

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1777 of 2017**

(Arising out of order dated 18.04.2017 in Case No.224/I.D. Act/2011
Reference of the learned Judge under the ID Act, Labour Court,
Rajnandgaon)

Order reserved on: 14.11.2017

Order delivered on: 16.01.2018

Ramesh Kumar Gupta, S/o. late Pyare Lal Gupta, aged about 68
years, R/o. Tulsipur Ward No.6, Rajnandgaon (Chhattisgarh)
(T) 07744 224209 (M) 94255 59024.

---Petitioner

Versus

- 1.State of Chhattisgarh, Labour Department, through its
Principal Secretary, Mantralaya, Naya Raipur, Raipur
(Chhattisgarh).
2. (Deleted).
- 3.Dr. Ashok Sanothiya, Judge (Under ID Act), Labour Court,
Rajnandgaon (Chhattisgarh)

---Respondents

For Petitioner : Mr. T. K. Jha and Mr. Romir S. Goyal,
Advocates.

For Respondent No.1 : Mr. Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order [C.A.V.]

1. Petitioner herein is a practicing advocate since 1975. He has
also served the Government of Madhya Pradesh and the
Government of Chhattisgarh as Panel Lawyer and also represented
the Government of Chhattisgarh before the Labour Court. He has

challenged legality, validity and correctness of order dated 18.04.2017 passed by the Labour Court by which the said court has annulled all his appearances made in various cases on behalf of the State Government since 2013 holding that he has failed to furnish order of appointment issued by the Government/or its officer-in-charge duly appointing him to appear in those proceedings and said order has been passed in exercise of power conferred under Section 36(4) of the Industrial Disputes Act, 1947.

2. Mr. T.K. Jha, learned counsel appearing on behalf of the writ petitioner, would submit that such an order passed by the Labour Court is totally unsustainable and bad in law. He would further submit that no such power is conferred by Section 36(4) of the Industrial Disputes Act, 1947 to annul his appearances already made on behalf of his party/client (State Government) as those appearances have become final. He would further submit that the State Government or its officers have not disputed his appearances so made or has not stated that the petitioner was not at all authorized to appear on behalf of the Government or its officer or he made appearances without instructions on behalf of the Government as such the order impugned is in excess of its jurisdiction and liable to be set aside.

3. Mr. Arun Sao, learned Deputy Advocate General, would submit that boycotting the court and abstaining from court proceeding is contrary to the judgment rendered by the Hon'ble Supreme Court and as such, the writ petition deserves to be dismissed.

4. I have heard learned counsel for the parties and considered their rival submissions and went through the record with utmost circumspection.

5. At the outset, it is appropriate to mention that the impugned order was passed on 18.04.2017 in Case No.224/I.D. Act/2011 Reference, in which the petitioner was a counsel appearing on behalf of the Government, but he has not appeared on that date supporting the boycott call given by the Rajnandgaon Bar Association by memo dated 03.04.2017 striking and boycotting the Labour Court proceeding. I will deal with this issue little later.

6. At this stage, it would be appropriate to notice Section 36(4) of the Industrial Disputes Act, 1947, which states as under:-

“36. Representation of parties.-

(1) to (3) ***** ***** *****

(4) In any proceeding [before a Labour Court, Tribunal or National Tribunal], a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be].”

A focused glance of above-stated provision would show that by virtue of above-stated provision, party to proceedings under the Industrial Disputes Act, can engage a legal practitioner only after fulfillment of conditions like consent of other party and leave of court. Sub-section (4) of Section 36 does not insist upon a written consent. It could be implied. There is no provision in the Act enabling such withdrawal or revocation of consent already granted.

7. It is not in dispute that the petitioner has appeared before the Labour Court in various cases on behalf of the State Government and its authorities since 2013 and leave has been granted by the appropriate court or Tribunal in those cases and there is no dispute raised on behalf of the State Government or its authorities in that behalf. The leave granted has been annulled holding that the petitioner has failed to produce his authority letter duly appointing him as panel lawyer on behalf of the State Government in those cases. Section 36(4) does not empower the courts or tribunals to revoke the leave already granted.

8. Even otherwise, termination of *Vakalat* of an advocate is a serious and extreme step and normally, the courts should not adopt such extreme step unless there are compelling circumstances to do so. The existence of power is something different from exercise of power. It may be relevant to observe that for an independent judiciary both the bar and the bench are the two strong pillars. An advocate is expected to represent the case of his client and no doubt he owes a duty towards the court also.

9. It was held by the Madras High Court in the matter of **Satteyya Chetti v. Venkataramanayya**¹ and the Allahabad High Court in the matter of **Kanhaya Lal v. Panchayati Akhara**² that a pleader having authority can file a plaint or execution petition without a *Vakalatnama* and the defect can be cured by a *Vakalatnama* being subsequently filed. The decisive factor is not filing of *Vakalatnama*,

¹ AIR 1950 Madras 119

² AIR 1949 All 367 (FB)

but existence of power to act on behalf of the plaintiff, applicant or appellant, as the case may be.

10. Similarly, the Madhya Pradesh High Court in the matter of **State of Madhya Pradesh v. Yatindra Prasad Sharma**³ has laid down the similar proposition by holding as under:-

“The fact of the existence of authority and the document by which that fact is sought to be established are two distinct things. Where there is a complete absence of authority in the person presenting a plaint or an appeal the suit or appeal with certainly be incompetent. But inhere the person presenting a plaint, application or appeal was prior to its presentation duly authorised by the person on whose behalf the plaint, application or appeal as presented, the fact that he was so authorised can, in my opinion, be proved at a later stage, and in such cases the tiling of a power of attorney or vakalatnama even at a late point of time would cure the defect.”

11. Following the principles of law laid down in above-stated judgments, reverting to the facts of the case, it is quite vivid that the petitioner has appeared in various cases before the Labour Court on behalf of the State Government/its authorities as a panel lawyer and he was duly appointed in those cases since 2013. It is not the case that he was not at all authorized on behalf of the State Government to appear in those cases as it has not been disputed by the State government by filing appropriate application in those proceedings. Merely because the petitioner has failed to produce the authority letter or power of attorney within the stipulated time granted by the Labour Court, his appearances so made cannot be annulled. Such an order passed by the Labour Court annulling the appearances of

3 AIR 1963 MP 127

the petitioner including appearances of those proceedings which are not before that court on the date of order, is without jurisdiction and without authority of law. Leave granted under Section 36(4) of the Act of 1947 cannot be revoked by learned labour court. The part of impugned order annulling his appearances are hereby set aside.

12. Before parting with record, a note of caution is necessary to the petitioner and District Bar Association, Rajnandgaon. As noted by learned labour court, the petitioner did not appear in Case No. 224/ID Act/2011 – Raju v. Water Resources Division, Chhuikhadan following the boycott call made by District Bar Association, Rajnandgaon by its memo dated 03.04.2017, as the said Association has decided to boycott the court proceedings of labour court. The labour court has rightly held that striking and boycotting the court proceedings is illegal and without authority of law.

13. A Constitution Bench of the Supreme Court in the matter of **Ex-Capt. Harish Uppal v. Union of India and another**⁴ has held that lawyers have no right to go on strike or even token strike or to give a call for boycott. It was further held that while holding vakalat on behalf of clients they cannot abstain from courts in pursuance of a call for strike or boycott. It was held as under:-

“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 and 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

4 (2003) 2 SCC 45

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 them 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 case*⁵ 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 *Ramon 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 clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy. In the words of Mr H.M. Seervai, a distinguished jurist:

“Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For, once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts. ‘In my submission’, he said that ‘it is high time that the Supreme Court and the High Courts make it clear beyond doubt that they will not tolerate any

5 (1999) 1SCC 37

interference from any body or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Courts maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill will.”

