

RESERVED JUDGMENT

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
WRIT PETITION (PIL) NO. 71 of 2019

Kuldeep AgarwalPetitioner.

vs.

State of Uttarakhand and others. ...Respondents

Mr. Kartikey Hari Gupta, learned counsel for the petitioner.

Mr. Amit Bhatt, learned Deputy Advocate General with Ms. Prabha Naithani, learned Brief Holder for the State of Uttarakhand.

Mr. Piyush Garg, learned counsel for the State Bar Council of Uttarakhand.

Mr. D.S. Mehta, learned counsel for the Kotdwar Bar Association.

Mr. B.S. Adhikari, learned counsel for the Bar Council of India

Reserved on : 31.07.2019

Delivered on: 03.09. 2019

Chronological list of cases referred:

1. (2011) 1 SCC 688
2. 366 US 82 (1961)
3. (2005) 8 SCC 771
4. (2004) 3 SCC 767
5. (2017) 5 SCC 702
6. Order in Writ Petition Criminal No.139 of 2017 dated 18.09.2017
7. AIR 2000 DELHI 266
8. (2012) 1 SCC 602
9. (2018) 3 SCC 22
10. (2004) 10 SCC 699
11. (2005) 5 SCC 294
12. (2007) 14 SCC 667
13. (2008) 9 SCC 204
14. (2008) 16 SCC 417
15. (2010) 7 SCC 263
16. AIR 1956 SCC 116

Coram: Hon'ble Ramesh Ranganathan, C.J.

Hon'ble Alok Kumar Verma, J.

Ramesh Ranganathan, C.J. (Oral)

“From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in court where he daily sits to practice, from the moment the liberties of England are at an end. If the advocate refuses to defend from what he may think of the charge or of the defence, he assumes the character of the judge; nay he assumes it before the hour of the judgment; and in proportion of his rank and reputation puts the heavy influence of perhaps a mistaken opinion into the scale against the accused in whose favour the benevolent principles of English law make all assumptions, and which commands the very Judge to be his Counsel”

2. So said Sir Thomas Erskine who had accepted the retainer to defend Thomas Paine in 1792 when he was prosecuted for

treason for publishing the second part of his work “The Rights of Man” in defense of the French Revolution. This speech of Sir Thomas Erskine, and the case of Thomas Paine which he defended, resulted in his losing the office of the Attorney General to the Prince of Wales. **(The Barrister: Advocate at the English Bar: by W.W. Boulton; A.S. Mohammed Rafi vs. State of Tamil Nadu and others¹).**

3. The nobility of the profession, and the high traditions of the Bar, are best reflected in the views of Clarence Darrow (widely renowned as the Attorney for the Damned), that a person, however wicked, depraved, vile, degenerate, perverted, loathsome, execrable, vicious or repulsive he may be regarded by society, has a right to be defended in a court of law and, correspondingly, it is the duty of the lawyer to defend him. **(A.S. Mohammed Rafi¹).**

4. Justice Hugo Black of the US Supreme Court, in his dissenting judgment in **Re Antastaplo²**, said :-

“Men like Lord Erskine, James Otis, Clarence Darrow, and a multitude of others have dared to speak in defense of causes and clients without regard to personal danger to themselves. The legal profession will lose much of its nobility and its glory if it is not constantly replenished with lawyers like these. To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it.”

5. Instead of following the path which these eminent lawyers have shown, we face a situation today where the miniscule few, who dare to tread the solitary path of taking up the cause of the damned, are threatened with dire consequences, for nothing more than the discharge of their duties as an Advocate. Unlike Sir Thomas Erskine, the threat which lawyers, such as the petitioner, face is not from outside but from within i.e. from the Association of Advocates of which they are members. Several Bar Associations (in the present case, the Kotdwar Bar Association) have been passing resolutions that no member of their association should defend a particular person or

persons in a particular case, or a person accused of a brutal or a heinous crime, though such resolutions are wholly illegal, against all traditions of the Bar, and against professional ethics. (A.S. Mohammed Rafi¹).

