

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Special Original Jurisdiction )

Friday, the Eighteenth day of December Two Thousand and Twenty

PRESENT

**The Hon`ble Mr.Justice N.KIRUBAKARAN**  
**and**  
**The Hon`ble Mr.Justice B.PUGALENDHI**

WP (MD) No.19293 of 2020  
and  
W.M.P. (MD) Nos.16096 and 16100 of 2020

G.SIVAKUMAR

... PETITIONER

Vs

1 THE BAR COUNCIL OF TAMIL NADU AND PONDICHERRY,  
GATE NO.4, HIGH COURT BUILDINGS,  
CHENNAI-104, REP BY ITS SECRETARY.

2 THE NAGERCOIL BAR ASSOCIATION  
REP BY ITS PRESIDENT, DISTRICT COURT CAMPUS,  
NAGERCOIL-629 001.

3 A.MARIA STEPHEN

4 T.K.MAKESH

... RESPONDENTS

Writ Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a Writ of Certiorarified Mandamus to calling for the records relating to the impugned order of suspension dated 14.12.2020 issued by the respondents 3 and 4 and quash the same and consequently direct the 1<sup>st</sup> respondent to take appropriate Disciplinary proceedings against the respondents 3 and 4 for their illegal action of declaring an illegal Boycott on 8.12.2020 and penalizing the petitioner for alleged violation of Court Boycott on 8.12.2020 and also Direct the respondents 3 and 4 to pay suitable compensation to the petitioner.

**Prayer in WMP(MD). 16096/ 2020 :**

To grant an order of Stay staying the order of suspension dated 14.12.2020 passed by the respondents 3 and 4 suspending, the petitioners membership in the 2nd respondent Bar Association, pending disposal of the main Writ Petition.

**Prayer in WMP(MD). 16100/ 2020 :**

To grant an order of interim injunction restraining the respondents 3 and 4 or their men, staff or any other person from preventing or disturbing the petitioner from entering upon the Nagercoil Bar Association and enjoying all the facilities in the bar association as its member pending disposal of the main Writ Petition.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.S.SURESH KUMAR, Advocate for the petitioner and of Mr.NIRANJAN S.KUMAR, Standing Counsel for the 1<sup>st</sup> Respondent, the court made the following order:-

(Order of the Court was made by **N.KIRUBAKARAN, J.**)

**"Bar leaders are neither labour leaders nor political leaders to call for a strike and they are advocates belonging to a noble profession."** They cannot resort to strike at any circumstances, when the aggrieved public are approaching the Court for the relief as the Court being the last resort. The Hon'ble Supreme Court of India in umpteen number of judgments has deprecated the practise of abstaining from work by the Bar. The Hon'ble Supreme Court of India in **Ex. Capt. Harish Uppal v. Union of India & Another in Writ Petition (Civil) No.132 of 1988, dated 17.12.2002**, held as follows:-

"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 arm bands, 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 not attend Courts in pursuance to 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

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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 Advocate 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 addition to damages which he might have to pay his client for loss suffered by him."

2. However, contrary to the judgments of the Hon'ble Supreme Court and forgetting their responsibilities and duties as Advocates to their clients, who entrust their cases with fond hope that Advocates would conduct their case before Courts with sincerity, many Advocates are often abstaining from Court work. As a result, the justice delivery system is being affected. Justice delivery system is one of the limbs of the State, apart from Legislative and Executive.

3. Here is a case, in which, an Advocate, who went to the Court to address the grievance of his clients, has come as a party before this Court voicing his concern that he has been prevented from entering into the Court as well as the Bar Room, in which Association, he is a Member. The case of the petitioner is that the second respondent, 'Nagercoil Bar Association' called for a boycott of the Courts on 08.12.2020 with regard to the farmers issue and the said decision is said to have been circulated through Social Media. As a dutiful lawyer to safeguard the interest of his client, the petitioner attended the Court duty on 08.12.2020 and argued a case before the Judicial Magistrate No.2, Nagercoil in C.C.No.181 of 2018, which irked the Association to suspend the petitioner from the Association, after issuing an alleged Show Cause Notice, dated 09.12.2020, on 14.12.2020. Resultantly, he is being prevented from entering into Courts, denying his statutory right to discharge his obligation to his client. Moreover, he is prevented from entering into the Association, Library and Wash Room.

4. Therefore, the petitioner gave a complaint to the first respondent on 16.12.2020, through an E-mail and approached this Court, challenging the order passed by the second respondent suspending him from the Association on 14.12.2020.

5. Heard Mr. Suresh Kumar, learned Counsel for the Petitioner and Mr. Niranjan S. Kumar, learned Standing Counsel appearing for the first respondent.

