoomi Chambers, New Marine Lines, Bombay.
 10. Central Board of Direct Taxes, Ministry of Finance, North Block, New Delhi.
 11. Chief Commissioner of Income Tax, Aaykar Bhavan, New Marine Lines, Bombay ;
 12. White & Case, a firm of lawyers having its head office at 1155 Avenue of the Americans, New York, New York 10036, United States of America and with offices at the Nirmal Building, Nariman Point, Mumbai – 400 021.
 13. Chadbourne & Parke, a law firm having its head office at Rockefeller Plaza, New York, New York 11012-0127, United States of America and with offices at Hotel Maurya Sheraton, new Delhi and/or at A-168,

Anand Niketan, New Delhi – 110 021.

14. Ashurst Morris Crisp having its principal office at Broadwalla House, 5, Apollo Street, London EC 2A- 2HA and with offices at 6, Aurangazeb Road, D-202 Chanakyapuri, New Delhi – 110 011 India

15. Society of India Law Firms,
S-454, Greater Kailash, Part – II,
New Delhi 11- 048

.....Respondents.

Mr.Chander Uday Singh, Senior Advocate with Mr.Anand Grover with Ms.Firdaus Moosa for the petitioner.

Mr.A.G. Damle for Respondent No.2.

Mr.P.A. Jani i/by Vigil Juris for Respondent No.4.

Mr.S.U. Kamdar, Senior Advocate with Mr.Sandeep Mahadik i/by M/s.Bhasin & Co., for Respondent No.6.

Mr.Rajinder Singh, Senior Advocate, Mr.Deobia, Senior Advocate, Mr.R.V. Desai, Senior Advocate, Mr.M.I. Sethna, Senior Advocate with Mr.A.M. Sethna and Mr.Vinod Joshi for respondent No.7,9, 10 and 11.

Mr. A.Y. Sakhare, Senior Advocate with Mr. N.H. Munjee & Mr.Rajesh Talekar i/by M/s.K. Ashar & Co. for respondent No.8.

Mr. N.H. Seervai, senior Advocate with Mr. Firdosh Pooniwala i/by M/s. Little & Co. for respondent No.12.

Mr.Shiraz Rustomji with Anil Agarwal for respondent No.13.

Mr.I.M. Chagla and Mr.D.H. Khambata, Senior Advocates with Mr.Simil Purohit i/by M/s.Kanga & Co. for respondent No.14.

Mr.S.N. Fadia i/by Mr.Naresh Fadia for Respondent No.15.

Mr.Venkatesh Dhond with Mr.Prashant Beri i/by M/s.Beri & Co. for Applicants (Intervenors)

CORAM : SWATANTER KUMAR, C.J. & J.P. DEVADHAR, J.

Judgment reserved On : 4TH DECEMBER, 2009

Judgment delivered On : 16TH DECEMBER, 2009

ORAL JUDGMENT (Per J.P. Devadhar, J.)

1. Basically two questions are raised in this petition. They are, firstly, whether the permissions granted by the Reserve Bank of India to the respondent Nos.12 to 14 foreign law firms to establish their place of business in India (liaison office) under Section 29 of the Foreign Exchange Regulation Act, 1973 are legal and valid ? Secondly, assuming such permissions are 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 ? To be specific, the question is, whether practising in non litigious matters amounts to 'practising the profession of law' under section 29 of the Advocates Act, 1961 ?

2. The Parliament has enacted the Advocates Act, 1961 ('1961 Act' for short) to regulate the persons practising the profession of law. To ensure the dignity and purity of the noble profession of law, the 1961 Act provides for establishment of the State Bar Councils and the Bar Council of India. The Bar Councils have been created at the State level as also at the Central level not only to protect the rights, interests and privileges of its members but also to protect the interest of the general public by ensuring them that the professionals rendering the legal services maintain high and noble traditions of the profession.

3. A person can be said to be practising in litigious matters when he renders legal assistance by acting, appearing and pleading on behalf of another person before any Court or authority. Similarly, a person can be 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. There is no dispute that for a person to practise in litigious matters, he has to be enrolled as an advocate under the 1961 Act. However, the dispute is, where a person wants to practise in non litigious matters, whether, he should be enrolled as an advocate under the 1961 Act ?

4. This writ petition is filed by a society which is duly registered under the Societies Registration Act, 1860 as well as under the Bombay Public Trust Act, 1960. The members of the petitioner – society are Advocates enrolled on the rolls of various Bar Council in India and also law students. The petitioner has filed the present writ petition in public interest as according to them, the permission granted by the Reserve Bank of India ('RBI' for short) to the foreign law firms, namely respondents No.12 to 14 to open liaison offices in India is totally illegal and in gross violation of the provisions of the 1961 Act. Since the petitioner is concerned with the practice of legal profession and particularly concerned in ensuring that the ethical practise prevail in the legal profession in India, the petitioner seeks declaration that the permission granted by RBI to the respondents No.12 to 14 is bad in law and that the respondents No.12 to 14 cannot be permitted to carry on their activities in India unless they are enrolled as advocates under the 1961 Act.

5. Respondents No.12 to 14 who are the foreign law firms practising the profession of law in U.K. / U.S.A. and having branch offices in different parts of the world had applied to the RBI during the period 1993 to 1995 seeking permission to open their liaison offices in India. In the application filed by respondent No.12, it was stated that the activities to be carried on by the liaison offices were :-

- "A. To act as a coordination and communications channel between the White & Case head office and other White & Case offices and its clients in and outside India;
- B. To coordinate and liaise with the various Government agencies and bodies, including Reserve Bank of India;
- C. To act as a coordination and communication channel between offices of White & Case and Indian legal advisors assisting such offices or other clients;
- D. To collect information and data in respect of clients and prospective clients and furnish the same to the head office and other White & Case offices;
- E. To establish business contacts and act as a listening post between the head office and the Indian entities;
- F. To explore and promote the possibility of foreign investments and technical and financial collaborations in India with clients and prospective clients;
- G. To provide information regarding White & Case to clients and other interested parties; and
- H. To provide administrative, secretarial and other support services to visiting White & Case personnel."

Similar applications were also made by respondents No.13 and 14 to the RBI.

6. On processing the applications made by respondents No.12 to

14, the RBI granted them permission to open their respective liaison offices in India, subject to the conditions set out therein. The conditions imposed by the RBI were :-

- “(i) Except the proposed liaison work, representative will not undertake any other activity of a trading commercial or industrial nature nor shall he enter into any business contracts in his own name without our prior permission.
- (ii) No commission fees will be charged or any other remuneration received / income earned by the representative for the liaison activities / services rendered by the representative or otherwise in India.
- (iii) The entire expenses of the representative office will be met exclusively out of the funds received from abroad through normal banking channels.
- (iv) The representative shall not borrow or lend any money from / to any person in India without our prior permission.
- (v) The representative shall not acquire, hold (otherwise than by way of lease for a period not exceeding five years) transfer or dispose of any immovable property in India without obtaining prior permission of the Reserve Bank of India under Section 31 of the Foreign Exchange Regulation Act, 1973.
- (vi) The representative will furnish to us (on a yearly basis) :
 - (a) a certificate from the auditors to the effect that during the year no income was earned by/or accrued to the office in India.
 - (b) details of remittances received from abroad duly support by bank certificates;
 - (c) certified copy of the audited final accounts of the office in India; and
 - (d) annual report of the work done by the office in India, stating therein the details of actual export or import, if any, effected during period in respect of which the office had rendered liaison services.
- (vii) The representative in India will not have signing / commitment powers except than those which are required for normal functioning of representative office

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on behalf of the Head Office.”

7. In the permission letter, it was, however, specifically stated that the permission granted to the respondents No.12 to 14 is limited for the purpose of Section 29 of the Foreign Exchange Regulation Act, 1973 ('1973 Act' for short) and that the said permission should not be construed in any way regularizing, condoning or in any manner validating any irregularities, contraventions or other lapses if any under the provisions of any other law for the time-being in force.

8. Mr.C.U. Singh, learned Senior Advocate appearing on behalf of the petitioner submitted that the permission granted by RBI to respondents No.12 to 14 under Section 29 of the 1973 Act is bad in law, because, firstly, nationals of foreign states intending to practice any profession in India can be granted permission under Section 30 and not under Section 29 of the 1973 Act. Secondly, to carry on the profession of law even in non-litigious matters, enrollment as advocates under the 1961 Act was mandatory. Since the foreign law firms were not enrolled as advocates under the 1961 Act, the RBI could not have granted permission to the respondents No.12 to 14 to open their liaison offices in India under Section 29 of the 1973 Act.

9. Mr.Singh further submitted that the 1961 Act is a complete code for regulating the practice of law in India. He submitted that as per Section 24 read with Section 29 of the 1961 Act, any person intending to practise the profession of law must be enrolled as an advocate on any State Bar Council established under the 1961 Act. Since the expression 'to

practice the profession of law' includes both practise in litigious matters as well as non-litigious mattes, Mr.Singh submitted that the foreign law firms namely respondents No.12 to 14 could not have carried on practise in non-litigious matters without being enrolled as advocates under the 1961 Act.

10. Mr.Singh further submitted that the right to practise the profession of law cannot be said to be confined to physical appearances in Courts / Tribunals / other authorities, but the right to practise the profession of law necessarily includes giving legal advise to a client, drafting and providing any other form of legal assistance. Mr.Singh submitted that the petitioner is not aversed to the foreign law firms practising the profession of law in India, however, the grievance of the petitioner is that the foreign law firms cannot be permitted to practise the profession of law even in non-litigious matters without being enrolled as advocates under the 1961 Act.

11. In support of his argument that the right to practise the profession of law includes both, practising in litigious matters as well as the practise in non-litigious matters, Mr.Singh relied upon various decisions. relevant portions of the said judgments are extracted herein below.

12. The Court of Appeals of New York in the matter of *New York County Lawyers Association (Roel)* reported in *3 N.Y. 2D 224*, inter alia held thus :-

“.....Whether a person gives advice as to New York law, Federal law, the law of a sister State, or the law of a foreign country, he is giving legal advice. Likewise, when legal documents are prepared for a layman by a person in the

business of preparing such documents, that person is practicing law whether the documents be prepared in conformity with law of New York or any other law. To hold otherwise would be to state that a member of the New York Bar only practices law when he deals with local law, a manifestly anomalous statement.

..... As heretofore pointed out, the public is as liable to injury when an unlicensed person gives advice to an individual as to his legal rights under foreign law as it is with respect to his rights under domestic law. The State need not have separate examinations for those who will specialize in real estate law, patent law, mining law, foreign law, or any other law. There are many branches of the law that a Bar examination does not reach, but the test is a general one which all qualified applicants are required to take. And so all are equally subject to the same character qualifications. Thus it is not unreasonable to require that a person desiring to engage in the practice of foreign law be admitted to the Bar here and be subject to the same rules as every other member of the Bar of this State."

(emphasis supplied)

13. The Supreme Court of South Carolina in its opinion No.25757 reported in **2003 S.C. Lexis 293**, inter alia held thus :-

"Based on the foregoing analysis, we hold that when nonlawyer title abstractors examine public records and then render an opinion as to the content of those records, they are engaged in the unauthorized practice of law. But if a licensed attorney reviews the title abstractor's report and vouches for its legal sufficiency by signing the report, title abstractors would not be engaged in the unauthorized practice of law."

(emphasis supplied)

14. In the case of **Legal Practice Board V/s. Wilhelmus Van Der Zwaan** reported in **(2002) WASC 133**, the Supreme Court of Western Australia, has held thus :-

"The expression "administration of law" in s 77 is to be read as meaning "the practice of law" or "the practice of the law". The practice of the law includes the giving of legal advice and counsel to others as to their rights and obligations under the law, and the preparation of legal instruments by which legal

rights are either obtained, secured or given away, although such matters may not then, or ever, be the subject of proceedings in a court. If the giving of such advice and performance of such services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the person giving such advise possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct, constitutes the practice of the law. Where an instrument is to be shaped from a mass of facts and conditions, the legal effect of which must be carefully determined by a mind trained in the existing laws in order to ensure a specific result and to guard against others, more than the knowledge of the layman is required. A charge for such service brings it within the term "practice of the law".

(emphasis supplied)

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15. The Apex Court in the case of *Ex. Capt Harish Uppal V/s.*

Union of India reported in (2003) 2 Supreme Court Cases 45, has held

thus :-

"34. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. 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 or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence, courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate."

(emphasis supplied)

16. In the case of *Supreme Court Bar Association V/s. Union of India* reported in **(1998) 4 Supreme Court Cases 409**, the Apex Court has held thus :-

“58. After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for “professional misconduct” has been conferred on the State Bar Council concerned and the Bar Council of India. That act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his “professional misconduct”. Since the suspension or revocation of licence of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the charge is established against the advocate in a manner prescribed by the Act and the Rules framed thereunder.”

71. Thus, after the coming force of the Advocates Act, 1961 with effect from 19-5-1961, matters connected with the enrolment of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only. Since, the jurisdiction to grant licence to a law graduate to practise as an advocate vests exclusively in the Bar Council of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body.”

(emphasis supplied)

17. In the case of *Pravin C. Shah V/s. K.A. Mohd Ali* reported in **(2001) 8 Supreme Court Cases 650**, the Apex Court has held thus :-

“16. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. 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 etc.”

(emphasis supplied)

18. In the light of the aforesaid decisions, Mr.Singh submitted that the lawyers practising in litigious as well as non-litigious matters are governed by the 1961 Act and bound by the rules framed by the regulatory body, namely, the Bar Council of India. He submitted that the Bar Council is constituted with a view to keep check on the lawyers who render services to their clients in litigious as well as non-litigious matters. He submitted that no country in the world permits unregulated practise of law and, therefore, the permission granted by the RBI to the respondents No.12 to 14, under Section 29 of the 1973 Act to open a liaison office in India amounts to permitting the foreign law firms to open their branch offices in India and practise the profession of law without being enrolled as advocates under the 1961 Act. He submitted that in view of the permission granted by RBI, the foreign law firms, namely respondents No.12 to 14 have an unfair advantage over the advocates practising the profession of law in India, because, Indian advocates practising in non litigious matters are subjected to the provisions of the 1961 Act and the rules framed by the Bar Council, whereas, the foreign law firms like respondents No.12 to 14 are neither subjected to the 1961 Act nor the rules framed by the Bar Council. Accordingly, Mr.Singh submitted that the permission granted by RBI being in gross violation of the provisions contained in the 1973 Act as well as the 1961 Act, the said permission must be declared to be illegal and contrary to law.

19. Counsel for the Bar Council of India and Bar Council of Maharashtra & Goa have adopted the arguments advanced by the counsel

for the petitioner.

20. Mr.Rajinder Singh, Senior Advocate appearing on behalf of the Union of India submitted that there is no proposal, as of now, to allow foreign lawyers to practice Indian law in Indian Courts. He submitted that the Government is still in the process of consulting all the stake holders and any decision on the issue will be taken after considering the views of all the stake holders. However, Counsel for the Union of India submitted that for drafting legal documents or giving opinion on aspects of foreign or international law, one need not be on the roll of the Bar Council. He further submitted that if the contention of the petitioner is accepted then, no bureaucrat will be able to draft or given opinion. He submitted that reading various provisions of the 1961 Act particularly Section 24, 29 and 45 of the 1961 Act, it becomes clear that the 1961 Act prescribes the mode and the manner of enrolling advocates who want to practice the profession of law before Courts, Tribunals and other authorities and provide for punitive action against advocates who have violated the provisions contained in the 1961 Act and the rules framed by the Bar Council. Counsel for the Union of India further submitted that the fact that the 1961 Act contains penal provisions in respect of persons illegally practicing in Courts and other authorities, and does not provide any penal provisions for the breaches committed by persons practicing in non-litigious matters clearly shows that persons practicing in non-litigious matters are not governed by the provisions of the 1961 Act.

21. Counsel for the Union of India further submitted that as per the

rules framed by the Bar Council, an advocate on being appointed as a Law Secretary is required to intimate the Bar Council to suspend his enrollment during his tenure as Law Secretary. Similarly, a retired Supreme Court Judge is not required to be on the roll of Bar Council for drafting opinions or carrying on the chamber practice. Referring to Section 477 of the Criminal Procedure Code, Civil Code Manual 1986, Section 13 of the Family Courts Act, 1984 and Consumer Protection Regulation, 2005, Counsel for the Union of India submitted that the persons who are permitted to act as petition writers in the criminal courts or persons nominated an amicus curie need not be on the roll of the Bar Council. In these circumstances, Counsel for the Union of India submitted that a person carrying on the profession of drafting and giving opinion is not required to be enrolled as advocate under the 1961 Act and, therefore, no fault can be found with RBI in giving permission to the respondents No.12 to 14 to open up their liaison offices in India.