22. It was expected that having known the well-settled law and having seen that repeated strikes and boycotts have shaken the confidence of the public in the legal profession and affected administration of justice, there would be self-regulation. The abovementioned interim order was passed in the hope that with self-restraint and self-regulation the lawyers would retrieve their profession from lost social respect. The hope has not fructified. Unfortunately strikes and boycott calls are becoming a frequent spectacle. Strikes, boycott calls and even unruly and unbecoming conduct are becoming a frequent spectacle. On the slightest pretence strikes and/or boycott calls are resorted to. The judicial system is being held to ransom. Administration of law and justice is threatened. The rule of law is undermined.

25. In the case of *Supreme Court Bar Assn. v. Union of India*⁶ it has been held that professional misconduct may also amount to contempt of court. 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

6 (1998) 4 SCC 409

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, fails 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 or the High Court, to prevent the contemner advocate to appear 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 practise 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 practise 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 the 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 calls for a strike or a call for boycott the State Bar Council concerned 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 boldly ignore a call for strike or boycott.

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 armbands, peaceful protest 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 refuse to attend courts in pursuance of 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 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 advocates 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 in 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.”

Justice M.B. Shah and Justice D.M. Dharmadhikari in their separate, but concurring opinion held as under:-

“40. However, by merely holding strikes as illegal, it would not be sufficient in the present-day situation nor serve any purpose. The root cause for such malady is required to be cured. It is stated that resort to strike is because the administration is having deaf ears in listening to the genuine grievances and even if grievances are heard appropriate actions are not taken. To highlight, therefore, the cause call for strike is given. In our view, whatever be the situation in other fields

lawyers cannot claim or justify to go on strike or give a call to boycott the judicial proceedings. It is rightly pointed out by the Attorney-General that by the very nature of their calling to aid and assist in the dispensation of justice, lawyers normally should not resort to strike. Further, it had been repeatedly held that strike is an attempt to interfere with the administration of justice.”

14. Thereafter, the Supreme Court in the matter of **Common Cause v. Union of India and others**⁷ following the principle of law laid down in **Harish Uppal** (supra), reiterated and held that in case any association calls 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 action against the person who calls for strike or calls for boycott. Therefore the Bar Councils and the Bar Association can never accept any association calling for a meeting to consider a call for strike or boycott.

15. In the matter of **R. K. Anand v. Registrar Delhi High Court**⁸ the Supreme Court while lamenting on the declining professional standards of lawyer, emphasized the need for framing rule by State Bar Councils/as well as by respective High Courts to frame rules in the matter of strikes and calls for boycott given by advocates.

16. In the case of **Roman Services Pvt. Ltd. v. Subhash Kapoor and others**⁹ the Supreme Court dealt with the consequences suffered by litigants on account of non-appearances of the advocates on the ground of call given for strikes by Bar Associations. The Supreme Court held that members of Bar will be

7 AIR 2005 SC 4442

8 (2009) 8 SCC 106

9 (2001) 1 SCC 118

responsible for consequences suffered by litigants.

17. The Supreme Court recently in the matter of Hussain and another v. Union of India¹⁰ following Harish Uppal (supra) reiterated and held that suspension of work or strike is clearly illegal.

18. Reverting to the facts of the case, it would appear that call was made by the District Bar Association to boycott proceedings of labour court, for certain grievances as reflected in the impugned order against the Presiding Officer, which was totally unauthorized and illegal in view of the Constitution Bench judgment of the Supreme Court in Harish Uppal (supra), and the petitioner should have shown the courage of defying the call, but rather he has joined hands with the unauthorized act of the Bar Association and also boycotted the court proceeding before the labour court and by joining that, the petitioner even did not made an attempt to demonstrate stating that he was duly appointed to appear in all those proceedings leading to passing of this order.

19. As a fallout and consequence of above-stated legal analysis, the part of the impugned order annulling the petitioner's appearance before the Labour Court since 2013 is hereby set aside subject to the condition that he will be careful in future and will not involve in such an act or activity and will uphold the rule of law being a senior member of the Bar. However, the part of order holding the boycott of labour court proceeding by the concerned Bar to be illegal and unauthorized, is upheld.

¹⁰ (2017) 5 SCC 702

20. The writ petition is allowed to the extent indicated herein-above.

No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge