

ITEM NO.1 Court 13 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Miscellaneous Application No. 859/2020 in SLP(C) No. 5440/2020

(Arising out of impugned final judgment and order dated 28-02-2020 in SLP(C) No. No. 5440/2020 passed by the Supreme Court Of India)

DISTRICT BAR ASSOCIATION DEHRADUN Petitioner(s)

VERSUS

ISHWAR SHANDILYA & ORS. Respondent(s)

(MR. MANAN KUMAR MISHRA, LEARNED SENIOR COUNSEL TO RENDER ASSISTANCE TO THIS COURT IN HIS CAPACITY AS CHAIRPERSON OF THE BAR COUNCIL OF INDIA)

Date : 04-10-2021 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Mr. Ajai Kumar Bhatia, AOR

For Respondent(s) Mr. S. N. Bhat, AOR

UPON hearing the counsel the Court made the following
O R D E R

It is brought to our notice that the Bar Association of the High Court of Rajasthan at Jaipur went on one day strike on 27.09.2021. To go on strike by the Bar Association and the lawyers is absolutely contemptuous and just contrary to the earlier decisions of this Court in the case of Ex-Capt. Harish Uppal vs. Union of India, (2003) 2 SCC 45; Common Cause, A Registered Society vs. Union of India, (2006) 9 SCC 295; Krishnakant Tamrakar vs. State of M.P., (2018) 17 SCC 27 and District Bar Association, Dehradun through its Secretary vs Ishwar Shandilya & Ors., 2020 SCC Online SC 244.

In the case of Ex-Capt. Harish Uppal (supra), this Court has

specifically observed and held that the lawyers have no right to go on strike or even token strike or to give a call for strike. It is also further observed that nor can they while holding Vakalat on behalf of clients, abstain from appearing in courts in pursuance of a call for strike or boycott. It is further observed by this Court that it is unprofessional as well as unbecoming for a lawyer to refuse to attend the court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is further observed that an Advocate is an officer of the court and enjoys a special status in the society; Advocates have obligations and duties to ensure the smooth functioning of the court; they owe a duty to their clients and strikes interfere with the administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy.

Despite the law laid down by this Court in the aforesaid decisions and even the concern expressed by this Court against the strikes by the lawyers, things did not improve and again the issue of lawyers going on strikes came to be considered in the case of *Common Cause, A Registered Society* (supra) and this Court in paragraph 4 of that judgment, held as under:

"4. The Constitution Bench has, in Ex Capt. Harish Uppal case [(2003) 2 SCC 45] culled out the law in the following terms: (SCC pp. 64 & 71-74, paras 20-21 & 34-36)

"20. Thus the law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as

unbecoming for a lawyer who has accepted a brief to refuse to attend court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since Mahabir Singh case [Mahabir Prasad Singh v. Jacks Aviation (P) Ltd., (1999) 1 SCC 37] that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court(s). Lawyers have also known, at least since Ramon Services case [Ramon Services (P) Ltd. v Subhash Kapoor, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152], that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy.

34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts

subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. 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, 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. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The

very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force, and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.

35. In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protect marches

outside and away from court premises, going on dharnas or relay fasts, etc. It is held that lawyers holding vakalats on behalf of their clients cannot refuse to attend courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest, abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all courts to go on with matters on their boards even in the absence of lawyers. In other words, courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a vakalat of a client, abstains from attending court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.

36. It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self-restraint will be exercised. The petitions stand disposed of accordingly."

While considering the issue of delay/speedy disposal, in case of *Krishnakant Tamrakar* (supra), this Court had the occasion to consider how uncalled for frequent strikes obstructs the access to

justice and what steps are required to remedy the situation. In the aforesaid decision, it is observed by this Court that access to speedy justice is a part of the fundamental rights under Articles 14 and 21 of the Constitution of India. This Court was of the opinion that one of the reasons/root cause for delay is uncalled for strikes by the lawyers. In the aforesaid decision, this Court also took note of 266th Law Commission Report, in which there was a reference to the strikes by the lawyers in the Dehradun and Haridwar districts itself. In the aforesaid decision, this Court also took note of the recommendations made by the Law Commission. This Court further observed that since the strikes are in violation of the law laid down by this Court, the same amounts to contempt and at least the office bearers of the Associations who give call for the strikes cannot disown their liability for contempt." (See *para 41 to 50*)

In spite of the law laid down by this Court in the aforesaid decisions and this Court time and again deprecated the lawyers to go on strike the strikes/boycotting the courts are continued unabated. Even in the present case also, the Advocates in the High Court of Rajasthan at Jaipur went on strike on 27.09.2021. Shri Manan Kumar Mishra, Learned Senior Advocate and Chairman of the Bar Council of India has submitted that the Bar Council of India has issued the notice to the Bar Association of High Court of Rajasthan at Jaipur. He has stated that there was a call to boycott only one court. Even that also cannot be tolerated. To boycott only one court will hamper the independence of judiciary and there may be a pressure on the particular judge whose court is boycotted and it

may lead to demoralize the judiciary.

Issue notice upon the President, Secretary and the Office Bearers of the Bar Association of High Court of Rajasthan at Jaipur to show cause why contempt proceedings may not be initiated against them.

Notice be made returnable on 25.10.2021.

The Registry is directed that notices be served through the Registrar General of the High Court of Rajasthan at Jaipur. The Registrar General of High Court of Rajasthan at Jaipur is directed to see that the notices upon the office bearers/President/Secretary of the Bar Association of the High Court of Rajasthan at Jaipur is served upon them well in time.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER