

IN THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

*In the matter of an application in terms of Article
126 read with Article 17 of the Constitution of
the Democratic Socialist Republic of Sri Lanka.*

SC (FR) 13/2019

Wijesundara Mudiyanseelage Naveen Nayantha
Bandara Wijesundara,
No. 296/19C,
Shanthi Mawatha,
High Level Road,
Colombo 06.

PETITIONER

-Vs-

1. D. N. R. Sirirwardena,
Registrar General of Companies,
The Department of the Registrar of Companies
Sri Lanka,
No. 400,
D. R. Wijewardena Mawatha,
Colombo 10.

- 1(a). Sanjeewa Dissanayake,
Registrar General of Companies,
The Department of the Registrar of Companies
Sri Lanka,

No. 400,
D. R. Wijewardena Mawatha,
Colombo 10.

2. Baqian Law Group Lanka (Pvt) Ltd,
No. 11,
Station Road,
Bambalapitiya,
Colombo 04.

3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

4. Kalinga N. Indatissa,
President's Counsel,
The President,
The Bar Association of Sri Lanka
No. 153,
Mihindu Mawatha,
Colombo 12.

And also, of

No. 20,
1st Lane,
Epitamulla Road,
Pitakotte.

4(a). Saliya K.M. Pieris, PC,
The President,

The Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.

And also of

No. 79/3,
Kuruppu Road,
Colombo 08.

5. W. J. Shavindra Fernando,
President's Counsel,
Deputy President
Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.
And also, of
No. 4/3,
Sri Sumangala Mawatha,
Ratmalana.

- 5(a). Anura B. Meddegoda, PC,
Deputy President,
Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.
And also of
No.195/21,
Royal Court,

Koswatta Road,
Nawala.

6. Kaushalya Nawaratne,
Attorney-at-Law,
Secretary,
Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.
And also, of
No. 8B,
1st Lane,
Pagoda Road,
Nugegoda.

- 6(a). Rajeev Amarasuriya,
Attorney-at-Law,
Secretary,
Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.
And also of
No.8/2,
Coniston Place,
Colombo 07.

7. A. W. Nalin Chandika De Silva,

Attorney-at-Law,
Treasurer,
Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.

And also, of

No. 321/ 15a,
Rankethyaya Road,
Makola South,
Makola.

- 7(a). T. Rajindh Perera,
Attorney-at-Law,
Treasurer,
Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.
And also of
No.457/14A,
Nawala Road,
Rajagiriya

8. V. De Livera Tennekoon,
Attorney-at-Law,
Assistant Secretary,
Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,

Colombo 12.

And also, of

No. 74/5,

Jaya Road,

Udahamulla,

Nugegoda.

8(a). T.M.S. Pasindu Silva,
Attorney-at-Law,
Assistant Secretary,
Bar Association of Sri Lanka,
No. 153,
Mihindu Mawatha,
Colombo 12.

And also of

No.6/1,

Watarappola Road,

Mount Lavinia.

ADDED RESPONDENTS

Before : VIJITH K. MALALGODA PC J

L. T. B. DEHIDENIYA J

P. PADMAN SURASENA J

Counsel : Nayantha Wijesundara appears in person for the Petitioner.

Dr. Sunil Abeyratne with Mihiri Kudakolowa and Buddhika Alagiyawanna for the 2nd Respondent.

Chanaka de Silva PC with Dilrukshi Paul, Sachintha Kahandage,
Sewwandi Karalliadde on the instructions of NW Associates for the
4th - 8th Added Respondents.

Sanjay Rajaratnam PC Acting SG with Sureka Ahmed SC Nayomi
Kahawita SC and Yuresha de Silva SSC for the 1st and 3rd
Respondents.

Argued on : 06-02-2020, 08-11-2021 and 02-12-2021

Decided on : 18-10-2022

P Padman Surasena J

The Petitioner is an Attorney-at-Law who seeks to challenge in this application, *inter alia*, the executive and administrative action/ decision of the 1st Respondent (Registrar General of Companies) to incorporate the 2nd Respondent as a limited liability company by the name of Baqian Law Group Lanka (Pvt) Ltd. for an unlawful purpose and his failure to investigate the said Baqian Law Group Lanka (Pvt) Ltd. in terms of Section 173(1)(b) (i) and / or (ii) of the Companies Act No. 07 of 2007.