6. The notice affixed by the Kotdwar Bar Association dated 17.05.2019, the validity of which is under challenge in this writ petition, reads thus:

**“Kotdwar Bar Association
Kotdwar District Pauri Garhwal Uttarakhand
Notice**

In accordance with the unanimous decision of Kotdwar Bar Association in the most urgent meeting dated 16.05.2019 all the members of Kotdwar Bar Association, Kotdwar are informed as under:

1. That as per the resolution passed by the members of the Kotdwar Bar Association, present in the most urgent meeting dated 16.05.2019 it is decided that no member of Kotdwar Bar Association/officer bearer shall represent the accused persons of the murder of late advocate Sushil Raghuvanshi in court. It has also come to the knowledge of the association that some advocates are representing the murder accused in court.
2. That in the abovementioned urgent meeting it was also decided that if any advocate despite of this notice and information represents the murder accused in court then Kotdwar Bar association will take action against those members and their membership shall be terminated.

For information to all advocate members.

Sincerely
(signed)
Secretary/President
Kotdwar Bar Association
Kotdwar.

7. Writ Petition (PIL) No. 71 of 2019 was filed by an Advocate of the Kotdwar Bar Association seeking a writ of certiorari to quash the resolution dated 16.05.2019 issued by the Kotdwar Bar Association; a writ of mandamus directing the Kotdwar Bar Association not to prevent the petitioner or any other advocate to represent / appear for any client in the Kotdwar District Court; and a writ of mandamus directing the Bar Council of Uttarakhand and the Bar Council of India to prevent the Advocates Bar Associations in all

Courts of the State of Uttarakhand from passing resolutions preventing any advocate from appearing for any client in a particular case; a writ of mandamus directing respondent nos. 3 & 4 to frame guidelines prohibiting the Advocates' body from interfering in any manner in the discharge of the individual advocate's duty towards his client; and a writ of mandamus directing the State of Uttarakhand to maintain law and order in the District Court, Kotdwar, and prevent members from obstructing the course of justice, and the petitioner from performing his lawful duties towards his client.

8. The petitioner, a practicing advocate at Kotdwar, has invoked the jurisdiction of this Court aggrieved by the prohibition imposed by the Kotdwar Bar Association on Advocates of the Kotdwar Bar Association, including him, to represent his client in a Court of law by passing a resolution in its meeting dated 16.05.2019, and the failure of the State of Uttarakhand to maintain law and order in the Court.

9. In the affidavit, filed in support of the writ petition, it is stated that, in the month of May, 2019, a person named Vinod Kumar was arrested on his suspected involvement in Crime No. 281 of 2017 under Sections 302 and 120B IPC; the petitioner had filed his Vakalatnama for the said accused, and had sought bail in the same case; the Bar Association had threatened all lawyers, including the petitioner, not to appear for this client; on the bail application being rejected, by the learned Chief Judicial Magistrate, the petitioner's client had sought bail before the High Court; on 16th May, 2019, the second respondent had called an illegal meeting and, even without having a mandatory quorum for holding such a meeting, had passed a resolution directing all advocates of the Kotdwar Bar Association not to appear/represent the accused; the said resolution of the Kotdwar Bar Association threatened advocates that if, despite the notice, any advocate represented the accused, then the Bar Association would

take adverse action and terminate his membership; the petitioner was an advocate of the accused in the criminal case, and the said resolution dated 16.05.2019 prevented him and other advocates from representing the accused in a free and fair manner; such illegal threats of expulsion from the Bar Association was in violation of Rules 11 and 15 of Chapter II of Part VI of the Bar Council of India Rules made under the Advocates Act, 1961; the second respondent had locked down the Court premises of the Kotdwar District Court protesting against the hearing of the case of the accused; the petitioner was prevented from discharging his duty of representing his client; whenever he appeared for the said accused in Court, the second respondent-Association prevented him from performing his lawful duties; he was threatened orally; and the second respondent, a Society registered under the Societies Registration Act, cannot resort to such illegal threats of preventing advocates from appearing for the accused.

10. In our interim order, in Writ Petition (PIL) No.71 of 2019 dated 13.06.2019, we had, after noting that the petitioner, a senior member of the Kotdwar Bar Association, had invoked the writ jurisdiction of this Court complaining of the resolution passed by the Kotdwar Bar Association that nobody should represent the accused in Case Crime No.281 of 2017, observed:-

“Howsoever, heinous the crime may be, every accused is entitled for legal representation. While the choice of whether or not to appear on behalf of the accused lies with the Advocate who is approached by the accused, the Bar Association cannot, by way of a resolution, prevent an Advocate from appearing on his behalf. The alleged resolution, passed by the Kotdwar Bar Association, is prima facie illegal since, by way of the said resolution, the Bar Association has already determined the guilt of the accused in Case Crime No. 281 of 2017, though such a conclusion can only be arrived at by a competent court, that too after completion of a free and fair trial. It is the obligation of an Advocate, subject to his being paid the fees he is entitled to, to represent the accused, and in case the accused is not able to afford legal representation then the State is obligated to provide him legal aid. We are disturbed by the resolution passed by the Kotdwar Bar Association in directing its members not to

provide legal representation to the accused. If the contents of the affidavit are true, the State Bar Council may need to take action against the concerned members of the Advocates Association, who were responsible for such acts.”

11. On notice in the Writ Petition being served upon them, the Secretary of the Kotdwar Bar Association, in the counter-affidavit filed on behalf of the 2nd respondent, has submitted that an urgent meeting was held by the Kotdwar Bar Association on 16.05.2019 relating to the murder of advocate Late Sushil Raghuvanshi who was a member of the Kotdwar Bar Association; in the said meeting, all the members of the Kotdwar Bar Association gave their views; in Para -2 of the Notice affixed by the Kotdwar Bar Association, on the Notice Board, it was mentioned that, if any member of the Bar Association appeared on behalf of the accused Vinod Kumar, the Bar Association would cancel the membership of such a member; the contents of Para-2 of the Notice dated 17.05.2019 was not part of the resolution dated 16.05.2019; by mistake, Para-2 was transcribed, and mentioned in the Notice dated 17.05.2019; an urgent meeting of the Executive of the Kotdwar Bar Association was convened on 04.07.2019, wherein Para-2 of the Notice dated 17.05.2019 was withdrawn, and a copy of the decision was affixed on the Notice Board of the Bar Association; the petitioner had appeared on behalf of the accused, and had filed his Vakalatnama in the bail application; the accused was the petitioner's regular client for whom he had appeared in a number of cases; the deceased Late Sushil Raghuvanshi was a member of the Kotdwar Bar Association, and an FIR was lodged against the accused only after a prolonged agitation; the Bar Association had the right to protect the rights of its members; the petitioner was never stopped from appearing for the accused in Court; he frequently appeared before the Court of the Additional Chief Judicial Magistrate, Kotdwar, and was doing regular pairvi on behalf of the accused Mr. Vinod Kumar; the second respondent never stopped any advocate from appearing on behalf of his / her client, and never gave any threat to the petitioner;

the Bar Association was working according to the rules, and was carrying on its functions as per the rules, and the objects of the Society; and the writ petition was filed with ulterior motives, and was not a public interest litigation.

12. The subsequent resolution passed by the Kotdwar Bar Association, and the notice issued pursuant thereto dated 04.07.2019, read thus:

“NOTICE

All the members of the Kotdwar Bar Association are informed that the meeting of executive of the Kotdwar Bar Association was held today on 04.07.2019, in which it was decided unanimously that in the most urgent meeting of the Kotdwar Bar Association dated 16.05.2019, proposal / information has been passed for not doing parivi of accused in the murder of late Sushil Raghuvanshi Advocate, Para (which had been written by mistake) mentioned in Paragraph-2 of the same has been withdrawn.

Kotdwar Bar Association, Kotdwar
Secretary
Mukesh Chandra Kabtiyal”

13. While Para 2 of the notice dated 26.05.2019 has been withdrawn by the notice dated 04.07.2019, Para 1 still remains in force, in terms of which no member of the Kotdwar Bar Association/officer-bearer shall represent the persons accused, of the murder of Advocate Late Sri. Sushil Raghuvanshi, in Court. We shall, therefore, proceed to examine the contentions, urged by learned counsel on either side, on its merits.

14. Dr. Kartikey Hari Gupta, learned counsel for the petitioner, would submit that the resolution of the Kotdwar Bar Association, restraining Advocates from defending a particular accused, is antithetical to the idea of “Justice”, “Equality” and “the dignity of the individual” as embedded in the preamble to the Constitution of India; the said resolution, passed by the Kotdwar Bar Association, is violative of the fundamental right enshrined in Article 21 of the Constitution; denial of the right to be defended in a case would result in depriving the accused of his right to life and liberty as

guaranteed under Article 21 of the Constitution, that too when no procedure by law has been established for denial of such a right to any accused, no matter how heinous be the nature of the offence so committed; the Constituent Assembly, while debating Article 15-A of the draft constitution on the 16th of September, 1949, specifically added “the right to defense by the counsel of his choice” as a fundamental right; the right to speedy trial was also discussed, and left out from the Part relating to fundamental rights only because there existed statutory provisions, although by later interpretation of the Supreme Court it has been made as a part of the right to life; the Bar Association resolutions, barring Advocates from appearing for a particular accused, is in violation of Articles 21, 22 (1) and 39-A of the Constitution of India; the said Bar Association resolution is also in violation of the Bar Council of India Rules contained in Part VI-Chapter II “Standards of Professional Conduct and Etiquette”; it is also in violation of Section-I : duty to the Court and Section II : duty to the Client; and the State Bar Council should be directed to take action against the resolution of the Kotdwar Bar Association for restraining advocates from defending a particular accused.

15. On the other hand Mr. Piyush Garg, learned counsel appearing for the Bar Council of Uttarakhand, would submit that Part VI Chapter II, Section II, Clause 11 of the Bar Council of India Rules stipulates that special circumstances may justify refusal by an Advocate to accept a particular brief; and, therefore, if an Advocate or the Advocates collectively decide not to appear in a particular case, they have the right, in terms of the said provision, to choose not to appear; under the State Bar Council Rules framed in its meeting held on 24.07.2014, duly published in the official gazette, Chapter III Rule 40 provides for affiliation of Bar Associations by the State Bar Council; it is mandatory for every Bar Association, functioning in Uttarakhand, to get itself affiliated with the State Bar Council; under the Advocates Welfare Act, 1974, as adopted by the Bar Council of

Uttarakhand, the Bar Association needs to be recognized by the Bar Council; the benefit of several welfare schemes are available to members of the Bar Association only on such associations being affiliated with the State Bar Council; and the State Bar Council, under Section 35 of the Advocates Act, can take disciplinary action against an individual Advocate, and not against an association.

16. Mr. D.S. Mehta, learned counsel appearing on behalf of the Kotdwar Bar Association, would submit that the petitioner can no longer claim to have been threatened of termination of his membership for appearing on behalf of the accused, since Para 2 of the notice dated 26.05.2019, has been withdrawn; Para 1 of the said notice is a collective expression of anguish of the members of the Kotdwar Bar Association, and their collective decision not to appear for the accused who is said to be involved in the murder of an Advocate member of the Kotdwar Bar Association; all the Advocates, who participated in the meeting where the resolution was passed, had voluntarily chosen not to appear for the accused as an expression of their grief regarding the murder of their Advocate colleague; and the voluntary decision of the members of the Bar Association cannot be faulted, as it is their choice whether or not to appear for an accused.

17. Paragraph no. 1 of the Resolution dated 16.05.2019, which still remains in force, requires all members of the Kotdwar Bar Association/office bearers not to represent persons, accused of the murder of Advocate Late Mr. Sushil Raghuvanshi, in Court. While paragraph no. 2, which threatens action being taken for termination of the membership of those members who represent the said accused, has since been withdrawn, the Kotdwar Bar Association has consciously chosen to retain paragraph no. 1 of the Resolution dated 16.05.2019.

18. Every accused has a fundamental right, under Article 22(1) of the Constitution of India, not to be denied the right to consult, and to be defended by, a legal practitioner of his choice. Paragraph

No. 1 of the Resolution dated 16.05.2019, as noted hereinabove, whereby members of the Kotdwar Bar Association were directed not to represent the accused, has, in effect, resulted in the accused being denied his fundamental right to be defended by a lawyer of his choice. Article 39-A, in Part IV of the Constitution, relates to equal justice and free legal aid, and requires the State to secure the operation of a legal system which promotes justice on the basis of equal opportunity and, in particular, to provide free legal aid by suitable legislation, or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The object sought to be achieved thereby is that no accused is denied his fundamental right to be defended by a lawyer merely on the ground of economic or other disabilities which he may suffer from; and the State is obligated to provide such an accused free legal aid. If that be the laudable object of Article 22(1) in Part III of the Constitution, and Article 39-A in Part IV, any fetter placed on the fundamental right of the accused, to be defended by a lawyer of his choice, be it for economic or other reasons, is illegal and unconstitutional.

19. A resolution, such as that passed by the Kotdwar Bar Association (which is impugned in this Writ Petition), and the petitioner's claim to have been threatened by lawyers to desist from representing the accused, also affects the fundamental right of the accused to have a free and fair trial, which is the sine qua non of Article 21 of the Constitution (**Sri Jayendra Saraswathy Swamigal (II) vs. State of T.N.**³) and **K. Anbazhagan vs. Supdt. of Police**⁴). Obstructions, caused to the case of the accused being heard, result in denial of speedy justice which is also a threat to public confidence in the administration of justice. (**Hussain and another vs. Union of India**⁵).

20. In **Francis Thomas vs. The State of Haryana**⁶, the validity of a resolution passed by the District Bar Association,

Gurgaon, not to represent the accused in the Court, was under challenge before the Supreme Court. Though the said resolution was later withdrawn, the Supreme Court opined that an accused, whatever the offence may be, had the inherent right to be represented by a counsel of his choice; the traditions of the Bar, and the fundamental concept pertaining to access to justice, did not permit any Bar Association to pass such a resolution; despite the assurance, that none of the members of the Bar would create any kind of hindrance or obstruction for the smooth hearing of the case, they were obliged to hold that none of the members of the Bar should create any kind of impediment in the ingress and egress of any counsel representing the petitioner; it shall be the responsibility of the office-bearers of the Bar to see that the order was complied with in its entirety; and any deviation would be seriously dealt with.

21. While we were inclined to pass, without further ado, a similar order as was passed by the Supreme Court in **Francis Thomas**⁶, both Mr. Piyush Garg, learned counsel for the Bar Council of Uttarakhand, and Mr. D.S. Mehta, learned counsel for the Kotdwar Bar Association, would contend that special circumstances, such as the accused being involved in the murder of an Advocate member of the Association, justified members of the Kotdwar Association collectively resolving not to appear on his behalf. Since reliance is placed in this regard on Clause 11 in Section II of Part VI of the Bar Council of India Rules, it is necessary to take note of what the said Rule provides.

22. Part VI Chapter II of the Bar Council of India Rules prescribes the Standards of Professional Conduct and Etiquette. In terms of the preamble thereto, an Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a

member of the Bar, or for a member of the Bar in his non-professional capacity, may still be improper for an Advocate. An Advocate should fearlessly uphold the interests of his client and, in his conduct, conform to the rules both in letter and in spirit. The rules contain canons of conduct and etiquette adopted as a general guide; yet the specific mention thereof is not to be construed as a denial of the existence of other equal imperatives, though not specifically mentioned. Section I in Part VI relates to the duty of an Advocate to the Court, and Section II relates to the duty of an Advocate to the client.

23. Clause 11 in Section II of Part VI, on which reliance is placed on behalf of the State Bar Council, stipulates that an Advocate is bound to accept any brief in the Court before which he professes to practice at a fee consistent with his standing at the Bar and the nature of the case; and special circumstances may justify his refusal to accept a particular brief. Ordinarily, on his being paid his fees consistent with his standing at the Bar and the nature of the case, an Advocate is bound to accept any brief in the Court in which he practises. However, special circumstances may justify his refusal to accept a particular brief. The “**special circumstances**” mentioned in Clause II, justifying refusal of an Advocate to accept a particular brief, refers, by the use of the word “**his**”, to the Advocate in his individual capacity, and not to the Bar Association whose members are Advocates. While an Advocate may choose, in special circumstances, not to appear in a particular case, his right to appear on behalf of an accused cannot be denied by any threat of removal of his membership of the Bar Association which cannot, legally or ethically, prohibit an Advocate from appearing for a particular accused.

24. Clause 15 in Section II, of Part VI Chapter II of the Bar Council of India Rules, stipulates that it shall be the duty of an Advocate to fearlessly uphold the interests of his client, by all fair and

honourable means, without regard to any unpleasant consequences to himself or any other. It requires him to defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence. It is this duty of an Advocate, to defend a person accused of a crime, which is sought to be interfered with by the Kotdwar Bar Association by the threat of action being taken against him for removal of his membership of the Bar Association. Para 1 of the resolution of the Kotdwar Bar Association is, in effect, a veiled threat to the petitioner not to represent the accused as he was accused of the murder of an Advocate member of the Bar Association. No lawyer (or for that matter an Association of Lawyers) can obstruct or prevent another lawyer from discharging his professional duty of appearing in Court on behalf of his client. No lawyer can also be visited with any adverse consequences by the Bar Association or the Bar Council, and no threat or coercion of any nature, including that of expulsion, can be held out against him. If anyone does it, he commits a criminal offence, interferes with the administration of justice, commits contempt of Court, and is liable to be proceeded against on all these counts. (**Sri Jayendra Saraswathy Swamigal³ and B.L. Wadhera Vs. State of (NCT of Delhi)⁷**).

25. The aforesaid resolution, passed by the Kotdwar Bar Association, is against all norms of the Constitution, the statute and professional ethics. It is against the great traditions of the Bar which has always stood up for defending persons accused of a crime. Such a resolution of the Bar Association is null and void, and right-minded lawyers should ignore and defy such a resolution if they want democracy and the rule of law to be upheld in this Country. It is the duty of a lawyer to defend, no matter what the consequences. (**A.S. Mohammed Rafi¹**).

26. Para 1, of the impugned resolution, is not a collective expression of anguish, but a direction to the members of the Association not to appear for the accused. While the anguish of the members of the Kotdwar Bar Association is understandable, since a colleague Advocate and a member of their Bar Association was allegedly murdered, it would have been in their interests, as they were of the belief that the accused was involved in such a murder, to ensure a free, fair and speedy trial so that the person guilty of murder is brought to justice, and is punished in accordance with law for having committed such an offence. Irrespective of the belief of the members of the Kotdwar Bar Association regarding his guilt, the accused cannot be denied the benefit of effective legal representation, and to be defended by an Advocate of his choice, provided, of course, he is in a position to pay the fees which the Advocate is entitled to.

27. The anguish of the members of the Kotdwar Bar Association notwithstanding, it is not for them to pronounce upon the guilt or otherwise of the accused even before investigation is completed, a charge-sheet is filed, and the accused is tried in accordance with law. It is only the Criminal Court of Competent jurisdiction which can decide upon the guilt or otherwise of the accused. Whatever the belief of the members of the Kotdwar Bar Association may be, the fundamental postulates of criminal jurisprudence, and the penal laws in India, are primarily based upon certain procedural values which are the right to a fair trial and the presumption of innocence. A person is presumed to be innocent till proven guilty. (**State of Rajasthan vs. Shera Ram@ Vishnu Dutta**⁸; **Dataram Singh vs. State of Uttar Pradesh & another**⁹). Presumption of innocence is a human right, (**Narendra Singh vs. State of M.P**¹⁰; **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra**¹¹; **State through SPE & CBI, Andhra Pradesh vs. M. Krishna Mohan & another**¹² and **Harendra Sarkar vs. State of Assam**¹³), as envisaged under Article 14(2) of the International

Covenant on Civil and Political Rights. (**Noor Aga vs. State of Punjab & another**¹⁴ and **Selvi & others vs. State of Karnataka**¹⁵). In a criminal trial innocence of an accused is presumed, unless there is a statutory presumption against him. (**Willie (William) Slaney vs. State of Madhya Pradesh**¹⁶). The Kotdwar Bar Association was, therefore, not justified in pre-determining the guilt of the accused even before investigation is completed, and in passing such a resolution based on this premise.

