

LAWSUIT ALLEGES
UNAUTHORIZED PRACTICE OF LAW IN INDIA BY
WESTERN LAW FIRMS AND AN LPO

August 3, 2010

On March 18, 2010, a Tamil Nadu lawyer filed a lawsuit at the High Court of Madras in Chennai (the Indian analogue to a U.S. state supreme court) alleging that 31 of the most well known western law firms and a separate LPO company are illegally practicing law throughout India. [Balaji v. Government of India, et al., Writ Pet. No. 5614 \(H.C. Madras, affidavit filed Mar. 18, 2010\).](#) Balaji's petition seeks an order pursuant to the High Court's original jurisdiction requiring various agencies of the government of India, the Reserve Bank of India (RBI), and the Bar Councils of India and Tamil Nadu to stop the named (and all other foreign) firms' practices immediately under the Advocates Act of 1961 and, as an interim measure, an injunction prohibiting the firms from practicing law in India while the case is pending. In light of the request for interim relief, the Madras High Court ordered on July 7 that notice of the lawsuit be served on the private firms and then gave the government additional time to respond. It also allowed the Tamil Nadu Women Lawyers Association to intervene as petitioner. Over the last few weeks, India's law minister has stated that the national government will seek to transfer the case to the Supreme Court of India, suggesting that the governmental and bar respondents could more easily coordinate their defenses and their approach to the underlying issues. (The chair of the Bar Council of India is also the country's solicitor general.)

Balaji's petition avers that he belongs to the "Association of Indian Lawyers" which has already made detailed presentations to the government, RBI, and the Bar Councils about foreign firms' alleged unauthorized practice of Indian law, all to no avail. Citing the websites of the respondent firms, including the likes of Clifford Chance, Covington & Burling, Clyde and Co, and Clayton Utz,¹ the petition alleges they are practicing law in India by conducting arbitrations in India, working on mergers, acquisitions, and commercial business there, negotiating and drafting documents for and settling such transactions, and conducting seminars for Indian clients. This conduct allegedly violates the Advocates Act because the firms' lawyers are not enrolled in a Bar Council (akin to U.S. state-level, regulatory bar

¹ The named law firms' offices are (in the order listed in the petition) Rouse (Chennai); Ashurst (New Delhi); Kelley Drye & Warren (Mumbai); Kennedys (New Delhi); DeHeng Law Office (New Delhi); White & Case (Mumbai); Integreon Managed Solutions (Gurgaon); Linklaters (London); Freshfields Bruckhaus Deringer (London); Allen & Overy (London); Clifford Chance (London); Wilmer Hale (New York); Shearman & Sterling (Washington, DC); Herbert Smith (London); Slaughter and May (London); Hogan & Hartson (Washington, DC); Davis Polk & Wardwell (New York); Eversheds (London); Akin Gump Strauss Hauer & Feld (New York); Paul Weiss Rifkin Wharton & Garrison (New York); Norton Rose (London); Pillsbury Winthrop Shaw Pittman (New York); Wilson Sonsini Goodrich & Rosati (Palo Alto); Arnold & Porter (Washington, DC); Covington & Burling (New York); Perkins Coie (Los Angeles); Loyens & Loeff (Paris); Freehills (Sydney); Clayton Utz (Sydney); Mayer Brown (Chicago); Clyde & Co. (London); and Bird and Bird (London).

organizations), the firms have violated RBI rules and regulations that govern how firms not organized under Indian law can set up offices in India, and they have illegally transferred fees outside of India and otherwise violated Indian tax laws, immigration rules, and business regulations.

Balaji's passionate, 26-paragraph petition-affidavit notwithstanding, it is unclear how his claims bear any relation to LPOs or their work. Balaji alleges generally that "some of the international law firms ha[ve] their office in India and practice[] Indian laws by calling themselves LPO" and are "taking protection under the guise of LPO" in order to operate as "a law firm in India without obtaining any prior permission" from the necessary authorities. Only one LPO, Integreon (at its Gurgaon, India office), is named as a respondent, but the petition makes no specific allegation against that company. Nor does it specify which of the 31 named law firms has practiced law in India, let alone how any of them has operated through the guise of "calling [itself an] LPO." Indeed, beyond its general allegations, the petition does not provide a single allegation about how any law firm has sought "protection" as an LPO or even how any of the named firms has conducted business or otherwise held itself out as an LPO.

Instead, the petition is only specific about its central claim, the alleged lack of reciprocity between rules for admitting foreign nationals to practice law in India compared to rules of admission of foreigners in western countries with internationally recognized law firms and legal practices. The petition recites a lengthy list of fees, tests, permits, and applications that Indian nationals must negotiate to practice law in the U.K. and alleges that similar requirements do not restrict U.K. nationals seeking to practice in India. As a result, Balaji alleges that "the procedure for Indian Lawyers to practice in UK is far more cumbersome as compared to the easy accessibility of the Indian legal market to the law firms of UK." Although he makes no specific allegations about the U.S., French, or Australian legal systems, Balaji "submits that there is no reciprocity between India and [the] other countries" in which the named law firms are based. And it's not just the rules for admission that Balaji alleges are unfair; the end results are too: "If foreign law firms are allowed to exploit 5% of [the] Indian legal market in reciprocity the Indian lawyers should be allowed to exploit 5% of the respective countries legal market."

There is no obvious connection between the recent rise of Indian LPO work and Balaji's central complaint that foreign firms could unfairly take over Indian legal practice. LPOs in India, so far as publicly reported, do not provide services to Indian clients or render advice about Indian law. Nor does Balaji's petition allege otherwise, at least not with any specificity. Moreover, members of LPOs' legal staff are usually Indian lawyers enrolled in their respective state's bar council and subject to the Advocate's Act, their state bar council's disciplinary and ethical rules, and the jurisdiction of their state's High Court. And as noted above, beyond its general allegations, the petition does not allege any specific connection between LPOs and the increasing insistence of foreign firms to enter the practice of law in India. Nonetheless, it would be too hasty by half to declare Balaji's lawsuit defeated on that basis alone, especially in light of other, recent Indian legal rulings.

Balaji's petition repeatedly makes the point that the practice of law in India is a profession and "not a trade or business." The foreign firms, according to Balaji, are treating the practice of law in India "as a business venture, a trade and a money spinner, rather than a noble profession which is intended to serve the society and the social cause;" the foreign firms are treating law practice as "nothing short of a trade or business far different from the noble profession" it remains amongst Indian lawyers. Indeed, the distinction between business and trade and the laws regulating them, on the one hand, and the practice of a profession regulated by ethical duties to clients and society at large, on the other, was a primary basis for the recent ruling in *Lawyers Collective v. Bar Council of India, et al.*, Writ Pet. No. 1526 of 1995 (H.C. Bombay, Dec. 16, 2009) which went against the interests of Ashurst, Chadbourne & Parke, and White & Case to set up Indian offices (two of which are also named in *Balaji*). The High Court used that distinction to uphold a 1995 interim order, ruling that RBI should not have licensed those professional firms to set up offices to conduct business under nationwide rules. More recently and much to the same practical effect against the ease of foreign law firms entering Indian legal practice, Linklaters lost a case before India's Income Tax Appellate Tribunal. The ITAT ruled under the Finance Act of 2010 that income "related to India" (even without a nexus to Indian territory) is subject to income tax if the firm had personnel in India for 90 days or more (pursuant to a double tax agreement between the UK and India). [Linklaters LLP v. Income Tax Officer, International Taxation Ward 1\(1\)\(2\), ITA Nos. 4896/Mum/03 and 5085/Mum/03 \(ITAT Mumbai Bench July 16, 2010\)](#). As it should be, therefore, upholding the legal rights and economic interests of the parties to *Balaji* and their counterparts will require a more robust consideration and balancing of currently applicable rules and policies as well as arguments in favor of change.