22. Mr.Sakhare, learned Senior Advocate appearing on behalf of RBI submitted that the permission given by RBI to the respondents No.12 to 14 was within the scope and ambit of powers vested in RBI under the 1973 Act. He submitted that Section 29(1)(a) of the 1973 Act empowers RBI to grant permission to a resident outside India to establish a branch office or a place of business in India. He submitted that RBI is not concerned with the provisions contained in the 1961 Act and in any event, the permission granted by RBI is only to establish a liaison / representative office to act as a communication channel between the overseas principal and parties in India.

23. Counsel for RBI further submitted that the respondents No.12

to 14 had stated in their application that they wish to undertake liaison activities in India and further specifically stated that they will not appear in Indian Courts and shall not practice Indian law. Since the permission granted by RBI was limited to granting permissions to overseas entities for undertaking specific activities enumerated in the permission letter and the said permission was not to be construed in any way regularizing or validating any irregularities or lapses under any other law, it cannot be said that the permission granted by RBI to respondents No.12 to 14 is illegal or contrary to law. Moreover, the permission granted was subject to the respondents No.12 to 14 submitting annual report. In fact, on perusal of the particulars furnished by the respondent No.13, it was prima facie found that the respondent No.13 has acted contrary to and beyond the scope of permission granted by RBI and accordingly a show-cause notice was issued to the respondent No.13. On receiving the reply to the show-cause notice and on being satisfied that the respondent No.13 was functioning within the ambit of the permission granted by the RBI, the show-cause notice was dropped. As the permission granted by RBI does not extend to the practise of profession of law in India, Counsel for RBI submitted that the permission granted by RBI to open liaison offices in India cannot be faulted.

24. Mr.Seervai, learned Senior Advocate appearing on behalf of one of the main contesting foreign law firm, namely the respondent No.12, submitted that the argument of the petitioner that the permission granted by RBI to the foreign law firms to establish liaison offices in India is in violation of the 1961 Act, is completely misconceived because, the 1961 Act is enacted by the Parliament in exercise of the powers conferred under entry

77 and 78 in List I to the Seventh Schedule to the Constitution, which relate to constitution and organization of the Supreme Court and the High Courts as well as the persons entitled to practice before the Supreme Court and before the High Courts. Since the source of power in enacting the 1961 Act relates to the persons entitled to practise before the Supreme Court and before the High Court, it is clear that the 1961 Act would apply to persons practising litigious matters before the Supreme Court and the High Courts and the said Act would not apply to the persons practising in non-litigious matters. He submitted that unless a legislation is enacted to regulate the persons practising in non-litigious matters by invoking entry 26 in List III to the Seventh Schedule to the Constitution which deals with legal, medical and other profession, it cannot be said that the persons practising in non-litigious matters are governed by the provisions of the 1961 Act.

25. Strong reliance was placed by Mr.Seervai on the decision of the Apex Court in the case of **O.N. Mohindroo V/s. Bar Council** reported in **AIR 1968 S.C. 888**, (see page 893) wherein it is inter alia held thus :-

“10. Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrolment, right to practise and discipline of the advocates. As provided by the Act once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practise in all courts including the Supreme Court. As aforesaid, the Act creates one common Bar, all its members being of one class, namely, advocates. Since all those who have been enrolled have a right to practise in the Supreme Court and the High Courts, the Act is a piece of legislation which deals with persons entitled to practise before the Supreme Court and the High Courts. Therefore, the Act must be held to fall within entries 77 and 78 of List I. As the power of legislation relating to those entitled to practise in the Supreme Court and the High Courts is carved out from the general power to

legislate in relation to legal and other professions in entry 26 of List III, it is an error to say, as the High Court did, that the Act is a composite legislation partly falling under entries 77 and 78 of List I and partly under entry 26 of List III.”

(emphasis supplied)

In the light of the aforesaid judgment of the Apex Court, learned counsel for respondent No.12 submitted that the question raised in the petition being squarely covered against the petitioner, the writ petition is liable to be dismissed.

26. Mr.Seervai further submitted that the 1961 Act is enacted to amend and consolidate the law relating to legal practitioners and to provide for the Constitution of Bar Councils and an All-India Bar. He submitted that the foreign law firm like the respondent No.12 had neither sought permission nor permission has been granted by RBI to the respondent No.12 to practise the profession of law as legal practitioners or advocates. Permission has been granted by RBI to open a liaison office in India which is within the domain of RBI under the 1973 Act. Therefore, in the facts of the present case, reference to the 1961 Act is wholly misconceived.

27. Relying on two decisions of the Apex Court one in the case of the **Bar Council V/s. The State of U.P.** reported in **(1973) 1 SCC 261** and another in the case of **In Re Lily Isabel Thomas** reported in **AIR 1964 SC 855**, Mr.Seervai submitted that the right to practise the profession of law under the 1961 Act is relatable only to the advocates practising the profession of law before Courts / Tribunals / any other authority and the said Act has no application to the persons practising in non-litigious matters.

Mr.Seervai submitted that if the contention of the petitioner that the 1961 Act applies both to persons practicing in non-litigious matters as well as litigious matters practised by persons before the Supreme Courts and High Courts is accepted, then it would render the Advocates Act, 1961 ultra vires the Constitution, because the 1961 Act is enacted in exercise of powers vested in the Central Government under entry 77 and 78 in List of the Seventh Schedule to the Constitution which specifically provides for enacting law relating to persons practising in the Supreme Court and the High Courts. Therefore, the construction put forth by the petitioner which renders the 1961 Act ultra vires the construction cannot be accepted.

28. Mr.Seervai further submitted that Section 29 of the 1961 Act is merely declaratory in nature and it merely provides that from the appointed day there shall be only one class of persons entitled to practise the profession of law. Section 29 does not confer the right to practise the profession of law. It is Section 33 which provides that advocates enrolled under the 1961 Act alone are entitled to practise in any Court or before any authority. Moreover, Section 49(1)(ag) and Section 49(1)(ah) of the 1961 Act, empower the Bar Council of India to make rules relating to the class or category of persons entitled to be enrolled as advocates and the conditions subject to which an advocate shall have the right to practise. Therefore, the 1961 Act which applies to persons practising in litigious matters before the Supreme Court / High Courts / Tribunals cannot be applied to persons practising in non-litigious matters.

29. In support of the above contentions, Mr.Seervai placed reliance

on various decisions and for the sake of convenience, relevant portions of the respective judgments are extracted herein below. In the case of ***Sushma Suri V/s. Govt. of National Capital Territory of Delhi & Another*** reported in ***(1999) 1 Supreme Court Cases 330***, the Apex Court inter alia held thus :-

“6. If a person on being enrolled as an advocate ceases to practise law and takes up an employment, such a person can by no stretch of imagination be termed as an advocate. However, if a person who is on the rolls of any Bar Council is engaged either by employment or otherwise of the Union or the State or any corporate body or person practises before a court as an advocate for and on behalf of such Government, corporation or authority or person, the question is whether such a person also answers the description of an advocate under the Act. That is the precise question arising for our consideration in this case.

9. The expression “members of the Bar” in the relevant Rule would only mean that particular class of persons who are actually practising in courts of law as pleaders or advocates. In a very general sense an advocate is a person who acts or pleads for another in a court and if a Public Prosecutor or a Government Counsel is on the rolls of the Bar Council and is entitled to practise under the Act, he answers the description of an advocate.

10. The test, therefore, is not whether such person is engaged on terms of salary or by payment of remuneration, but whether he is engaged to act or plead on its behalf in a court of law as an advocate. In that event the terms of engagement will not matter at all. What is of essence is as to what such law officer engaged by the Government does – whether he acts or pleads in court on behalf of his employer or otherwise. If he is not acting or pleading on behalf of his employer, then he ceases to be an advocate. If the terms of engagement are such that he does not have to act or plead, but does other kinds of work, then he becomes a mere employee of the Government or the body corporate. Therefore, the Bar Council of India has understood the expression “advocate” as one who is actually practising before courts which expression would include even those who are law officers appointed as such by the Government or body corporate.”

(emphasis supplied)

30. In the case of *V. Sudeer V/s. Bar Council of India* reported in **(1999) 3 Supreme Court Cases 176**, the Apex Court inter alia held thus :-

"25. Section 49(1)(ag) also deals with the class or category of persons entitled to be enrolled as advocates. Thus, by the said provision, the Bar Council of India in exercise of its rule-making power can add to the class of persons contemplated by Section 29 by enlarging the said class of advocates entitled to practise as full-fledged advocates. Entitlement to practise the profession of Law necessarily means full-fledged entitlement to plead and argue cases of their clients before the courts of law. There cannot be any truncated right to practise the profession of Law which is sought to be culled out by Shri P.P. Rao, learned Senior Counsel for the Bar Council of India on a conjoint reading of Sections 29 and 49(1)(ag) of the Act."

(emphasis supplied)

31. The Apex Court in the case of *Indian Council of legal Aid and Advice V/s. Bar Council of India* reported in **(1995) 1 SCC 732**, has inter alia held thus :

"3. It will be seen from the above provisions that unless a person is enrolled as an advocate by a State Bar Council, he shall have no right to practise in a court of law or before any other Tribunal or authority. Once a person fulfils the requirements of Section 24 for enrolment, he becomes entitled to be enrolled as an advocate and on such enrolment he acquires a right to practise as stated above. Having thus acquired a right to practise he incurs certain obligations in regard to his conduct as a member of the noble profession. The bar Councils are enjoined with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus, every State Bar Council and the Bar Council of India has a public duty to perform, namely, to ensure that the monopoly of practice granted under the Act is not misused or abused by a person who is enrolled as an advocate. The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its

members but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity and dignity of the profession are not jeopardized. It is generally believed that members of the legal profession have certain social obligations, e.g., to render “pro bono publico” service to the poor and the underprivileged. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behoving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.”

(emphasis supplied)

32. The Apex Court in the case of **Jamilabai V/s. Shankarlal** reported in **AIR 1975 S.C. 2202**, has inter alia held thus :-

“ There is no statutory provision decisive of this issue (whether a pleader can compromise a Suit in the interest of his client, though the vakalatnama is silent) and we have to garner the principles from various factors like the status and significance of the legal profession in society, the wider powers conferred on lawyers as distinguished from ordinary agents on account of the triune facets of the role of an advocate vis-a-vis the client, the Court and the public and its traditions and canons of professional ethics and etiquette. Above all, the paramount consideration that the Bench and the Bar form a noble and dynamic partnership geared to the great social goal of administration of justice puts the lawyer appearing in the Court in a class by himself and to compare him with an ordinary agent may be to lose sight of the lawyer as engineer of the rule of law in society.”

(bracketed portion is supplied)

33. The Apex Court in the case of **Ashwini Kumar V/s. Arabinda Bose** reported in **AIR 1952 S.C. 369**, held thus :-

“6. A brief historical survey of the functions, rights and duties of legal practitioners in this country may facilitate appreciation of the contentions of the parties. Before the Indian High Courts Act of 1861 (24 and 25 Vict. Ch. 104) was enacted, there were, in the territories subject to the

British rule in India, Supreme Courts exercising jurisdiction mainly in the Presidency Towns, and Sudder Courts exercising jurisdiction over the mufassil. Though the Supreme Courts were given, by the Charter Acts and the Letters Patent establishing them, power to enroll Advocates who could be authorized by the rules to act as well as to plead in the Supreme Courts rules were made empowering Advocates only to appear and plead and not to act, while Attorneys were enrolled and authorised to act and not to plead. In the Sudder Courts and the Courts subordinate thereto, pleaders who obtained a certificate from those Courts were allowed both the act and plead.

15. It seems reasonable, therefore, to assume that the practice of law in this country generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party; in other words, the Bar in India, generally speaking is organised as a single agency. Accordingly, when the Legislature confers upon an advocate "the right to practise" in a Court, it is legitimate to understand that expression as authorising him to appear and plead as well as to act on behalf of suitors in that Court. It is true that the word "practise" used in relation to a given profession means simply the pursuit of that profession and involves the exercise of the functions which are ordinarily exercised by the members of the profession. But it seems to be fallacious to relate that expression, as applied to an advocate, either, on the one hand, to the Court in which the advocate is enrolled or, on the other, to the Court in which he seeks to exercise the statutory right conferred on him. It must, in our opinion, be related to the general constitution of the bar in India as a single agency in dealing with the litigant public, a system which prevails all over this vast country except in two small pockets where a dual agency imported from England was maintained, owing, as we have seen, to historical reasons.

16. We are accordingly unable to accept the suggestion that because the advocates of the Supreme Court are not, under the Rules of that Court, entitled to act, the word "practise" as used by Parliament in s. 2 must be understood in the restricted sense of appearing and pleading only. Parliament was, of course, aware that the right of the advocates of the Supreme Court to practise in that Court was confined only to appearing and pleading, but the object of s. 2 was to confer upon a designated body of persons, namely, the advocates of the Supreme Court, a right to practise in other Courts, viz. the various High Courts in India, whether or not they were already enrolled in such Courts. This statutory right, which is conferred on the Supreme Court Advocates in relation to other Courts and

which they did not have before, cannot, as a matter of construction, be taken to be controlled by reference to what they are allowed or not allowed to do in the Supreme Court under the Rules of that Court. Such Rules are liable to be altered at any time in exercise of the rule-making power conferred by Art. 145 of the Constitution.”

(emphasis supplied)

34. This Court in the case of **Mulchand Gulabchand V/s. Mukund S. Bhide** reported in **AIR 1952 Bom 296**, has inter alia held thus :-

“Therefore, his right to practise is controlled by this important provision that any other law for the time being in force may restrict or take away his right. Therefore, if the Co-operative Societies Act were to provide that an advocate of the High Court of Bombay shall not practise before the arbitral tribunal set up under that Act, then the right of the advocate will be circumscribed by the provisions of that law. It should be remembered that it is not the fact that a man has passed a law examination or has acquired a law degree that entitles him to practise in Courts of law; his right to practise depends upon his being enrolled as an advocate and he is enrolled as an advocate on terms and conditions laid down in the Bar Councils Act. Therefore, as I said before, his very charter which entitles him to practise lays down conditions and limitations, and one of the conditions and limitations is that he can only practise before such tribunals as the law permits him and he may not practise before such tribunals as the law lays down as being prohibited to lawyers.”

(emphasis supplied)

In the light of the aforesaid decisions, counsel for respondent No.12 is submitted that the expression “right to practise the profession of law” is restricted to the practise in litigious matters and cannot be extended to the persons practising in non-litigious matters.

35. Mr.Seervai further submitted that prior to the 1961 Act, the Indian Bar Councils Act, 1926 was enacted with a view to consolidate and

amend the law relating to the legal practitioners entitled to practice in certain Courts in the Provinces of India. The 1961 Act was enacted by repealing the 1926 Act. Therefore, in the absence of any intention to the contrary, it must be held that the 1926 Act as well as the 1961 Act provide for the rights and obligations of the legal practitioners practising the profession of law before the Courts / Tribunals / other authorities. The submission is that when a statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute, then, ordinarily, the words in the re-enacted statute should be interpreted in the sense the said words in the repealed Act were judicially interpreted. In support of the above contention, he relied on a decision of the Apex Court in the case of **State of Madras V/s. Gannon Dunkerley & Co.** reported in **AIR 1958 S.C. 580** and a decision of the Apex Court in the case of **Bengal Immunity Co. Limited V/s. State of Bihar** reported in **AIR 1955 S.C. 661**.

36. Alternatively, Mr.Seervai submitted that even assuming that the expression 'to practice the profession of law' in Section 29 of the 1961 Act applies to persons practising in litigious matters as well as non-litigious matters, then and in that event, the liaison activities carried on by the respondent No.12 cannot be said to fall in any of the above two categories, because the activity carried by their liaison office in India was only a liaison activity and not an activity covered under the 1961 Act and, therefore, the permission granted by RBI under Section 29 of the 1973 Act to carry on the liaison activities in India cannot be faulted.

37. Lastly, Mr.Seervai submitted that the respondent No.12 has

performed the liaison activities within the frame work of the terms and conditions imposed by the RBI. The report submitted by the Officers of RBI bear testimony to the claim of respondent No.12. He submitted that the argument that the respondent No.12 ought to have applied for permission under Section 30 of the 1973 Act is without any merit because that section requires foreign nationals to take prior permission before taking up employment etc. in India wherein the foreign exchange acquired would be required to be remitted outside India. In the present case, the foreign law firms were not taking up any employment in India and they were not seeking to carry on trade or business in India which involved forwarding remittances outside India. Therefore, the respondent No.12 could not have applied for permission under Section 30 of the 1973 Act. For all the aforesaid reasons, Mr.Seervai submitted that the permission granted by RBI to open liaison offices in India under Section 29 of the 1973 Act was valid and to such a case the 1961 Act would not be applicable.

38. Counsel for respondent No.13 and 14 while adopting the arguments advanced by Mr.Seervai, submitted that the respondent No.13 and 14 have not violated any of the conditions imposed by RBI and, therefore, the activities carried on by respondent Nos.13 & 14 being within the framework of the permission granted by R.B.I., the writ petition is liable to be dismissed.

39. We have carefully considered the rival submissions.

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 world. However, even after establishing the liaison offices in India, the said foreign law firms have not enrolled themselves as advocates under the 1961 Act.

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.

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/s. 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 inextricately 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 ?

46. Before dealing with the rival contentions on the above

question, we may quote Sections 29, 30, 33 and 35 of the 1961 Act, which read thus :

“29. Advocates to be the only recognised class of persons entitled to practise law. - Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates.

(not brought into force so far)

30. Right of advocates to practise. - Subject to provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends, -

- (i) in all Courts including the Supreme Court;
- (ii) before any tribunal or person legally authorized to take evidence;
- (iii) before any other authority or person before whom such advocate by or under any law for the time being in force entitled to practise.

33. Advocates alone entitled to practise. - Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any Court or before any authority or person unless he is enrolled as an advocate under this Act.”

35. Punishment of advocates for misconduct – (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(1-A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.

(2) The disciplinary committee of a State Bar Council [***] shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after

giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:-

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice or such period as it may deem fit;

(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any Court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

Explanation- In this section, (section 37 and section 38), the expressions "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.

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 ?

48. In the statements of Objects & Reasons for enacting the 1961 Act, it is stated that the main object of the Act is to establish All India Bar Council and a common roll of advocates and Advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court. Thus, from the Statement of Objects and Reasons, it is seen that the 1961 Act is intended to apply to (one) persons practising the profession of law in any part of the country and (two) persons practising the profession of law in any Court including the Supreme Court. Thus, from the statement of objects and reasons it is evident that the 1961 Act is intended to apply not only to the persons practising before the Courts but it is also intended to apply to persons who are practising in non litigious matters outside the Court.

49. Apart from the above, Section 29 of the 1961 Act specifically provides is that from the appointed day, there shall be only one class of persons entitled to practise the profession of law, namely Advocates. It is apparent that prior to the 1961 Act there were different classes of persons entitled to practise the profession of law and from the appointed day all these class of persons practising the profession of law, would form one class, namely, advocates. Thus, section 29 of the 1961 Act clearly provides that from the appointed day only advocates are entitled to practise the profession of law whether before any Court / authority or outside the Court

by way of practise in non litigious matters.

50. Section 33 of the 1961 Act is a prohibitory section in the sense that it debars any person from appearing before any Court or authority unless he is enrolled as an advocate under the 1961 Act. The bar contained in section 33 of the 1961 Act has nothing to do with the persons entitled to be enrolled as advocates under section 29 of the 1961 Act. A person enrolled as an advocate under section 29 of the 1961 Act, may or may not be desirous of appearing before the Courts. He may be interested in practising only in non litigious matters. Therefore, the bar under section 33 from appearing in any Court (except when permitted by Court under Section 32 of the 1961 Act or any other Act) unless enrolled as an advocate does not bar a person from being enrolled as an advocate under section 29 of the 1961 Act for practising the profession of law in non litigious matters. The Apex Court in the case of Ex-Capt. Harish Uppal (supra) has held that the right to practise is the genus of which the right to appear and conduct cases in the Court may be a specie. Therefore, the fact that section 33 of the 1961 Act provides that advocates alone are entitled to practise before any Court / authority it cannot be inferred that the 1961 Act applies only to persons practising in litigious matters and would not apply to person practising in non litigious matters.

51. It was contended that the 1961 Act does not contain any penal provisions for breaches committed by a person practicing in non-litigious matter and, therefore, the 1961 Act cannot apply to persons practising in non-litigious matters. There is no merit in this contention, because, section

35 of the 1961 Act provides punishment to an advocate who is found to be guilty of professional or other misconduct. The fact that section 45 of the 1961 Act provides imprisonment for persons illegally practising in Courts and before other authorities, it cannot be said that the 1961 Act does not contain provisions to deal with the persons found guilty of misconduct while practising in non litigious matters. Once it is held that the persons entitled to practise the profession of law under the 1961 Act covers the persons practising the profession of law in litigious matters as well as non-litigious matters, then, the penal provisions contained in section 35 of the 1961 Act would apply not only to persons practising in litigious matter, but would also apply to persons practising the profession of law in non-litigious matters. The very object of the 1961 Act and the Rules framed by the Bar Council of India are to ensure that the persons practising the profession of law whether in litigious matters or in non litigious matters, maintain high standards in professional conduct and etiquette and, therefore, it cannot be said that the persons practising in non litigious matters are not governed by the 1961 Act.

52. Strong reliance was placed by the counsel for the respondent No.12 on the decision of the Apex Court in the case of O.N. Mohindroo (supra) in support of his contention that the 1961 Act applies only to persons practising the profession of law before Courts / Tribunals / other authorities. It is true that the Apex Court in the above case has held that the 1961 Act is enacted by the Parliament in exercise of its powers under entry 77 and 78 in List I of the Seventh Schedule to the Constitution. However, the fact that entry 77 and 78 in List I refers to the persons practising before the Supreme Court and the High Courts, it cannot be said that the 1961 Act is restricted to

the persons practising only before the Supreme Court and High Courts. Practising the profession of law involves a larger concept whereas, practising before the Courts is only a part of that concept. If the literal construction put forth by the respondents is accepted then, the Parliament under entry 77 & 78 in List I of the Seventh Schedule to make legislation only in respect of the advocates practising before the Supreme Court / High Courts and the Parliament cannot legislate under that entry in respect of advocates practising before the District Courts / Magistrate's Courts / other Courts / Tribunals / authorities and consequently, the 1961 Act to the extent it applies to advocates practising in Courts other than the High Courts and Supreme Court would be ultra vires the Constitution. Such a narrow construction is unwarranted because, once the Parliament invokes its power to legislate on advocates practising the profession of law, then the entire field relating to advocates would be open to the Parliament to legislate and accordingly the 1961 Act has been enacted to cover the entire field. In any event, the question as to whether the persons practising the profession of law exclusively in non-litigious matters are covered under the 1961 Act, or not was not an issue directly or indirectly considered by the Apex Court in the case of O.N. Mohindroo (supra). Therefore, the decision of the Apex Court in the above case does not support the case of the contesting respondents.

53. Similarly, in all other cases relied upon by the counsel for the contesting respondents, the question as to whether a person, practising in non-litigious matters was required to be enrolled as advocates under the 1961 Act was not raised directly nor indirectly in all these cases. Therefore,

all those decisions relied upon by the counsel for the respondents are distinguishable on facts.

54. It is not the case of the respondents that in India individuals / law firms / companies are practising the profession of law in non-litigious matters without being enrolled as advocates under the 1961 Act. It is not even the case of the respondents that in the countries in which their head office as well as their branch offices are situated, persons are allowed to practice the profession of law in non-litigious matters without being subjected to the control of any authority. In these circumstances, when the Parliament has enacted the 1961 Act to regulate the persons practising the profession of law, it would not be correct to hold that the 1961 Act is restricted to the persons practising in litigious matters and that the said Act does not apply to persons practising in non litigious matters. There is no reason to hold that in India the practise in non litigious matters is unregulated.

55. It was contended by the counsel for Union of India that if it is held that the 1961 Act applies to persons practising in non-litigious matters, then no bureaucrat would be able to draft or give any opinion in non-litigious matters without being enrolled as an advocate. There is no merit in the above argument, because, there is a distinction between a bureaucrat drafting or giving opinion, during the course of his employment and a law firm or an advocate drafting or giving opinion to the clients on professional basis. Moreover, a bureaucrat drafting documents or giving opinion is answerable to his superiors, whereas, a law firm or an individual engaged in

non litigious matters, that is, drafting documents / giving opinion or rendering any other legal assistance are answerable to none. To avoid such anomaly, the 1961 Act has been enacted so as to cover all persons practising the profession of law be it in litigious matters or in non-litigious matters within the purview of the 1961 Act.

56. The argument that the 1961 Act and the Bar Councils constituted thereunder have limited role to play has been time and again negated by the Apex Court. Recently, the Apex Court in the case of *Bar Council of India V/s. Board of Management, Dayanand College of Law* reported in (2007) 2 SCC 202 held thus:-

" It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of the universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pendant view of the situation, the State Government and the recommending authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with. "

Thus, when efforts are being made to see that the legal profession stand tall in this fast changing world, it would be improper to hold that the 1961 Act and the Bar Council constituted thereunder have limited role to play in the field relating to practising the profession of law.

57. It is not in dispute that once a person is enrolled as an advocate, he is entitled to practise the profession of law in litigious matters

as well as non-litigious matters. If the argument of the respondents that the 1961 Act is restricted to the persons practising the profession of law in litigious matters is accepted, then an advocate found guilty of misconduct in performing his duties while practising in non-litigious matters cannot be punished under the 1961 Act. Similarly, where an advocate who is debarred for professional misconduct can merrily carry on the practise in non-litigious matters on the ground that the 1961 Act is not applicable to the persons practising the profession of law in non litigious matters. Such an argument which defeats the object of the 1961 Act cannot be accepted.

58. It may be noted that Rule 6(1) in Chapter III Part VI of the Bar Council of India Rules framed under section 49(1) (ah) of the 1961 Act provides that an advocate whose name has been removed by an order of the Supreme Court or a High Court or the Bar Council as the case may be, shall not be entitled to practise the profession of law either before the Court and authorities mentioned under section 30 of the 1961 Act, or in chambers, or otherwise. The above rule clearly shows that the chamber practise, namely, practise in non litigious matters is also within the purview of the 1961 Act.

59. Counsel for the Union of India had argued that the Central Government is actively considering the issue relating to the foreign law firms practising the profession of law in India. Since the said issue is pending before the Central Government for more than 15 years, we direct the Central Government to take appropriate decision in the matter as expeditiously as possible. Till then, the 1961 Act as enacted would prevail, that is, the persons practising the profession of law whether in litigious matters or non

litigious matters would be governed by the 1961 Act and the Bar Councils framed thereunder, apart from the powers of the Court to take appropriate action against advocates who are found guilty of professional misconduct.

60. For all the aforesaid reasons, we hold that in the facts of the present case, the RBI was not justified in granting permission to the foreign law firms to open liaison offices in India under Section 29 of the 1973 Act. We further hold that the expressions 'to practise the profession of law' in section 29 of the 1961 Act is wide enough to cover the persons practising in litigious matters as well as persons practising in non litigious matters and, therefore, to practise in non litigious matters in India, the respondent Nos.12 to 14 were bound to follow the provisions contained in the 1961 Act. The petition is disposed of accordingly with no order as to costs.

Chief Justice

J.P. Devadhar, J.

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