

CASE NO.:
Appeal (civil) 6385 2000

PETITIONER:
RAMON SERVICES PVT. LTD.

Vs.

RESPONDENT:
SUBHASH KAPOOR AND OTHERS

DATE OF JUDGMENT: 14/11/2000

BENCH:
S.P.Sethi

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J
J U D G M E N T

SETHI, J.

I agree both with the reasonings and the conclusions arrived at by Thomas, J. in his lucid judgment. However, the matter being important having far reaching effects on the institution of the judiciary, and for my views with respect to the role of the Courts during strikes by Advocates, I have opted to pen down my own observations in addition. Persons belonging to the legal profession are concededly the elite of the society. They have always been in the vanguard of progress and development of not only law but the Polity as a whole. Citizenary looks at them with hope and expectations for traversing on the new paths and virgin fields to be marched on by the society. The profession by and large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of the mankind. The lawyers, who have been acknowledged being sober, task oriented, professionally responsible stratum of the population, are further obliged to utilise their skills for socio-political modernization of the country. The lawyers are a force for the preservice and strengthening of constitutional government as they are guardians of the modern legal system. After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare state would remain in oblivion unless social justice is dispensed with. Dispensation of social justice and achieving the goals set forth in the constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system. The prevailing ailing socio-economic-political system in the country needs treatment which can immediately be provided by judicial incision. Such a surgery is impossible to be performed unless the Bench and the Bar make concerted effort. The role of the members of the Bar has thus assumed great importance in the post independent era in

the country. Generally strikes are antithesis of the progress, prosperity and development. Strikes by the professionals including the Advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two besides statutory limitations, restrictions and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the Advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service oriented profession. The relationship between the lawyer and his client is one of trust and confidence. With the strike by the lawyers, the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the Advocates Act. Law is no trade and briefs of the litigants not merchandise. This Court in *The Bar Council of Maharashtra v. M.V. Dabholkar & Ors.* [1976 (2) SCC 291] placed on record its expectations from the Bar and observed: "We wish to put beyond cavil the new call to the lawyer in the economic order. In the days ahead, legal aid to the poor and the weak, public interest litigation and other rule-of-law responsibilities will demand a whole new range of responses from the Bar or organised social groups with lawyer members. Indeed, the hope of democracy is the dynamism of the new frontiersmen of the law in this developing area and what we have observed against solicitation and alleged profit-making vices are distant from such free service to the community in the jural sector as part of the profession's trust with the People of India."

In *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra Bombay & Others* [1984 (2) SCC 556] it was observed that, "An advocate stands in a loco parentis towards the litigants. Therefore, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. The client is entitled to receive disinterested, sincere and honest treatment". It would be against professional etiquette of a lawyer to deprive his client of his services in the court on account of strike. No advocate can take it for granted that he will appear in the court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings. This Court in *Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr.* [1993 Supp. (3) SCC 256] while deprecating the decreasing trend of service element and increasing trend of commercialisation of legal profession, pointed out that it was for the members of the Bar to act and take positive steps to remove such an impression before it is too late. By striking work, the lawyers fail in their contractual and professional duty to conduct the cases for which they are engaged and paid. In *Common Cause, A Regd. Society v. Union of India & Ors.* [1994 (5) SCC 557] it was observed, "Since litigants have a fundamental right to speedy justice as observed in *Hussainara Khatoon v. Home Secy., State of Bihar* [1980 (1) SCC 81] it is essential that cases must

proceed when they appear on board and should not ordinarily be adjourned on account of the absence of the lawyers unless there are cogent reasons to do so. If cases get adjourned time and again due to cessation of work by lawyers it will in the end result in erosion of faith in the justice delivery system which will harm the image and dignity of the Court as well". Noting casual and indifferent attitude of some of the lawyers and expecting improvement in quality of service this Court in *In Re: Sanjiv Datta, Deputy Secretary, Ministry of Information & BroadCasting, New Delhi, etc.* [1995 (3) SCC 619] held: "Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant-public and to the courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings - many time even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system.

