

Court No. - 18 WWW.LIVELAW.IN

Case :- MISC. SINGLE No. - 28555 of 2021

Petitioner :- Imtiyaj Ali & Ors.

Respondent :- Addl. Commissioner Faizabad-I, Mandal Ayodhya, Ayodhya & Anr.

Counsel for Petitioner :- Mohammad Nauman

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir, J.

Heard Mr. Mohammad Nauman, Advocate appearing for the petitioners, Mr. P.K. Singh, learned Additional Chief Standing Counsel appearing on behalf of the State. Mr. Atul Kumar Dwivedi, appearing on behalf of the President and the Secretary, Commissioner Court's Bar Association, Ayodhya.

On 17.12.2021, an order was passed requiring the personal presence of the President of Commissioner Court's Bar Association, Ayodhya and that of the Secretary, the relevant part of which reads:

"1. In compliance with our order dated 07.12.2021, the Additional Commissioner, Faizabad (First) Ayodhya Division, Ayodhya has submitted a report dated 15.12.2021. A perusal of the said report indicates the following dates on which the cause could not be taken up because of strike by Members of the Bar. These dates are: 22.11.2018, 22.02.2019, 12.03.2019, 09.04.2019, 26.04.2019, 13.06.2019, 02.07.2019, 01.08.2019, 16.09.2019, 09.01.2020, 11.02.2020, 27.02.2020, 01.05.2020, 04.08.2020, 03.02.2021 and 15.04.2021.

The report says:

"पत्रावली में सुनवाई हेतु नियत तिथि 20.07.2021 के पूर्व आयुक्त महोदय के आदेश दिनांक 03.07.2021 से अपर आयुक्त (न्यायिक), अयोध्या मण्डल अयोध्या के न्यायालय में विचाराधीन जनपद बाराबंकी से सम्बन्धित समस्त वाद पत्रावलियों को सुनवाई हेतु अपर आयुक्त (प्रशासन), अयोध्या मण्डल, अयोध्या अर्थात् मेरे न्यायालय में दिनांक 20.07.2021 से सुनवाई स्थानान्तरित की गयी। पत्रावली में सुनवाई हेतु नियत तिथि 20.07.2021 व 10.09.2021 की तिथियों में अधिवक्तागण के न्यायिक कार्य से विरत रहने के कारण सुनवाई नहीं की जा सकी। पत्रावली में वर्तमान में सुनवाई हेतु दिनांक 17.01.2022 की तिथि नियत है। यहाँ पर यह भी उल्लेख किया जाना समीचीन होगा कि प्रश्नगत

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अपील में याचिकाकर्ता इम्तियाज अली व अन्य द्वारा स्वयं या किसी अधिवक्ता का वकालतनामा दाखिल नहीं कराया गया। उक्त से स्पष्ट है कि प्रश्नगत अपील की जानकारी याचिकाकर्ता इम्तियाज अली व अन्य को होते हुए भी इस न्यायालय में उपस्थित न होकर मा० उच्च न्यायालय के समक्ष प्रश्नगत रिट याचिका प्रस्तुत की गयी है। चूंकि अपील नं०-00911/2018 में याची/इम्तियाज अली व अन्य अभी मेरे न्यायालय पर स्वयं या किसी अधिवक्ता के माध्यम से उपस्थित नहीं हुए हैं। पत्रावली में नियत तिथि 17.01.2022 पर यदि याचिकाकर्ता इम्तियाज अली व अन्य की तरफ से स्वयं या किसी अधिवक्ता के माध्यम से लिखित या मौखिक बहस प्रस्तुत की जाती है तो प्रश्नगत अपील का निस्तारण त्वरित गति से कर दिया जायेगा।

मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 07.12.2021 के समादर में सादर निवेदन करना है कि प्रश्नगत अपील आयुक्त महोदय के आदेश दिनांक 03.07.2021 के अनुपालन में प्रथम बार मेरे न्यायालय के समक्ष दिनांक 20.07.2021 को प्रस्तुत हुई, किन्तु उक्त तिथि में अधिवक्तागण द्वारा न्यायिक कार्य से विरत रहने का प्रस्ताव दिये जाने के कारण सुनवाई नहीं की जा सकी। प्रश्नगत वाद पत्रावली के निस्तारण में जानबूझकर कोई विलम्ब नहीं किया गया है, जो भी विलम्ब हुआ है वह अधिवक्तागण के न्यायिक कार्य से विरत रहने के कारण हुआ है। उपरोक्तानुसार मा० न्यायालय द्वारा वांछित रिपोर्ट/टिप्पणी सादर प्रेषित है।

विशेष-कथन

उल्लेखनीय है कि आयुक्त न्यायालय बार एसो०, अयोध्या द्वारा आये दिन न्यायिक कार्य से विरत रहने का प्रस्ताव देने के कारण वाद पत्रावलियों में सुनवाई नहीं हो पाती है, जिसके कारण पत्रावलियों का निस्तारण नहीं हो पाता है। ऐसी स्थिति में विवश होकर वादकारियों द्वारा मा० उच्च न्यायालय में याचिका प्रस्तुत कर शीघ्र निस्तारण के निर्देश की मांग की जाती है। पूर्व में संजय कुमार बनाम उ० प्र० सरकार आदि के शीघ्र निस्तारण हेतु संजय कुमार द्वारा मा० उच्च न्यायालय के समक्ष रिट याचिका संख्या-34436/एम० एस०/2019 प्रस्तुत किया गया, जिसमें मा० न्यायालय द्वारा पारित आदेश दिनांक 19.12.2019 द्वारा उक्त वाद की सुनवाई न हो पाने के कारण दि फैजाबाद बार एसोसियेशन एवं आयुक्त न्यायालय बार एसोसियेशन के अध्यक्ष एवं मंत्री के नाम, दूरभाष नं० उपलब्ध कराने का निर्देश दिया गया। तदोपरान्त मा० उच्च न्यायालय के समक्ष दि फैजाबाद बार एसोसियेशन एवं आयुक्त न्यायालय बार एसोसियेशन के तत्कालीन अध्यक्ष व मंत्री द्वारा इस आशय का शपथ पत्र प्रस्तुत किया गया था कि भविष्य में विषम परिस्थितियों के अतिरिक्त न्यायिक कार्य से विरत रहने का प्रस्ताव

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नहीं दिया जायेगा, किन्तु वर्तमान में उक्त शपथ पत्र का पालन आयुक्त न्यायालय बार एसोसियेशन के वर्तमान अध्यक्ष श्री आनन्द श्रीवास्तव व मंत्री श्री सुनील कुमार सिंह द्वारा नहीं किया जा रहा है। यह भी सादर अवगत कराना है कि माह 1 जून 2021 से 15 दिसम्बर 2021 तक कुल 103 न्यायिक कार्य दिवसों के सापेक्ष मात्र 19 दिन ही न्यायिक कार्य सम्पादित किया गया है। शेष 84 न्यायिक कार्य दिवसों में अधिवक्तागणों द्वारा न्यायिक कार्य से विरत रहने का प्रस्ताव दिया गया है। इस प्रकार आयुक्त न्यायालय बार एसोसियेशन द्वारा न्यायिक कार्य में सहयोग न किये जाने के कारण ही वादों का निस्तारण समय से नहीं हो पा रहा है, जिससे यह स्थिति उत्पन्न हुई है। "

(Emphasis by Court)

2. A look at the report submitted by the Additional Commissioner, Faizabad (First) Ayodhya Division, Ayodhya shows that the Faizabad Bar Association and the Commissioner Court's Bar Association have virtually brought the functioning of the Commissioner's Court to a standstill. They are indulging in rampant and repeat strikes. This Court is also compelled to take judicial notice of the fact that in Misc. Single No.34436 of 2019 some affidavits were filed before this Court by the former Presidents and the Secretaries of the Faizabad Bar Association and the Commissioner Court's Bar Association, undertaking that they will not abstain from judicial work, except under some extraordinary circumstances. It has come to the notice of the Court through the report of the Additional Commissioner, Faizabad (First) Ayodhya Division, Ayodhya that the present President of the Commissioner Court's Bar Association, Mr. Anand Srivastava and the Secretary, Mr. Sunil Kumar Singh, are not honouring the aforesaid undertaking given to this Court. In breach of the said undertaking given by their predecessors, the two office bearers are indulging in repeat and rampant adoption of resolutions, asking the Members of the Bar to abstain from judicial work. This conduct is not only unacceptable, but is prima facie contumacious. In **District Bar Association, Dehradun through its Secretary v. Ishwar Shandilya and Others, 2020 SCC OnLine SC 244**, it has been held:

"14. In spite of the law laid down by this Court in the aforesaid decisions, this Court time and again deprecated the lawyers to go on strikes, the strikes were continued unabated. Even in the present case, the advocates have been boycotting the courts on all Saturdays, in the entire district of Dehradun, in several

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parts of the district of Haridwar and Udham Singh Nagar district of the State of Uttaranchal. Because of such strikes, the ultimate sufferers are the litigants. From the data mentioned in the impugned judgment and order, things are very shocking. Every month on 3-4 Saturdays, the Advocates are on strike and abstain from working, on one pretext or the other. If the lawyers would have worked on those days, it would have been in the larger interest and it would have achieved the ultimate goal of speedy justice, which is now recognized as a fundamental right under Articles 14 and 21 of the Constitution. It would have helped in early disposal of the criminal trials and therefore it would have been in the interest of those who are languishing in the jail and waiting for their trial to conclude. When the Institution is facing a serious problem of arrears and delay in disposal of cases, how the Institution as a whole can afford such four days strike in a month.

15. Now, so far as the submission on behalf of the petitioner that to go on strike/boycott courts is a fundamental right of Freedom of Speech and Expression under Article 19(1)(a) of the Constitution and it is a mode of peaceful representation to express the grievances by the lawyers' community is concerned, such a right to freedom of speech cannot be exercised at the cost of the litigants and/or at the cost of the Justice Delivery System as a whole. To go on strike/boycott courts cannot be justified under the guise of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution. Nobody has the right to go on strike/boycott courts. Even, such a right, if any, cannot affect the rights of others and more particularly, the right of Speedy Justice guaranteed under Articles 14 and 21 of the Constitution. In any case, all the aforesaid submissions are already considered by this Court earlier and more particularly in the decisions referred to hereinabove. Therefore, boycotting courts on every Saturday in the entire District of Dehradun, in several districts of Haridwar and Udham Singh Nagar district in the State of Uttarakhand is not justifiable at all and as such it tantamounts to contempt of the courts, as observed by this Court in the aforesaid decisions. Therefore, the High Court is absolutely justified in issuing the impugned directions. We are in complete

agreement with the view expressed by the High Court and the ultimate conclusion and the directions issued by the High Court. Therefore, the present Special Leave Petition deserves to be dismissed and is accordingly dismissed. We further direct all concerned and the concerned District Bar Associations to comply with the directions issued by the High Court impugned in the present SLP in its true spirit. It is directed that if it is found that there is any breach of any of the directions issued by the High Court in the impugned judgment and order, a serious view shall be taken and the consequences shall follow, including the punishment under the Contempt of Courts Act.

16. As observed hereinabove, in spite of the decisions of this Court in the cases of Ex-Capt Harish Uppal (supra), Common Cause, A Registered Society (supra) and Krishnakant Namrakar (supra) and despite the warnings by the courts time and again, still, in some of the courts, the lawyers go on strikes/are on strikes. It appears that despite the strong words used by this Court in the aforesaid decisions, criticizing the conduct on the part of the lawyers to go on strikes, it appears that the message has not reached. Even despite the resolution of the Bar Council of India dated 29.09.2002, thereafter, no further concrete steps are taken even by the Bar Council of India and/or other Bar Councils of the States. A day has now come for the Bar Council of India and the Bar Councils of the States to step in and to take concrete steps. It is the duty of the Bar Councils to ensure that there is no unprofessional and unbecoming conduct by any lawyer. As observed by this Court in the case of Ex-Capt. Harish Uppal (supra), the Bar Council of India is enjoined with a duty of laying down the standards of professional conduct and etiquette for Advocates. It is further observed that this would mean that the Bar Council of India ensures that advocates do not behave in an unprofessional and unbecoming manner. Section 48 of the Advocates Act gives a right to the Bar Council of India to give directions to the State Bar Councils. It is further observed that the Bar Associations may be separate bodies but all advocates who are members of such associations are under disciplinary jurisdiction of the Bar Councils and thus the Bar Councils can always control their conduct. Therefore, taking a serious note of the fact that despite the aforesaid decisions of this Court,

still the lawyers/Bar Associations go on strikes, we take suo moto cognizance and issue notices to the Bar Council of India and all the State Bar Councils to suggest the further course of action and to give concrete suggestions to deal with the problem of strikes/abstaining the work by the lawyers. The Notices may be made returnable within six weeks from today. The Registry is directed to issue the notices to the Bar Council of India and all the State Bar Councils accordingly."

3. Here is a case, where, despite an undertaking by their predecessors, Mr. Anand Srivastava, President of the Commissioner Court's Bar Association and Mr. Sunil Kumar Singh, Secretary of the said Association, are observing the undertaking in breach."

Mr. Atul Kumar Dwivedi, appears on behalf of the President, Commissioner Court's Bar Association, and the Secretary of the said Bar Association. He has filed in Court two personal affidavits, one sworn by Mr. Anand Srivastava, President of the Commissioner's Court Bar Association and the other by Mr. Sunil Kumar Singh, Secretary of the said Association. Both affidavits have been filed along with a Civil Misc. Application to take the respective affidavits on record. Let both the applications be numbered by the office.

Both the applications, as aforesaid, are allowed and the affidavits filed by Mr. Anand Srivastava, President of the Commissioner's Court Bar Association and Mr. Sunil Kumar Singh, Secretary of the said Association are taken on record.

The affidavits filed by the two office bearers of the Association have been perused. In paragraph 20 of the affidavit filed by the President of the Association, it is stated thus:

"20. That be that as it may, the deponent tenders his unconditional apology and assures this Hon'ble Court that no resolution abstaining from work shall be passed by the "Commissioner Courts Bar Association" except any grave situation and all possible efforts shall be made and full support shall be extended by the "Commissioner Courts Bar Association" to ensure proper and uninterrupted functioning of the Court."

Likewise, in the affidavit filed by the Secretary of the Association Mr. Sunil Kumar Singh, it is stated in paragraph 20 of the affidavit thus:

"20. That be that as it may, the deponent tenders his unconditional apology and assures this Hon'ble Court that no resolution abstaining from work shall be passed by the "Commissioner Courts Bar Association" except any grave situation and all possible efforts shall be made and full support shall be extended by the "Commissioner Courts Bar Association" to ensure proper and uninterrupted functioning of the Court."

Going by the law laid down by the Supreme Court in ***District Bar Association, Dehradun through its Secretary Vs. Ishwar Shandilya and Others, AIR 2020 SC 1412***, no kind of freedom or right entitles a Bar Association to give a call for any kind of strike or boycott of Courts. Therefore, the qualified undertaking given by the President and the Secretary of the Bar Association that they will not pass resolutions abstaining from judicial work except in a grave situation is not accepted for the qualifications of it. The undertaking is accepted without any qualifications. It is ordered that until further orders, the Commissioner's Court Bar Association, Ayodhya, shall not pass any resolution, abstaining from judicial work, whether styled as a strike or a call to abstain from judicial work, a condolence resolution that has the effect of withdrawing Advocates from judicial work, by whatever name called. The Members of the Bar are free to hold a meeting to condole the demise of any member or anyone else, but they do not have the right to obstruct the functioning of Courts. The undertaking given today, on the basis of which this order is passed, shall not only apply to the incumbent President and Secretary of the Commissioner's Court Bar Association, Ayodhya but to all their successors-in-Office.

So far as the present petition is concerned, it is directed that the Additional Commissioner Faizabad (First), Ayodhya Division

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Ayodhya, shall proceed with Appeal No.00911 of 2018, Computerized Case No.C-201804000000911 on a day to day basis and submit a status report also by the next date fixed.

List this petition again as fresh on **28.01.2022** by which time, the Commissioner, Ayodhya Division Ayodhya, shall submit a report to this Court indicating whether any resolution obstructing the judicial work or withdrawing the Members of the Bar from their professional duties has been passed by the Bar Association.

The personal presence of Mr. Anand Srivastava, President of the Commissioner's Court Bar Association, Ayodhya and Mr. Sunil Kumar Singh, Secretary of the said Association is exempted, unless otherwise ordered.

Let this order be communicated to the Commissioner, Ayodhya Division Ayodhya, by the Senior Registrar.

Order Date :- 23.12.2021

NSC