The 2nd Respondent, Baqian Law Group Lanka (Pvt) Ltd. (hereinafter sometimes referred to as Baqian Law Group) has been incorporated on 19th November 2018 as a limited liability company having its name as 'Baqian Law Group Lanka (Pvt) Ltd.' It bears company registration No. PV00206486. The Petitioner has produced a copy of the application submitted by Baqian Law Group for its incorporation, marked **P 2**. The 1st Respondent has admitted the same.¹

The Primary Objective of Baqian Law Group stated in its Articles of Association is as follows:

¹ Vide Paragraph 7 of the affidavit dated 18-03-2019 filed by the 1st Respondent.

"To carry on the business of providing investment advisory services and consultations. The company will not engage in retail trade in Sri Lanka."

The Petitioner has produced a copy of the said Articles of Association marked **P 3**.

It is the position of the Petitioner that Baqian Law Group would provide, *inter alia*, legal professional services in Sri Lanka and it has stated so in the documents produced marked **P 4** and **P 5** which are copies of online editions of newspaper articles.

It is in those circumstances that the Petitioner complains that the action of the 1st Respondent in incorporating Baqian Law Group and his subsequent failure to act in terms of section 173(1)(b) (i) and/or (ii) of the Companies Act No. 07 of 2007 have infringed the Petitioner's fundamental rights guaranteed under Articles 12(1), 12(2) and 14(1)(g) of the Constitution.

This Court on 31st January 2019, having heard the submissions of the Petitioner, the learned counsel for the Baqian Law Group and the learned Senior Additional Solicitor General who appeared for the 1st and 3rd Respondents, has granted:

- i. Leave to Proceed in respect of the alleged violations of Articles 12(1) and 14(g) of the Constitution, and;
- ii. an interim order restraining the Baqian Law Group from engaging in any legal professional work within the Democratic Socialist Republic of Sri Lanka until the Court finally determines this matter.

Thereafter, then office bearers holding the posts of President, Deputy President, Secretary, Treasurer and Assistant Secretary of the Bar Association of Sri Lanka (hereinafter referred to as the BASL) filed the motion dated 10th September 2019 along with the petition and the affidavits seeking permission for intervention into this application as parties. Court having considered the said application, by its order dated 19th September 2019, had permitted the then office bearers holding the posts of President, Deputy President, Secretary, Treasurer and Assistant Secretary of BASL to intervene in this

application. They were added to the caption respectively as 4th, 5th, 6th, 7th and 8th Respondents.

Court commenced the argument of this case on 06th February 2020. As the Petitioner did not conclude his submissions on that day, Court fixed the case to be resumed, for 19th March 2020. However, with the outbreak of Covid 19 pandemic in the country, resumption of the argument of the case did not happen on the scheduled date.

Thereafter, it was on 08th November 2021 that the Court could resume the argument and the 1st Respondent, the Registrar of Companies and the office bearers of the BASL had changed by that time.

Accordingly, the Petitioner by motion dated 23rd November 2021 pleaded for the 1st Respondent to be substituted by 1(a) Respondent which court permitted. Further the Added Respondents by motion dated 30th November 2021 applied for the persons who had succeeded as office bearers to the posts of President, Deputy President, Secretary, Treasurer and Assistant Secretary of the BASL to be added to the caption. Consequently the court had permitted the substitution of the persons who succeeded to the posts held by their predecessors. Thus, those who had become the President, Deputy President, Secretary, Treasurer and Assistant Secretary of the BASL were added to the caption as 4(a), 5(a), 6(a),7(a) and 8(a) respectively.

In essence, the arguments advanced in this case by the Petitioner as well as the BASL can be summarized as follows.

- 1) The main objective of Baqian Law Group which the 1st Respondent has incorporated under the Companies Act No. 07 of 2007 as a limited liability company, is to provide legal professional services in Sri Lanka.
- 2) According to the law in Sri Lanka it is only a natural person who should be an Attorney-at-Law who can provide the legal professional services in Sri Lanka.
- 3) In the above circumstances, the 1st Respondent has acted in violation of the law of the country when he incorporated Baqian Law Group as a limited liability company under the Companies Act No. 07 of 2007.

- 4) The 1st Respondent has also acted in violation of the law of the country by failing to act in terms of section 173(1)(b) (i) and/or (ii) of the Companies Act No. 07 of 2007.
- 5) The Petitioner is therefore denied the equal protection of law guaranteed by Article 12(1) and 14(g) of the Constitution.

Let me commence the discourse relevant to the final decision of this case, with the argument No. 02 above.

According to Article 4 (c) of the Constitution the Sovereignty of the People includes the judicial power of the People which shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognized, by law.

Article 105 (1) of the Constitution states that subject to the provisions of the Constitution, the institutions for the administration of justice which protect, vindicate and enforce the rights of the People shall be the Supreme Court, the Court of Appeal, the High Court and such other Courts of First Instance, tribunals or such institutions as Parliament may from time to time ordain and establish.

Article 105 (2) of the Constitution states that all courts, tribunals and institutions created and established by existing written law for the administration of justice and for the adjudication and settlement of industrial and other disputes, other than the Supreme Court, shall be deemed to be courts, tribunals and institutions created and established by Parliament and that the Parliament may replace or abolish, or amend the powers, duties, jurisdiction and procedure of, such courts, tribunals and institutions.

The first piece of legislation passed by the Parliament soon after the promulgation of the 1978 Constitution was the Judicature Act No. 02 of 1978. As the administration of justice in any civilized society cannot be effectively implemented without lawyers, the legislature in its wisdom, through the Judicature Act, established the legal profession. Thus, there is no dispute that the legal profession is a *sine qua non* for the due administration of justice in this country and for that matter in any civilized society. The said profession is essential for the maintenance of the Rule of Law and maintenance of law and order and its due

existence is of paramount importance to the organized functioning of the society which is primarily the basis for the smooth functioning of the country as a whole. Therefore, the community must always have competent lawyers, for it is then only that the citizens can assert and vindicate their rights created and guaranteed by law and claim that the due administration of justice and the Rule of Law prevails in the country.

The above requirement for the well-being of the people has been put in place by Parliament through section 40 (1) of the Judicature Act which provides that '*the Supreme Court may in accordance with rules for the time being in force admit and enroll as attorneys-at-law, persons of good repute and of competent knowledge and ability*'. That was an important and necessary step taken by Parliament to facilitate the administration of justice by all courts, tribunals and institutions created and established by existing written law referred to in Article 105 of the Constitution. Indeed, section 41 of the Judicature Act which has clearly set out the right of representation, has further shed light on the above mechanism established for implementing the administration of justice in the country. It is as follows;

Section 41 of the Judicature Act (Right of Representation)

- “ (1) *Every attorney-at-law shall be entitled to assist and advise clients and to appear, plead or act in every court or other institution established by law for the administration of justice and every person who is a party to or has or claims to have the right to be heard in any proceeding in any such court or other such institution shall be entitled to be represented by an attorney-at-law.*
- (2) *Every person who is a party to any proceeding before any person or tribunal exercising quasi-judicial powers and every person who has or claims to have the right to be heard before any such person or tribunal shall unless otherwise expressly provided by law be entitled to be represented by an attorney-at-law.*”

As in any other profession, the legislature in its wisdom, through section 42 of the Judicature Act has also put in place, a mechanism of regulating the legal profession and

vested the powers therefore in the hands of the Supreme Court. It would be relevant at this stage to reproduce that section.

Section 42 of the Judicature Act (Refusal to admit, suspension and removal of attorney-at-law)

“ (1) The Supreme Court shall have the power to refuse to admit and enroll any person applying to be so admitted and enrolled as an attorney-at-law and shall if required to do so by the applicant, assign and declare in open court the reasons for such refusal.

(2) Every person admitted and enrolled as an attorney-at-law who shall be guilty of any deceit, malpractice, crime or offence may be suspended from practice or removed from office by any three Judges of the Supreme Court sitting together.

(3) Before any such attorney-at-law shall be suspended or removed as hereinbefore provided a notice containing a copy of the charge or charges against him and calling upon him to show cause within a reasonable time why he should not be suspended or removed, as the case may be, shall be personally served on him. If, however, personal service cannot be effected, the Supreme Court shall order such substituted service as it may deem fit:

Provided however that every such attorney-at-law may be suspended by any Judge of the Supreme Court on such cause as aforesaid pending the final decision of the Supreme Court.

(4) It shall be the duty of the presiding officer of any court or other tribunal administering justice before which any attorney-at-law is found guilty of any crime or offence which may be prescribed to forthwith report such fact to the Supreme Court which may if it thinks fit suspend such attorney-at-law from practice pending the final determination of any appeal from such finding of guilty or a proceeding under subsection (3) whichever is later.”

It is pertinent at this stage to observe that section 43 of the Judicature Act has specifically recognized the importance and necessity of the role played by the Bar Association of Sri

Lanka in maintaining the professional discipline of its members. Section 43 (1) which is reproduced below would be self-explanatory in that regard.

"Where the Chief Justice or any Judge of the Supreme Court considers it expedient or necessary for the purpose of enabling the Court to determine whether or not proceedings should be taken for the suspension from practice or the removal from office of any attorney-at-law, the Chief Justice or any other Judge of the Supreme Court may by order direct that a preliminary inquiry into any alleged misconduct of such attorney-at-law shall be held by a disciplinary committee of the Bar Association of Sri Lanka constituted in accordance with the succeeding provisions of this Act."

Very existence of the above provision is sufficient to explain why this Court had rightly permitted the BASL to intervene into this case as Interventient Petitioners.

Article 136 (1) (g) of the Constitution is yet another further step taken by the legislature in the Constitution itself to charge the Supreme Court with the power to make rules in respect of the admission, enrolment, suspension and removal of Attorneys-at-Law. The said article is as follows.

"(1)Subject to the provisions of the Constitution and of any law the Chief Justice with any three judges of the Supreme Court nominated by him, may, from time to time, make rules regulating generally the practice and procedure of the Court including –

...

(g)the admission, enrolment, suspension and removal of attorneys-at-law and the rules of conduct and etiquette for such attorneys-at-law"

The Supreme Court under the powers vested in it by virtue of the above article has formulated the Supreme Court Rules 1978 which was published in the Gazette Extraordinary No. 9/10 dated 8th November 1978. Reproduction of Rules 67, 68, 69 & 70 thereof would be relevant for the purposes of this case. They are as follows:

Rules 67, 68, 69 & 70 of Supreme Court Rules 1978 published in the Gazette Extraordinary No. 9/10 dated 08th November 1978.

- “
67. *Every person who intends to apply for admission as an Attorney-at-law shall, not less than six weeks before he shall so apply, give notice of such intention to the Registrar of the Supreme Court and to the Registrar of the Council of Legal Education or of such other governing body as may at the time be established for the purpose, of supervising and controlling the legal education of students desirous to qualify themselves as Attorneys-at-law and shall cause his name and place of abode to be posted up at the Registry of the Supreme Court and shall also cause notice of his intended application to be published once at least in the Gazette of the Republic of Sri Lanka and in any Sinhala, Tamil or English daily newspaper published in Colombo.*
68. *Every application shall be in the form of a petition to the Supreme Court to which shall be annexed-*
- a) *the certificates issued to him by the Ceylon Law College or by under the authority of such other governing body as aforesaid in proof of his having passed the various examinations prescribed for the admission of Advocates or Proctors or Attorneys-at-law or of his having been exempted from the whole or any part of any such examination by reason of his having passed an equivalent or higher examination in law of a recognized University or other educational institution;*
 - b) *an affidavit that the applicant is the identical person mentioned in such certificates and that he has attained the age of twenty-one years;*
 - c) *a certificate from the Attorney-at-law whose chambers he has attended that he duly attended his chambers and that he practically understands the details of the practice of an Attorney-at-law;*

d) a certificate from the Principal of the Ceylon Law College or of such other governing body, as afore-said that he has successfully completed any practical training course as may be prescribed: provided that in the case of a person who was registered as a student before January 1, 1974, the certificates given under the Rules of the Council in force at that time shall be accepted for the purpose of this Rule; and

e) certificate from two or more Attorneys-at-law of at least seven years' standing that the applicant is a person of good repute and that there is no impediment or objection to his enrolment as an Attorney-at-law.