The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is

likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

In *Brahma Prakash Sharma v. State of U.P.* [1953 SCR 1169] a Constitution Bench of this Court held that a resolution passed by the Bar Association expressing want of confidence in the judicial officers amounted to scandalising the court to undermine its authority which amounted to contempt of court. In *Tarini Mohan Barari, Re:* [AIR 1923 Cal. 212] the Full Bench of the High Court held that pleaders deliberately abstaining from attending the court and taking part in a concerted movement to boycott the court, was a course of conduct held not justified. The pleaders had duties and obligations to their clients in respect of matters entrusted to them which were pending in the courts. They had duty and obligation to cooperate with the court in the orderly administration of justice. Boycotting the court was held to be high handed and unjustified. In *Pleader, Re:* [AIR 1924 Rang 320] a Division Bench of the High Court held that a pleader abstaining from appearing in the court without obtaining his client's consent and leaving him undefended, amounted to unprofessional conduct. In *U.P. Sales Tax Service Association v. Taxation Bar Association, Agra & others* [1995 (5) SCC 716] this Court observed: "It has been a frequent spectacle in the recent past to witness that advocates strike work and boycott the courts at the slightest provocation overlooking the harm caused to the judicial system in general and the litigant public in particular and to themselves in the estimate of the general public. An advocate is an officer of the court and enjoys a special status in the society. The workers in furtherance of collective bargaining organise strike as per the provisions of the Industrial Disputes Act as a last resort to compel the management to concede their legitimate demands.

It is not necessary to go into the question whether the advocates, like workmen, have any right at all to go on strike or boycott court. In *Federal Trade Commission v. Superior Court Trial Lawyers' Assn.* 493 US 411 the attorneys who regularly accepted court appointments to represent indigent defendants in minor felony and misdemeanour cases before the District of Columbia Superior Court sought an increase in the statutorily fixed fees they were paid for the work they had done. When their lobbying efforts to get increase in the fees failed, all the attorneys, as a group, agreed among themselves that they would not accept any new cases after a certain date, if the District of Columbia had not passed legislation providing for an increase in their fees. The Trial Lawyers' Association to which the attorneys belonged supported and publicised their agreement. When they are not accepting the briefs which affected the District's criminal justice system, the Federal Trade Commission (FTC) filed a complaint against the Trial Lawyers' Association complaining that they had entered into a conspiracy to fix prices and go in for a boycott which was an unfair method of competition violating Section 5 of the Federal Trade Commission Act (15 USCS 45). The administrative law judge rejected various defences of the Association and recommended that the complaint to browbeat

the boycott be dismissed. The Court of Appeals for the District of Columbia reserved the FTC order holding that the attorneys are protected by Federal Constitution's First Amendment etc. On certiorari, majority of USA Supreme Court speaking through Stevens, J. held that the lawyers had no protection of the First Amendment (free speech) and the action of the group of attorneys to boycott the courts constituted restraint of trade within the meaning of Section 1 of Sherman Act against unfair method of competition. Though the object was enactment of a favourable legislation, the boycott was the means by which the attorneys sought to obtain favourable legislation. The Federal Constitution's First Amendment does not protect them."

In Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd. [1999 (1) SCC 37] to which one of us (Thomas, J.) was a party observed: "Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty bound to insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear. But unfortunately this case reflects apathy on the part of the High Court in affording such protection to a judicial functionary who resisted, through legal means, a pressure strategy slammed on him in open court."

It was further held: "If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquett require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating.

A three-Judge Bench of this Court has reminded members of the legal profession in Lt.Col. S.J. Chaudhary v. State (Delhi Admn.) (1984) 1 SCC 722 that it is the duty of every advocate who accepts a brief to attend the trial and such duty cannot be overstressed. It was further reminded that 'having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend'.

"A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay differential respect to the Judge, and scrupulously observe the decorum of the courtroom."

(Warvelle's Legal Ethics, at p.182)

Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court."

In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting counsel for the costs paid. In appropriate cases the court itself can pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. In the instant case respondent has to be held entitled to the payment of costs, consequent upon the setting aside of the ex-parte order passed in his favour. Though a matter of regret, yet it is a fact, that the courts in the country have been contributory to the continuance of the strikes on account of their action of sympathising with the Bar and failing to discharge their legal obligations obviously under the threat of public frenzy and harassment by the striking advocates. I find myself in agreement with the submission of Sh.M.N. Krishnamani, Senior Advocate that the courts were sympathising with the Bar by not agreeing to dismiss the cases for default of appearance of the striking advocates. I have my reservations with the observations of Thomas, J. that the courts had not been sympathising with the Bar during the strikes or boycotts. Some courts might have conducted the cases even during the strike or boycott periods or adjourned due to helplessness for not being in a position to decide the lis in the absence of the counsel but majority of the courts in the country have been impliedly sympathisers by not rising to the occasion by taking positive stand for the preservation of the high traditions of law and for continued restoration of the confidence of the common man in the institution of judiciary. It is not too late even now for the courts in the country to rise from the slumber and perform their duties without fear or favour particularly after the judgment of this Court in Mahabir Singh's case(supra). Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting courts may also be contributory to the contempt of this Court.