28. In Paragraph 12 of the affidavit, filed in support of the writ petition, the petitioner has stated that the second respondent had locked down the Court premises of the Kotdwar District Court protesting against the hearing of the case of the accused Sir Vinod Kumar, and had created hindrance in the operation of the Court of law and in the dispensation of justice. Again, in Paragraph 14 of the writ affidavit, it is stated that, whenever the petitioner appeared for his client, members of the second respondent-Association tried to prevent him from performing his lawful duties, they adopted illegal means, and had harassed his client in Court premises. In reply thereto, the Kotdwar Bar Association, in Paragraph 11 of its counter affidavit, has denied the contents of Paragraph 12 of the writ petition stating that the Kotdwar Bar Association, and their members, never stopped the petitioner from appearing on behalf of the accused in Court; and he frequently appeared before the Court of the Additional Chief Judicial Magistrate, Kotdwar, Pauri Garhwal on behalf of the accused Sri Vinod Kumar. While denying the contents of Paragraph 14 of the writ affidavit, the second respondent has, in Paragraph 13 of its counter affidavit, stated that they never stopped any advocate from appearing on behalf of his client, and never gave any threat to the petitioner.

29. What has not been denied by the Kotdwar Bar Association, in its counter affidavit, is the petitioner's assertion that

they had locked down the Court premises, of the Kotdwar District Court, protesting against the hearing of the case of accused Vinod Kumar; and they had created hindrance in the operation of the Court, and in the dispensation of justice. We see no reason, in the absence of a specific denial in the counter affidavit, to disbelieve the petitioner's assertion that the Kotdwar District Court premises had been locked in protest against the case of the accused Sri Vinod Kumar being heard. It does appear that the District Court at Kotdwar has not only failed to take action against these acts of hooliganism, but has also kept the High Court in the dark of such unruly acts which the members of the Kotdwar Bar Association had indulged in. The High Court is requested to examine, on its administrative side, whether or not the Additional District Judge, Kotdwar has failed to discharge his duties in preventing such incidents of lawlessness by members of the Kotdwar Bar Association.

30. The Additional District Judge, Kotdwar shall, henceforth, ensure that interruption, in any form, being caused to Court proceedings, by any member of the Kotdwar Bar Association is sternly dealt with, and prompt action is taken against those who may cause any impediment to the petitioner in the discharge of his obligations as an Advocate for the accused. The Superintendent of Police, Pauri Garhwal shall provide adequate police protection to prevent any untoward incident taking place in the Court precincts, and to ensure that court proceedings continue uninterrupted. In case of any such recurrence, the Additional District Judge, Kotdwar shall, forthwith, submit a report making a reference to the High Court, to enable it to consider whether cognizance of criminal contempt should be taken, under Section 15(2) of the Contempt of Courts Act, 1971, against such of those Advocates who interrupt Court proceedings, or lock down Court premises, protesting against the hearing of the case of the accused. The Superintendent of Police, Pauri Garhwal, and the concerned police officials at Kotdwar, shall, in case any request is

made by the Additional District Judge, promptly provide necessary police protection in the Court precincts to enable justice to be administered unhindered. In case the petitioner faces any kind of physical threat to his person, for representing the accused, the Superintendent of Police, Pauri Garhwal, shall, on being informed of any such threats, promptly examine whether he should be provided police protection, and take such steps as are necessary to ensure his physical safety and well-being.

31. The resolution, passed by the Kotdwar Bar Association dated 16.05.2009 is declared null and void in its entirety. The second respondent-Bar Association shall ensure that none of its members, henceforth, restrain or cause any impediment to the petitioner in appearing for the accused, and refrain from issuing any threats to him, much less of termination of his membership of the second respondent-Bar Association.

