

Can chartered accountants/ company secretaries give opinions, draft legal documents?

Analysis of Bombay High Court ruling in Lawyers Collective vs Bar Council of India and others, ruling dated 16th Dec 2009

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The Bombay High court delivered an interesting ruling that may, literally speaking, have far reaching consequences for chartered accountants, company secretaries or others who are not “advocates” and yet give opinions on interpretation of any law, or draft legal documents, and so on. The ruling is on the point whether the phrase “practice of law” or “profession of law” as used in the Advocates Act includes areas of non-litigious practice such as drafting, giving of opinions, etc. The Bombay High Court answered this question in the affirmative.

The litigation in this case may not have been intended against chartered accountants or company secretaries, but may really affect them. The litigation was essentially directed against foreign law firms that were permitted by the RBI several years ago to open liaison offices in India, which were engaged in non-litigious legal work in India. Question was, whether such practice was possible without being an “advocate” registered with the Bar Council.

The Bombay High court considered rulings from overseas. It is clear that in the USA, people are quite often surprised by the fact that in India, someone other than a lawyer may give a legal opinion or draft legal documents. However, this is a consistent practice in India. Opinion on tax matters and corporate laws is quite commonly given by chartered accountants and company law professionals who are not “advocates”. However, going by the Bombay High Court ruling, both litigation work as also drafting/opinion work amounts to “profession of law” and therefore, only advocates are permitted to carry out the same, even if it be pertaining to tax laws or corporate laws.

The judgment, thus, has far reaching consequences. In fact, the implications of the decision on fellow professionals such as chartered accountants and company secretaries were never pointed out before the court. The implications pertaining to drafting of documents or giving of an opinion by bureaucrats were, but the court rubbished that ground, since the bureaucrat in question is giving such opinions or drafting documents in course of employment.

Notably, there is a massive difference between practice of law in the USA and in India. In India, we have, over the years, consciously promoted several quasi-judicial bodies that are not “courts” but render justice in several matters. Chartered accountants and company secretaries are allowed to practice even litigious matters before these forums. Hence, there is no comparability between the US position and that in India, where even litigation in certain specialized branches of law can be carried out by persons who are not “advocates”. If the meaning of the phrase “profession of law” is ambitiously interpreted as implied by the Bombay High court ruling, then the permission granted by several

subordinate laws to chartered accountants to appear before the Tax Tribunals and company secretaries to appear before the Company Law Board would contradict the provisions of the Advocates Act. Or, if it is admitted that it is perfectly legal in India for a chartered accountant to appear before the Tax Tribunal and a company secretary to appear before the CLB, there is no reason why such professionals cannot give opinions on matters on which they are entitled to plead. There is even no reason why a proceeding before a Tax Tribunal will be limited to the interpretation of the Income Tax Act. It is well known that several tax rulings are based on interpretation of several laws, even areas such as Hindu law. Many famous rulings of the Supreme Court on family law have come due to tax litigation. Likewise, several matters before CLB may involve complicated questions of stamp duty, etc.

Given the fact that law in India recognizes several professionals who are entitled to plead, the practice relating to opinions and drafting cannot be limited to “advocates”. In fact, the US rulings that the Bombay High court has cited state that the intent behind limiting practice of law only to recognized professions is that unqualified and irresponsible people do not mislead public while rendering non-litigious services. That is not the case with chartered accountants and company secretaries, which are as much regulated professions as advocates.

Hence, the effect of the Bombay High Court must stay limited only to the matter on which it opined in the instant case – liaison offices of foreign law firms.