

CASE NO.:
Contempt Petition (civil) 81 of 2000

PETITIONER:
Common Cause 'A Registered Society, Etc.

RESPONDENT:
Union of India & Ors., Etc

DATE OF JUDGMENT: 28/09/2005

BENCH:
S. N. Variava, Dr. AR. Lakshmanan & S. H. Kapadia

JUDGMENT:
JUDGMENT

O R D E R
CONTEMPT PETITION (C) NO. 81 OF 2000
IN

W.P. (C) NO. 821 OF 1990
[With Contempt Petition (C) No. 88 of 2000 in W.P. (C) No. 821 of 1990 and W.P. (C) No. 320 of 1993 and I.A. No. 7 in W.P. (C) No. 821 of 1990 and W.P. (C) No. 320 of 1993]

The two Contempt Petitions and the I.A. can be disposed off by this common Order. All of them deal with the question whether the action of the Bar Associations, i.e., the Delhi High Court Bar Association and the Supreme Court Bar Association, in visiting the Advocates, who refused to participate in the strike call, with punitive action of suspension and the action of the Bar Council of Delhi passing a resolution which inter alia proposes to take against lawyers who did not participate in the strike call, amounts to contempt of the Judgment of this Court in the case of Common Cause 'A Registered Society vs. Union of India reported in (1995) 1 Scale 6.

The concerned events in these matters took place during 1999 and 2000 and since then there has been no repetition of the acts of the type alleged. Thus, apart from reiterating the well-settled legal position, we do not propose to take any further action.

The question of lawyers' going on strike has been a subject matter in a number of decisions of this Court. All of them have been considered in the Judgment of a Constitution Bench of this Court in the case of Ex. Capt. Harish Uppal vs. Union of India reported in (2003) 2 SCC 45. In this case, the Court also noted the directions, which were issued by this Court in the case of Common Cause 'A Registered Society (supra). The said directions are to the following effect:

"(1) In the rare instance where any association of lawyers including statutory Bar Councils considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps.

(2) No such member who appears in court or otherwise practices his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat of expulsion therefrom.

(3) The above will not preclude other forms of

protest by practicing lawyers in court such as, for instance, wearing of armbands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.

(4) Office-bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (1) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (1), (2) and (3) above."

Even though these directions were passed as an interim measure they were made an Order of the Court. In this case, it was hoped that the Bar Council of India would incorporate the above clauses in the Bar Council of India (Conduct and Disciplinary) Rules. Unfortunately, even after all these years, the Bar Council of India has not deemed it fit to incorporate those directions into its Rules. However, Mr. Krishnamani made a statement, on behalf of the Bar Council of India, that a meeting has been called by the Bar Council of India on 18th October, 2005 in order to consider what is to be done with regard to Lawyers' Strike. It is hoped that now at least better sense will prevail and the Bar Council of India incorporates the above clauses in the Bar Council of India (Conduct and Disciplinary) Rules.

The Constitution Bench has, in Ex. Capt. Harish Uppal's case (Supra), culled out the law in the following terms:

"20. Thus the law is already well settled. It is the duty of every Advocate who has accepted a brief to attend trial, even though it may go on day to day for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend Court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend Court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that Courts are under an obligation to hear and decide cases brought before it and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of Courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers it would amount to scandalising the Courts to undermine its authority and thereby the Advocates will have committed contempt of Court. Lawyers have known, at least since Mahabir Singh's case (supra) that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of Court/s. Lawyers have also known, at least since Roman Services' case, that the Advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an Advocate is an officer of the Court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the Court. They owe a duty to their client. Strikes interfere with administration of justice. They cannot thus disrupt Court proceedings and put interest of their clients in jeopardy.

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34. One last thing which must be mentioned is that the right of appearance in Courts is still within the control and

jurisdiction of Courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in Court can only be within the domain of Courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an Advocate) can practice in the Supreme Court and/or in the High Court and Courts subordinate thereto. Many Courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self restraint is exercised, Courts may now have to consider framing specific rules debarring Advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the Courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of Bar Councils. It would be concerning the dignity and orderly functioning of the Courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the Courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file Vakalat on behalf of client even though his appearance inside the Court is not permitted. Conduct in Court is a matter concerning the Court and hence the Bar Council cannot claim that what should happen inside the Court could also be regulated by them in exercise of their disciplinary powers. The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the Court may be a specie. But the right to appear and conduct cases in the Court is a matter on which the Court must and does have major supervisory and controlling power. Hence Courts cannot be and are not divested of control of supervision of conduct in Court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of Court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in Courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of Court proceedings. On the contrary it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the Court. Proceedings inside the Courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of Contempt of Court or of unbecoming or unprofessional conduct, standing in the Court would erode the dignity of the Court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the Courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the Courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of

the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an Advocate shall have a right to practice i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the Court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an Advocate shall be permitted to practice in Courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an Advocate to appear in a Court. An Advocate appears in a Court subject to such conditions as are laid down by the Court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a Court. Even if Section 30 were to be brought into force control of proceedings in Court will always remain with the Court. Thus even then the right to appear in Court will be subject to complying with conditions laid down by Courts just as practice outside Courts would be subject to conditions laid down by Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.

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 protest marches outside and away from Court premises, going on dharnas or relay facts 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 bodily 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 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.

36. It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self restraint will be exercised. The petitions stand disposed of accordingly." The Court also dealt with the role of Bar Councils on the following terms:

"25. In the case of Supreme Court Bar Association v. Union of India reported in (1998) 4 SCC 409 (1998 AIR SCW 1706 : AIR 1998 SC 1995), it has been held that professional misconduct may also amount to Contempt of Court (para 21). It has further been held as follows:

"79. An advocate who is found guilty of Contempt of Court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing Contempt of Court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the Courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a Court of record records its findings about the conduct of an advocate while finding him guilty of committing Contempt of Court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law

with a view to maintain the dignity of the Courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the Court or disregard by the Court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, falls to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court of the High Court, to prevent the contemner advocate before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate on Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other Courts or Tribunals."

Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of Courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to the place where they belong viz. the waste paper basket. In case any Association call for a strike or a call for boycott the concerned State Bar Council and on their failure the Bar Council of India must immediately take disciplinary action against the Advocates who give a call for strike and if the Committee Members permit calling of a meeting for such purpose against the Committee Members. Further it is the duty of every Advocate to bodily ignore a call for strike or boycott.

26. It must also be noted that Courts are not powerless or helpless. Section 38 of the Advocates Act provides that even in disciplinary matters the final Appellate Authority is the Supreme Court. Thus even if the Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an Appeal the Supreme Court can and will. Apart from this, as set out in Roman Services' case, every Court now should and must mulct. Advocates who hold Vakalats but still refrain from

attending Courts in pursuance of a strike call with costs. Such costs would be in addition to the damages which the Advocate may have to pay for the loss suffered by his client by reason of his non-appearance."

Apart from reiterating the above law, we do not propose to take any further action. The Contempt Notices stand discharged.

The Contempt Petitions and I. A. stand disposed off accordingly.

JUDIS