69. The Supreme Court shall thereupon direct the Registrar to inquire and report whether the applicant is of good repute and whether there exists any impediment or objection to his enrolment as an Attorney-at-law, and upon such report the Supreme Court shall either direct the applicant to be sworn or affirmed and admitted and enrolled or make such other order as it may deem proper.

70. No person who has not been duly admitted and enrolled as an Attorney-at-law or who has been suspended from practice or removed from office after having been so admitted and enrolled shall be allowed to assist and advise clients or to appear, plead or act for or on behalf of clients in any Court or other institution established by law for the administration of Justice."

All of the above provisions of law are on the primary basis that only an individual as opposed to a corporate personality who can be duly admitted and enrolled as an Attorney-at-Law. Thus, it is beyond any doubt that in this country, only a natural person can provide the professional services expected from an Attorney-at-Law and it is not possible for a company to provide the professional services of an Attorney-at-Law.

Moreover, in the process of the hearing, the submission of the learned counsel for all parties revealed that all the parties have agreed to record the following admissions.²

- “
- 1) *Only natural persons are permitted to engage in the practice of law in the Democratic Social Republic of Sri Lanka.*
 - 2) *The 2nd Respondent shall not engage in any activity constituting the practice of law as contemplated in rule 70 of the Supreme Court Rules 1978 to wit "to assist and advise clients or to plead or act for on behalf of clients in any court or other institution established by law for the administration of justice."*
 - 3) *The 2nd Respondent admits the documents produced marked **P 4** and **P 5** attached to the Petition dated 16/01/2019. "*

The 2nd Respondent has admitted that the "Baqian Law Group Lanka (Pvt) Ltd." has been incorporated as a company under Companies Act of Sri Lanka.³ Further, the 1st Respondent too has confirmed it.⁴

It follows from the above conclusion that Baqian Law Group, which is registered as a company, cannot lawfully provide the professional services of an Attorney-at-Law in Sri Lanka under its governing laws . This is quite obvious as the Supreme Court admits and enrolls only natural persons as Attorneys-at-Law for it is only then that it can exercise disciplinary control over such Attorneys-at-Law in terms of the aforementioned provisions of the Judicature Act.

According to the 2nd Respondent on the authorization of the Chairman of Baqian Law Group Zhao Yao, a lawyer attached to Baqian Law Group Zhejiang Yunnan has submitted to this Court the affidavit dated 27th March 2019. The said letter of authorization has been produced marked **X**.

The position of Baqian Law Group is that it will not carry out the functions of Attorneys-at-Law of this country who can represent and appear on behalf of clients in litigation in

² Vide journal entry dated 02-12-2021 in the docket.

³ Vide Paragraph 12 of the statement of objections dated 27-03-2019 filed by the 2nd Respondent.

⁴ Vide Paragraph 7 of the affidavit dated 18-03-2019 filed by the 1st Respondent.

any Court or other institution established by law for the administration of justice. However, Baqian Law Group has taken up the position that *"there is no restriction in carrying out to assist or to advice or to appear, plead for interested parties who are involved in Alternate Dispute Resolutions such as Arbitration under the Arbitration Act No. 11 of 1995, Mediation and Negotiation and Intellectual Property Act 2003."*⁵

Thus, it is the stated position of Baqian Law Group in the instant proceedings that it was incorporated as a company under the Companies Act of Sri Lanka with the primary objective to carry on the business of providing investment advisory services and consultations without engaging in retail trade in Sri Lanka and activities that are identified as restricted areas of business. Baqian Law Group has specifically denied that it has any intention or made any attempt to engage or enter into legal practice of Attorneys-at-Law of the Supreme Court of Sri Lanka who are involved in legal profession of the Republic to assist and advise clients or to appear, plead or act for or on behalf of clients in any Court or other institution established by law for the administration of justice.⁶ Further, the purpose of its incorporation according to paragraph 10 of the affidavit of Zhejiang Yunnan, is to provide investment advisory services and consultation for Baqian Law Group's Chinese investor clients in Sri Lanka.⁷ Baqian Law Group has stated that this was necessary due to the existence of a language barrier which prevent them from understanding the differences of legal systems between China and Sri Lanka. It has not specified the exact area of the business activities it would engage in, within Sri Lanka but has been content only to have stated the above as its objective and the reason therefore as the failure on the part of the Chinese investors to understand the differences of legal systems between China and Sri Lanka. According to Baqian Law Group, if it does not get opportunity to assist its clients in Sri Lanka through its secretarial services mainly providing investment advice, there will be a serious threats caused to some Chinese investors in Sri Lanka and also to the Sri Lankan economy.⁸

⁵ Vide paragraph 13 of the affidavit of Zhejiang Yunnan.

⁶ Vide paragraph 14 of the affidavit of Zhejiang Yunnan.

⁷ Vide paragraph 10 of the affidavit of Zhejiang Yunnan.

⁸ Vide paragraph 15 of the affidavit of Zhejiang Yunnan.

Thus, it would be necessary for me at this stage, to determine whether Baqian Law Group as claimed by it, neither has any intention nor made any attempt to engage or enter into the legal practice of Attorneys-at-Law of the Supreme Court of Sri Lanka.

The sole affidavit presented to this Court on behalf of the 2nd Respondent has been affirmed on the 27th of March 2019 by one Zhejiang Yunnan who claims to be a lawyer of Baqian Law Group Lanka (Pvt) Ltd. of the Peoples Republic of China. The said affirmant has affirmed to the factual positions contained therein from his personal knowledge, the documents available to him and the instructions given to him by and on behalf of the 2nd Respondent. According to the said affidavit, the affirmant has been given the letter of authorization produced marked **X** by the Chairman of the 2nd Respondent to enable him to present the said affidavit. The said affirmant has also annexed a copy of his/her passport marked **Y** and annexed to the said affidavit.

I observe that the letter of authorization given by the Chairman of the 2nd Respondent produced marked **X** has only authorized one Li Leiqi to sign the affidavit and the legal documents pertaining to the instant case on behalf of the 2nd Respondent. The copy of the passport produced marked **Y** is that of Li. Leiqi. However, it is a matter of grave importance and concern to me that the affidavit dated 27th March 2019 has neither been affirmed nor has been submitted by Li Leiqi. The affidavit dated 27th March 2019 has been submitted by Zhejiang Yunnan who has not been given any authority to sign affidavits or produce documents by the 2nd Respondent company. Thus, I hold that the affirmant Zhejiang Yunnan is a person who does not have any connection to this case and hence has no locus standi to present the affidavit dated 27th March 2019. For the above reasons, I reject the affidavit affirmed on 27th March 2019 by Zhejiang Yunnan.

The above conclusion results in a situation where there is no evidence to substantiate aforementioned factual positions taken up on behalf of the 2nd Respondent. Thus, in view of my decision to reject the affidavit, I hold that the 2nd respondent has failed to substantiate any of the aforementioned positions it had taken up in this case.

Let me now consider the position taken up by BASL. Mr. Chanaka de Silva PC who represented BASL, submitted that the operations, the 2nd Respondent had planned to launch in this country directly falls within the ambit of legal services, which is conventionally procured through legal professionals regulated under the laws of Sri Lanka. It was the submission made by BASL that this Court would not be able to regulate the manner in which the 2nd Respondent would provide legal services in this country as contemplated by Article 136 (1) (g) of the Constitution since this Court has not admitted and enrolled the 2nd Respondent as an Attorney-at-Law under the governing laws in Sri Lanka. It is the argument of the BASL that the above situation has resulted in placing the Attorneys-at-Law who are regulated by the Supreme Court of Sri Lanka in a disadvantaged and discriminated position. It is also the BASL's position that such a situation would prejudice the rights of the members of the public at large, who may obtain the purported services advertised, represented or held out as being provided by the 2nd Respondent, thereby denying them the equal protection of the law guaranteed to all persons in terms of Article 12 (1) of the Constitution.

In order to evaluate the above arguments, it would be necessary for me to first determine the nature and extent of legal practice permitted by law for Attorneys-at-Law of the Supreme Court of Sri Lanka.