32. On the scope of power of Uttarakhand State Bar Council to take action against Advocates who indulge in such acts, as also against the Bar Associations for pass such resolutions, it is necessary to note that Section 6 of the Advocates Act relates to the functions of the State Bar Council and, under Sub-Section (1)(c) thereof, the functions of the State Bar Council include entertaining and determining cases of misconduct against advocates on its rolls. Chapter V of the Advocates Act relates to the conduct of Advocates, and Section 35 thereunder relates to punishment of Advocates for misconduct. Under Sub-Section (1) thereof, where, on receipt of a complaint or otherwise, a State Bar Council has reason to believe that any Advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. Section 35(3) requires the disciplinary committee of a State Bar Council, after giving the Advocate concerned an opportunity of being heard, to make, among others, the following orders – (c)

suspend the Advocate from practice for such period as it may deem fit; and (d) remove the name of the Advocate from the State roll of Advocates.

33. Part VII of the Bar Council of India Rules relates to disciplinary proceedings and review, and Chapter I thereof deals with complaints against Advocates, and the procedure to be followed by disciplinary committees of the State Bar Council. The aforesaid provisions of the Advocates Act, and the Bar Council of India Rules, confer power on the State Bar Council to take action against Advocates, enrolled on its roll, for professional or other misconduct. Members of the Kotdwar Bar Association are Advocates enrolled with the Uttarakhand State Bar Council, and for holding out such threats, the State Bar Council has undoubtedly the power to proceed and take disciplinary action against the errant Advocates including the office-bearers of the Kotdwar Bar Association.

34. The State Bar Council also has the power to take action against the Bar Associations under the Advocates Welfare Fund Act, 2001. Chapter IV of the said Act relates to recognition of any association of advocates, and Section 16 thereunder, relates to the recognition by a State Bar Council of any association of advocates. Sub-sections (1) and (2) of Section 16 permit any association of advocates, registered as an association, to apply for recognition to the State Bar Council. The explanation below Section 16(4) defines the word 'registered', for the purposes of Section 16, to be registered or deemed to be registered under the Societies Registration Act, 1860. Section 16(4) enables the State Bar Council, after such enquiry as it deems necessary, to recognize the association and issue a certificate of recognition in such form as may be prescribed. Section 16(5) stipulates that the decision of the State Bar Council on any matter, regarding recognition of an association under sub-section (4), shall be final. In view of Section 21 of the General Clauses Act, 1897, the

power conferred on the State Bar Council, to issue a certificate of recognition, would include the power to rescind the certificate issued by them, which power they can exercise in exceptional circumstances. We may not be understood to have held that the Uttarakhand State Bar Council should rescind the certificate of recognition issued earlier to the Kotdwar Bar Association. We merely remind the Uttarakhand State Bar Council of its powers to control recalcitrant Bar Associations which continue to flout the law, and indulge in acts which affects the rights of advocates to appear on behalf of an accused, as also the fundamental right of the accused to be defended by a lawyer of his choice.

35. In case such resolutions are passed in future by any of the recognized Bar Associations, including the Kotdwar Bar Association, the Uttarakhand State Bar Council shall forthwith initiate action against the office-bearers of such an Association, and the Advocates guilty of such acts of misconduct, referring the complaint to its Disciplinary Committee. Even, in the absence of the elected members of the State Bar Council, the Special Committee of the Uttarakhand State Bar Council, constituted under Section 8(A) of the Advocates Act, has the power to take action, and shall do so accordingly.

36. The resolution passed by the Kotdwar Bar Association dated 16.05.2019 is declared null and void, and is accordingly quashed in its entirety. The writ petition is allowed with costs of Rs.25,000/- which the Kotdwar Bar Association shall pay the petitioner within four weeks from today, failing which it shall be open to the petitioner to recover the said amount in accordance with law.

(Alok Kumar Verma, J.)
03.09.2019

(Ramesh Ranganathan, C.J.)
03.09.2019