

Yatin N. Oza
Senior Advocate, High Court of Gujarat

To,
Shri Hardik Brahmbhatt,
Secretary General,
Gujarat High Court Advocates' Association.

Date : 2.6.2020

Dear Hardik,

Since 1994 till this date, in 26 years, by the blessings of the seniors and love and affection of the juniors, I have held the office of the President of our esteemed Association for almost 18 years and our Bar has elected me as its President for 17 times, for which I shall ever remain grateful and obliged to each and every member of the Bar.

2. It is for the first time I find myself absolutely helpless not only to redress the grievances of the majority of the Members of the Bar, but more than that, I have miserably failed to wipe out the tears, miseries and the difficulties being faced by them in this hard time, when they need my support the most. More than 700 juniors have either by way of telephonic conversation or by way of whatsapp message or by personal meeting, expressed their pathetic and disastrous financial situation. Almost before 15 days, I informed you that in pursuant to an order placed for food to a restaurant, a person who came to deliver the food from a restaurant through Swiggy, was a regular practitioner of our court, who preferred to serve as a delivery man rather than to meet with starvation. We mutually discussed that there are several advocates who showed their readiness for taking away of their car in lieu of financial assistance, when they were put a query by the Committee as to why they need assistance from the Bar when they own a car, practically each one of them said that their car may be taken away but financial assistance be provided. Large number of members of the Bar represented to me that since they cannot muster courage to speak, they have voted me as President so that I can take up their cause and speak on their behalf. Many of them could not vote in the Referendum because they were absolutely unaware about the mechanism to vote.

3. Since, the divergent views came from cross sections of the Bar, I conducted a Referendum. The result of which is by now known to everybody. Those advocates who are blessed by the God and who are well settled, who have no worries about their future, did vote for virtual hearing of the court, but in a democracy we have to go by the majority view. Until the Referendum was held, every elected member

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had an absolute right to put forward his/her views but once the Referendum is held and the result is out, still to represent their own views, is unpardonable and betrayal of faith of electorate in the elected person. In my opinion, therefore, none of us have any right to open our mouth taking a contrary stand than the one expressed by the majority. This is a cardinal principle of democracy.

4. Notwithstanding above, contrary views are being canvassed by the Vice President and the Joint Secretary even in the matter of entry of advocates to attend their chambers, notwithstanding that there is a loud demand from the advocates that at least advocates may be permitted to operate through their chamber. Advocates even agreed for odd-even formula and when I vociferously made that request to Hon'ble the Chief Justice in presence of his two Hon'ble companion Judges (Hon'ble Mr. Justice R. M. Chhaya and Hon'ble Mr. Justice J. B. Pardiwala), the stand taken by Shri Prithvisinh Jadeja was otherwise. Yesterday, Prithviraj Jadeja himself messaged me as under, "In the meeting with C.J., Hardik is proof, Yatin Sir kept on insisting for opening the chambers and C.J. kept on telling him that Mr. Oza we are not convinced, if you convince us, we will allow you. Even Justice Pardiwala and Justice Chhaya were against his suggestion of letting advocates use chambers." However, he did not further write to which you are witness that he opposed my request tooth and nail. If he had not opposed and if three of us were unanimous, I would have persuaded Hon'ble the Chief Justice to permit the advocates to visit their chambers.

5. Yesterday evening, I received a message from Shri Yatin Soni, stating as under, "It appears that full-fledged physical hearing of the court may take time. My suggestion first to get permission to use chambers for whole day. See whether social distancing and safety measures are fulfilled or not, after one week opening of chamber, we will be able to pursue for physical working of court step by step."

And my answer to that was as thus:

"Please tell Prithvi. He strongly opposed when I made the same request to Hon'ble the Chief Justice."

6. Not only Mr. Yatin Soni, I receive at least 10 messages a day requesting me to request Hon'ble the Chief Justice to permit the advocates to operate from their chambers. Even the Hon'ble Supreme Court has permitted the advocates to use their chambers on odd-even formula. But, yet it was opposed for reasons best known. It is astonishing that many advocates who have voted for virtual hearing, are bringing every day some or other difficulties, like link not being supplied to them, though matters having been filed for a month not circulated, unnecessary office objections raised notwithstanding clear instructions from Hon'ble the Chief Justice and most importantly, charges are leveled of favouritism

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and nepotism in the matter of circulation of matters. Mr. Prithviraj Jadeja himself mentioned before Hon'ble the Chief Justice that two clients with a similar grievance approached one advocate and the advocate answered that he cannot guarantee the circulation. One remained with him and the other engaged another advocate. The other advocate gave an assurance and guaranteed the circulation of the matter which actually was circulated in two days time while the first advocate who did not promise for circulation suffered and till date his matter is not circulated.

7. My very dear friend Mr. Rashmin Jani made a very loud complaint that though his matter was filed on 19th May, 2020, it is not circulated. One must understand that if you voted for a system namely V.C., you have to face and suffer such problems without any grievance. Mr. Jani not only favoured V.C. but even canvassed for the same. I really fail to understand then why should he have made any grievance. He should have accepted the system with all its shortcomings.

8. Ms. Subhadra Patel informed me that from 11th to 16th May, 2020, she circulated 5 matters and till last week, none saw the light of the day. Mr. Babubhai Mangukiya though circulated five matters with urgent note, not one is circulated. Ms. Kruti Shah has filed 30 matters in the month of April, 2020, but till a week back none was circulated. Therefore, I addressed a letter to all the members of the Bar before conducting the Referendum and said that accept one system without ifs and buts, if you opted for virtual functioning of the court, you have to face the consequence. I do not know whether Ms. Subhadra Patel, Ms. Kruti Shah and Mr. Babubhai Mangukiya have voted in favour of virtual functioning of the court or against, but what was their fault when for a month that their matters were not circulated.

9. What shocked my conscience is the information supplied by Mr. Dipen Dave, former Chairman of Bar Council of Gujarat. He drew my attention to 50 matters of 10 advocates whose matters were circulated in two days time. I have got it cross checked and verified and there was 100% truth in Mr. Dave's information.

10. The advocates must also understand that there are no ifs and buts when you make a selection. Once a particular advocate has voted for V. C., he or she must understand that he or she cannot have the cake and eat it too. If you have voted for virtual hearing, you have to face the problems related to it and you must yourself know how to deal with it. It is a different matter that if an advocate has voted for physical hearing, but physical hearing could not take place, then he/she has every right to knock the doors of any office bearers for any grievance that he faced in the system of virtual functioning of the court. But, it is most unfair that one has opted for virtual hearing and then to bring the problems which arise because

of virtual hearing. If you have opted for virtual hearing, you must know how to solve the problems, such as mentioned above.

11. I have witnessed from amongst those 36% members of the Bar in minority, using most intemperate and indecent language in abusing majority view. One cannot loose site of the fact that in a democracy, every single decision goes by majority. There may be many many people who might be against the present establishment, i.e. the Government of India, but one cannot ignore that the present establishment is the reflection of will and wish of people of India. Howsoever strong you may feel envy, but you have no option by standard of decency but to address the elected head as Hon'ble and you have no right to criticize the people of India who voted, simply because that vote is not to your liking. Every single electorate is supposed to be mature to know what is right and what is wrong for him/her more so an elite class like an advocate. You will find several messages putting conditions which in other words are ifs and buts. The advocates who do not wish to go to the court for safety measures, their interest can be well taken care of by requesting Hon'ble the Chief Justice and his Hon'ble companion Judges not to proceed with the matters where advocate is scared of coming to the court.

12. In view of the above, I have decided to resign from the post of President, which I hereby do. I will seek a fresh mandate only on one issue, 'as to whether the court should function physical or virtual'. I will never betray the faith and confidence of my electorate, when 64% members of the bar want physical functioning of the court.

13. I will re-contest only and only on one issue as stated above. If I win, which I am pretty sure I will, with all zeal and enthusiasm and with vigour and force, take a crusade to see that the court starts functioning physically. I am making it clear that thereafter I will be unstoppable. If I lose, good luck to the friends who opposed me, but if Bar reposes confidence in me on this issue, I will leave no stone unturned to see that the court functions physically.

14. I would like to put the message that I circulated yesterday in our Managing Committee's group, "Those office bearers and the Members of the Managing Committee who oppose the physical opening of the court, are betraying the mandate of the Bar. In fact the view expressed by Darshan Dave giving preference to the mandate of the Bar over his choice is absolutely a correct approach. One must not forget that we are all elected by mandate of the very same Bar. Whoever will oppose must forthwith quit and seek a fresh mandate."

Rather than asking them to resign, I have decided to vacate the post and get fresh mandate from the Bar only and only on one issue as stated above.

15. I would be failing in my duty, if I don't acknowledge and recognise two important messages. One by Shri Darshan Dave, member of the Managing Committee, who so fairly stated that he believes in virtual hearing, however, he will not like to press virtual hearing into service because he is an elected member of the Managing Committee and he cannot go against the will and wish of the Bar. The second message from Mr. Chitrajit Upadhyay, who objectively and fairly supported me notwithstanding he contested election against me only in last December. The message reads, "I really appreciate last letter addressed by you for the re-opening and physical functioning of the court." The third most important fact that I would like to mention here is the support and co-operation rendered to me by Shri Hardik Brahmhatt, Shri Savan Pandya and all the 10 members of my Managing Committee- without their support, I would not have been able to perform.

16. Friends, during this time of pandemic, I have been performing my duties to the best of my ability. I have answered more than 100 to 150 calls a day, 300 whatsapp messages a day. Even at mid-night hours, when Mr. Raghuvir Chaudhary messaged me at 1.30 a.m., I replied back at 1.35 a.m.. Not only have I replied to the messages, I have even talked to the advocate concerned on phone dialled from my side to either understand their grievance or to inform them that their grievance has been answered. I have taken up each and every issue put before me at different levels for its redressal. Only one message that went out of my sight was one from Mr. Nimish Kapadia which I could not pursue.

17. I have tried my level best to resolve the problem of the members of the Bar by personally attending to it. I will be most disgraceful if I do not mention the most friendly attitude and kind co-operation extended to me by Hon'ble the Chief Justice. On number of occasions for small matters, I sought his appointment or called him. With a smiling face, he always redressed the grievances of the Bar. On Saturday last, i.e. Managing Committee had a zoom meeting with Hon'ble the Chief Justice, where also he lent his ears to all the members of the committee. Since one or two suggestions were left out in the notification, only yesterday I had sent a message to his Lordship as follows,
"Kindly notify the procedure for the mentioning and also be kind enough to instruct the registry to circulate the matters filed under section 482 of the Cr. P.C., 1973"

This possibly was the last message of mine as President of the Bar.

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18.I would request Mr. Jadeja, who will be in-charge President, to follow up both the above issues. If my message in the Managing Committee group is read in letter and spirit, it would mean that if I get elected, then both, i.e. the Vice President and the Joint Secretary will have to resign because after the mandate of the Bar, they have continued with their contrary stand.

19.Lastly, since I have resigned on one issue and I am seeking a fresh mandate of the Bar, my request to the Managing Committee is to hold the election in two weeks time before the burning issue gets over. The voters list is ready. You can call for the nominations by way of e-mail and send link to every voter to vote according to their conscience by way of E-mail as per the last voter list. Otherwise, the whole purpose would be frustrated. Any way, it is only a suggestion, it is for the acting President and the Managing Committee to decide.

20. I tender my apology to the members of the Bar for putting them to great difficulties in such hard days inasmuch as I anticipate what difficulties they will have to face in my absence, but I am left with no option. If with the blessings of the seniors and love and affection of the juniors, I am elected as President of the Bar, I promise that I shall go to any extent regardless of its result or consequence to see that the court physically re-opens. Those sitting in air conditioned bungalows and air conditioned chambers have really no idea what the pain and suffering is to 1800 members out of 2400 members.

Thanking you,

Yours sincerely



(Yatin N. Oza)

Sr. Advocate

CC:

Shri Prithviraj Jadeja,

General Secretary,

GHCAA.

NB:

As per the constitution of our Association, resignation does not require any formal approval. It becomes effective immediately once it is received by the recipients competent to accept which as per our Constitution is the Secretary General or the Vice President.