Authorities are hardly necessary, to understand that the practice of an Attorney-at-Law in this country is not limited to mere appearances as an Attorney-at-Law in Courts. Indeed, once an Attorney-at-Law is admitted and enrolled, as per the aforementioned provisions of the Judicature Act, such Attorney-at-Law shall be entitled to assist and advise clients and to appear, plead or act in every court or other institution established by law for the administration of justice. Furthermore, and every person who is a party to or has or claims to have the right to be heard in any proceeding in any such court or other such institution, shall be entitled to be represented by an Attorney-at-Law.

It is common knowledge that a large, if not a greater work, of Attorneys-at-Law today happens out of court. The practice of law is not limited to the conduct of cases in courts. Starting with the drafting of pleadings, they also inevitably have to render their

professional services in advising their clients, drafting agreements, conveyancing, preparation of numerous other documents, participating in legal formalities such as negotiations or other kind of proceedings taking place outside the courtroom. All of those activities would need proper legal skills and have been recognized from time immemorial, as part of the practice any Attorney-at-Law may engage. Indeed, it is a matter of fact that there are many lawyers who confine themselves to what is commonly known as "Chamber Practice" which means that such lawyers would hardly go and appear in Courts but are actively engaged in other events which are at various stages in the run up to vindication of the citizens' rights. Only some of them would end up in litigations before Courts. These activities and the connected services thereto, rendered by such Attorneys-at-Law too require competence and involve the use of legal knowledge and skill. Thus, the practice of such Attorneys-at-Law does come under the purview of a practice of an Attorney-at-Law.

Attorneys-at-Law are officers of Court. Their right to practice law attaches to them only in their individual capacity. Their right to practice dies with them. It cannot be made the subject of a business sheltered under a veil of a corporation which does not die like a human being. Moreover, this Court too does not issue such licenses for corporations to practice as Attorneys-at-Law.

The practice of law by an Attorney-at-Law is a privilege extended to them upon their satisfying threefold requirements: be persons of good repute; be persons having competent knowledge; and be persons having ability. This is in addition to the requirement of having achieved the qualifications specified by the Supreme Court Rules. It is primarily for upholding the Rule of Law and to safeguard the general public that the law has required that no other person shall engage in such practice. Another important factor in that regard is the ability and power of Supreme Court to supervise and exercise disciplinary control over the Attorneys-at-Law it admits and enrolls. That is because, once enrolled and admitted as lawyers, they are bound by a high code of professional ethics which have been formulated by the Supreme Court in the form of Rules. One has to bear in mind that this is a measure taken by the legislature for the well-being and protection

of public and not either to the advantage of lawyers or to the disadvantage of non-lawyers. Thus, in my view, holding that a layman who prepares legal papers or furnishes other services of a legal nature is not practicing law when such services are incidental and closely connected to those permitted to be exercised by Attorneys-at-Law would surely defeat the mischief, the legislature had sought to suppress and would completely ignore the public welfare and the protection afforded to the general public by law. I am unable to subscribe to that kind of interpretation.

Let me now turn to the documents produced marked **P 4** and **P 5** which are copies of online editions of newspaper articles. The following excerpts from **P 4** must be noted.

"For the first time a Chinese law firm, Baqian Law Group, has selected Sri Lanka to open their regional office for the South Asian region.

...

"Due to this Baqian Law Group is keen to extend our foot print in Sri Lanka to look after legal matters and also providing a basic support for the development of strategic development arising not only in Sri Lanka but in the entire region. We will open our office in Colombo next week and would have for Chinese lawyers along with a legal team from Sri Lanka."

Established in 1992 in Kunmin, China the law firm is looking to open more offices in Sri Lanka and in Asia.

Attorney at Law and Sri Lanka consultant for Baqian Law Group Sri Lanka, Sunil Abeyratne said that the legal systems in both China and Sri Lanka have major differences and they hope to provide advice and consultancy services for Chinese companies in Sri Lanka. "Sri Lanka is also in the process of drafting several new legislatures on ICT and electronic money transfer and other areas and we will provide our expertise for in these areas." "

Contents of **P 5** may also be noted and is as follows:

" Addressing the language barrier and misunderstandings in connection to the time-consuming legal processes faced by Chinese investors in Sri Lanka, Yunnan Baqian Law Group of China opened Baqian Law Group Lanka (Pvt.) Ltd in Colombo to act as a catalyst to fast track the processing and communication between the investor and relevant local authorities. The firm was officially launched at an opening ceremony at the Hilton, Colombo on Monday.

With the extensive promotion of the 'One Belt One Road' initiative, Chinese companies are seeking to invest in overseas markets, which is inseparable from strong legal guarantees.

Baqian Law Group Lanka (Pvt.) Ltd was developed with the aim to provide professional, comprehensive, timely and efficient overseas legal services to domestic and foreign enterprises.

Relying on the geographical advantages of the law firm and exquisite overseas legal services, combined with the extensive local legal service experience, Baqian integrates high-quality resources from all walks of life in domestic and abroad to build a legal service bridge for mutual benefit.

The establishment of Baqian Law Group Lanka (Pvt.) Ltd is believed to enhance the brand competitiveness and influence of China's international legal services, practice legal diplomacy, and demonstrate the value of lawyers.

The services provided by Baqian Law Group Lanka (Pvt.) Ltd are: notarial services, legal due diligence, international trade remedies, undertaking for the establishment of various types of enterprises and institutions, advising on investment architecture and corporate governance architecture, assist clients in handling anti-monopoly review in domestic and overseas, intellectual property disputes, assist clients to complete the acquisition and delivery, dispute resolution related to investment, real estate and construction, advising on operations, taxation and financial compliance, transaction structure design document drafting, review and support of transaction negotiation, assist on

government approvals, filing, registration, exemption and related procedures, legal services for the construction of direct investment projects, assist on project financing, legal opinions and advising in selecting and coordinating financial advisers and other service agents.

Yunnan Baqian Law Firm is one of the Sino-Global legal Alliance (SGLA) members rooted in Yunnan, serving China and its business covers South Asian and Southeast Asia. With nearly 200 lawyers and administrative staff, Baqian can provide customers with comprehensive domestic and international legal services and solutions. The law firm strives to provide quality and efficient legal services to each client with the joint efforts of the whole team.

After 20 years of inheritance and 10 years of brand honing, Baqian has grown into one of China's leading law firms. Today, in the field of commercial legal services, dispute resolution, government and State-owned enterprise legal services, and in the legal services of South Asia and Southeast Asia, Baqian has been at the leading position among Chinese law firms. ... "

Thus, the contents of those documents (**P 4** and **P 5**) which are admitted by the 2nd Respondent, have established the fact that the 2nd Respondent is a law firm in which Chinese lawyers would work along with a legal team from Sri Lanka, to provide 'quality and efficient legal services' in Sri Lanka.

As no person who has not been duly admitted and enrolled as an Attorney-at-law shall be allowed to assist and advise clients or to appear, plead or act for or on behalf of clients in any Court or other institution established by law for the administration of Justice,⁹ Baqian Law Group is debarred from engaging or entering into any operation coming within the purview of a legal practice of Attorneys-at-Law of this country.

In the above circumstances, and for the foregoing reasons, I hold that the 1st Respondent has acted in violation of the law of the country when he had incorporated Baqian Law

⁹ Rule 70 of Supreme Court Rules 1978 published in the Gazette Extraordinary No. 9/10 dated 08-11-1978.

Group as a limited liability company under the Companies Act No. 07 of 2007 as its primary objective is illegal. The said action has denied the Petitioner and the Added Respondents, the equal protection of law guaranteed to them by Article 12(1) and their freedom to engage in their lawful profession, guaranteed to them by Article 14(1)(g) of the Constitution. I also hold that only natural persons (practicing the profession as individuals and practicing the profession in partnerships) are permitted to engage in the practice of law in the Democratic Socialist Republic of Sri Lanka. Thus, I hold that the 2nd Respondent is not entitled in law to engage in any legal professional work within the Democratic Socialist Republic of Sri Lanka as per the primary objectives stated in its Articles of Association (**P 3**) and the documents produced marked **P 4** and **P 5**. I direct the 1st Respondent to take all necessary steps according to law to give effect to the above conclusions.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda PC J

I agree,

JUDGE OF THE SUPREME COURT

L. T. B. Dehideniya J

I agree,

JUDGE OF THE SUPREME COURT