6. Legal profession is a noble profession, where Advocates are supposed to discharge their duties not only towards their clients and also duties to the Society. However, now-a-days, quite often, Advocates are indulging in strikes and disturbing the functioning of Courts. Even for political reasons, some of the Associations are indulging in boycotts, according to the political affinity or communal affiliations and various other reasons. This results in affecting not only the rights of the litigants, but also the Advocates, who are ready to discharge their statutory duty as per the Advocates Act and the Bar Council Rules.

7. *Prima facie*, it is clear that the petitioner has not abided the boycott call given by the second respondent, which is illegal, and attended the Courts and therefore, he is taken to task. The actions of the respondents 2 to 4 are not sustainable in law. For having discharged his legal duty, the petitioner is being targeted and singled out and suspended from the Association.

8. In ***The Gobichettipalayam Association v. The Bar Council of Tamilnadu*** in ***W.P. No.4418 of 2011, dated 12.06.2012***, a learned Single Judge of this Court has also deprecated this kind of calling boycotts and taking action against those Advocates, who do not fall in line with the Associations' call. Paragraphs 25 to 29 of the said order reads as follows:

"25. The Courts cannot lose sight of the fact that in the recent past, the functioning of courts has been disrupted to a great extent due to boycott of courts by lawyers. Despite knowing that such boycotts have been declared illegal by the Apex Court, the associations recognised by the Bar Council continue to indulge in such boycotts with impunity. The Bar Council, which is vested with the obligation to regulate the profession and enforce discipline, does not take any action against the recognised associations, which issue such boycott calls.

26. Section 14A of the Tamilnadu Welfare Fund Act empowers the Bar Council to cancel the recognition and registration of any Bar Association/Advocates Association. This can be done if the Advocates/Bar Association fails to discharge any of the duties imposed upon them under Section 14 or fails to carry out the directions given under Section 9A.

27. While Section 9A empowers the Bar Council to give such directions to Bar/Advocates Association as are



necessary for carrying out the purposes of this Act, Section 14(3) obliges every Advocates Association to carry out the directions given by the Bar Council. But, there is not a single instance where the Bar Council issued any direction to any Advocates/Bar Association not to resort to illegal boycotts. There is not a single instance where the Bar Council cancelled the recognition of any Advocates/Bar Association under Section 14A. Therefore, right thinking individual members of all recognised associations have very little choice, namely either to resign from the membership of the recognised Bar/Advocates Association or to defy any resolution for boycott passed by the association. Once these members defy any unlawful resolution passed by any Bar Association, these members are expelled from such recognised associations. The expulsion spells doom for these members, as their right to receive welfare fund stamps from the recognised associations and their right to use the library and toilet facilities in the rooms allotted to the associations get curtailed.

28. The consequence is that a member of the Bar should always be at the mercy of the recognised associations, so as to be able to continue to practice of law (?). If these right thinking individuals do not toe the line of a few, who control the recognised associations, their very survival gets threatened.

29. The Bar Council should take note of the above reality. Even if they do not invoke Section 14A to cancel the registration of the recognised Bar Associations, who violate the law, the Bar Council should at least go to the rescue of right thinking individuals, who want to break away and form their own association. If an encouragement is shown by the Bar Council to these persons, the persons, who suffer in silence may have an incentive to take positive action."

9. This Court is not convinced with the call for strike, which is illegal as per the judgments of the Hon'ble Supreme Court, and the petitioner has only done his professional duty to his client and attended the Court and has taken part in the Justice delivery system by conducting cases. For that, the petitioner cannot be put to unnecessary hardship.

**10. In view of the above, there shall be an order of interim stay and injunction as prayed for.**

11. Considering the circumstances under which the petitioner has been suspended by the Association and he is prevented from attending the Court and from using the Bar Room and there is a

likelihood of petitioner being abused and assaulted, this Court orders police protection to the petitioner to attend the Court as well as using the Bar Room in order to avoid any untoward incident.

12. The first respondent - Bar Council of Tamilnadu and Puducherry is to take appropriate action against the Bar Association, which called for the strike under Section 14 - A of the Tamil Nadu Advocates' Welfare Fund Act, 1987.

13. Notice returnable by 18.01.2021. Private notice is also permitted. Call on 18.01.2021.

sd/-  
18/12/2020

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/ /2020  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1 THE SECRETARY,  
THE BAR COUNCIL OF TAMIL NADU AND PONDICHERRY,  
GATE NO.4, HIGH COURT BUILDINGS,  
CHENNAI-104,
- 2 THE PRESIDENT,  
THE NAGERCOIL BAR ASSOCIATION  
DISTRICT COURT CAMPUS,  
NAGERCOIL-629 001

COPY TO:  
THE SUPERINTENDENT OF POLICE,  
KANYAKUMARI DISTRICT.

ORDER IN  
WP(MD) No.19293 of 2020 &  
W.M.P.(MD) Nos.16096 and 16100 of 2020  
Date :18/12/2020

MS/PN/SAR-4/21.12.2020/6P.4C