

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VISHAL MISHRA**

W.P. No. 7295 of 2023

[IN REFERENCE (SUO MOTO) VS. CHAIRMAN, STATE BAR COUNCIL OF M.P. & OTHERS]

Dated: 24-03-2023

This *suo moto* public interest litigation has been initiated as a result of the communication by the Chairman of the State Bar Council of Madhya Pradesh asking the entire lawyer community in the State of Madhya Pradesh to abstain from court work w.e.f. 23.03.2023.

2. The facts are that by the letter dated 20.03.2023, the Chairman of the State Bar Council of Madhya Pradesh addressed a communication to the Hon'ble Chief Justice to the effect that unless the scheme relating to disposal of 25 identified cases in every quarter is not withdrawn by 22.03.2023 they would protest the issue seriously. It is further stated therein that the general body in its meeting held on 18.03.2023 has unanimously resolved that if the Hon'ble High Court does not withdraw the scheme pertaining to disposal of 25 oldest cases up to 22.03.2023, all the lawyers in the State of Madhya Pradesh will collectively protest and will abstain from judicial work w.e.f. 23.03.2023. The same is marked as **Annexure-A**.

3. Thereafter, the Hon'ble Chief Justice vide communication dated 21.03.2023 replied to the same and stated that in pursuance to the assurances made by the Chairman of the Bar Council on 02.03.2023 as

well as on 15.03.2023, the Chairman and members of the Bar Council were most welcome to submit all the issues being faced, so that the same can be considered and thereafter a meeting would be convened to resolve the issues. Copy of the same is marked as **Annexure-B**. In pursuance whereof, a communication was addressed to the Hon'ble Chief Justice by the Chairman, State Bar Council of Madhya Pradesh dated 22.03.2023, which was received by email at 02.47 PM to the effect that disposal of 25 oldest cases scheme be adjourned for first three months or it be withdrawn immediately within 4 O'clock today i.e. on 22.03.2023, so that the courts in the State of Madhya Pradesh may work properly. Copy of the same is marked as **Annexure-C**.

4. Subsequently, the Chairman of the Bar Council of India addressed a communication dated 23.03.2023 to the respondent No.1 and a copy to the Hon'ble Chief Justice through the Registrar General. In terms of the said communication, the Bar Council of India has directed the State Bar Council to take immediate steps for withdrawal of the call for strike immediately by the Bar Council as well as by the Bar Associations of the State. The copy of the same is produced as **Annexure-D**. In flagrant violation of the direction issued by the Bar Council of India, the respondent No.1 has directed all the advocates to abstain from work.

5. On 23.03.2023, we found that advocates were not present in our court as well as at the Benches at Indore and Gwalior. They were also absent in other courts of the State. Therefore, the Registrar General has been directed to obtain a report from each one of the courts in the State of Madhya Pradesh with regard to the happenings on 23.03.2023.

6. Keeping in mind the seriousness and the interest of the poor litigants at large, for the present, we are of the considered view that the following are required as respondents:-

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| Respondent No.1 : | Chairman, State Bar Council of Madhya Pradesh |
| Respondent No.2 : | President, High Court Bar Association, Jabalpur |
| Respondent No.3 : | President, High Court Bar Association, Indore |
| Respondent No.4 : | President, High Court Bar Association, Gwalior |
| Respondent No.5 : | President, High Court Advocates' Bar Association, Jabalpur |
| Respondents No.6 to 236 : | President of each of the Bar Associations in the State of Madhya Pradesh |

7. We are extremely shocked, worried and pained about the manner in which things have unfolded. Subsequent to the communication by respondent No.1 vide Annexure-A, a reply has been furnished asking the Chairman and the Bar Council Members to submit the issues for consideration by the Hon'ble Chief Justice. They have not done so even as on date. Rather than doing so, a call for abstaining from court work has been announced by respondent No.1.

8. It is needless to mention that various orders were passed by this court in a series of matters pertaining to the very issue of abstaining from court work. One such petition is Writ Petition No.8078 of 2018 in the case of Praveen Pandey vs. State of Madhya Pradesh and others, which was disposed off vide order dated 31.07.2018. The undertaking given by the accused, namely, the State Bar Council of Madhya Pradesh and others was noted in the order dated 22.03.2016 passed in Contempt Petition No.296 of 2016 to the effect that it was undertaken that henceforth a precaution would be taken and if eventualities require for resorting to any manner of protest, the Bar Council will ensure that strictly

in the light of the law laid down by the Hon'ble Supreme Court in the case of Ex-Capt. Harish Uppal vs. Union of India and Another reported in (2003) 2 SCC 45 action would be taken.

9. Another such order of this Court is the order dated 10.04.2018 passed in Writ Petition No.8078 of 2018 (supra), wherein, it has been held in paras 19, 20 and 21 as follows:-

“19. If an Advocate does not appear at the time of hearing of the cases, he can be proceeded against for misconduct for negligence in defending the interest of his client. The call of the Bar Council to Advocates of the State to abstain from work, does not fall within the four corners of the Act and the role assigned to the Bar Council. The State Bar Council derives its authority from the Act and has to discharge functions which are conferred on it. None of the provisions of the Act confers power on the statutory body to call the members to abstain from judicial work which is a responsibility of every member of the Bar in terms of the provisions of the Act itself. It has been rightly held by the Calcutta High Court in Arunava Ghosh and others vs. Bar Council of West Bengal and others (AIR 1996 Calcutta 331) that the Act does not confer any power or jurisdiction on the State Bar Council to take away the right of an Advocate to practice as of right either temporarily or permanently or to compel him not to practice even for a day or affect his right to practice in any manner whatsoever except by way of exercising disciplinary jurisdiction under Section 35 of the Act. Therefore, the call given to the Advocates to abstain from Judicial work negates the statutory right of Advocates to practice and also is an violation of fundamental right of an Advocate where freedom to practice any profession is guaranteed under Section 19(1)(g) of the Constitution of India.

20. *In view of the foregoing, we find that the decision of the State Bar Council calling upon the Advocates in the State to observe a week-long protest and to abstain from all judicial works and Court proceedings is illegal, unconstitutional and against the statutory provisions as well as contrary to the judgments of the Supreme Court. Therefore, we hold the call to abstain from court work vide letters dated 21st March, 2018 and 5th April, 2018 as illegal and against the provisions of the Advocates Act and the Judgments on the subject.*

21. *Consequently, we direct the Advocates in the State to resume the work forthwith so that the poor, needy, under-trials, convicts and numerous other persons desiring to seek justice from the Courts do not suffer on account of lack of legal assistance for the reason that the members of the Bar are not available to work in the Courts”.*

10. The Bar Council has been a party to all the earlier proceedings before this court. Undertakings have been given. The directions of the Hon'ble Supreme Court in Ex-Capt. Harish Uppal's case (supra) have been flouted. There is no permission from the Hon'ble Chief Justice for the purpose of abstaining from court work.

11. After considering the various issues on the same, one of the observations made by the Hon'ble Supreme Court in Ex-Capt. Harish Uppal's case (supra) is at para 35 of the order, which reads 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 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."

- 12.** The Hon'ble Supreme Court have time and again held that a call to abstain from work is illegal. The lawyers cannot go on a strike. Even assuming it is a rarest of rare case, where it has to be resorted to, then the

guidelines postulated in para 35 have to be followed. In terms whereof, the permission of the Hon'ble Chief Justice should have been obtained well in advance. The respondent No.1 has failed to do so. He has not complied with the orders of the Hon'ble Supreme Court.

13. We are of the considered view that the duty of a lawyer is to uphold the rule of law. It is he, who fights for the legal rights of a litigant. There are almost 20 Lakh cases pending in the district court judiciary and more than 4 Lakh cases pending in the High Court. Every effort is being made by the Hon'ble High Court to reduce the pendency. The action of the respondent No.1 seeking to abstain from court work is opposed to the well established principles of the legal profession. The respondent No.1 cannot call for an illegal act to be done.

14. “*Dharmo Rakshati Rakshitah*” when translated into English means that those who protect *Dharma* will be protected by *Dharma* or in other words, it also means that those who destroy *Dharma*, *Dharma* destroys them. Therefore, in this context, when it is applied to the present scenario, it would mean that those who protect the law will be protected by law.

15. The duty of the lawyer is to fight for the legal rights of his clients and to ensure the rule of law. The rule of law is one of the basic tenets of the legal profession. Therefore, it is the duty of every lawyer to uphold the rule of law. The rule of law in the present scenario is the law as declared by the Hon'ble Supreme Court in Ex-Capt. Harish Uppal's case (supra). The duty is to uphold and to comply with it. Rather than doing so, the judgment of the Hon'ble Supreme Court has been violated. Whatever may be the issues being faced by the lawyers, they cannot exercise their rights without first performing their duty. Their duty is to protect the legal rights of the litigants. It is only after they have done so that they can exercise their rights and that too in accordance with law. The right therefore enures

only after a duty is well done. On the contrary rather than performing their duty of protecting the interest of the litigants and upholding the rule of law, they have violated the rule of law by disobeying the directions issued by the Hon'ble Supreme Court in Ex-Capt. Harish Uppal's case (supra). All this has been done only at the behest of the call to abstain from work issued by the respondent No.1. This is not acceptable. It is illegal.

16. The respondent No.1 has violated the orders of the Hon'ble Supreme Court. He has also shown scant respect and disobeyed the directions issued by the Bar Council of India. This Court cannot be a mute spectator to the blatant disobedience of the orders of the Hon'ble Supreme Court. It is the solemn duty of this court to uphold the rule of law and also to deal with all such persons who violate the law and who have no respect for the rule of law. All actions of the lawyers should be focused only towards the litigants and not against them. The litigant has sadly and unfortunately become a silent, helpless sufferer to the actions of the respondent No.1. We also express our displeasure to the manner and contents of the letter written by respondent No.1 vide Annexure-C, which would appear more to be a threat rather than a request.

17. Under these circumstances, we are of the considered view that the litigants are the ones who suffer. Their cause in the court is not being considered in view of the absence of the counsels. The litigants have suffered because of this. Today is the second day, the lawyers are abstaining from attending the court. The entire judicial system is intended only for the benefit of the litigants. Everyone in the system is geared to deal with the grievances of the litigants. If advocates themselves abstain from work due to the call given by the respondent No.1, it is indeed a very sad day for the State of Madhya Pradesh.

18. Under these circumstances, since the judgment of the Hon'ble Supreme Court has been violated and keeping in mind the interest of the poor litigants, we deem it just and necessary to issue the following directions:-

- (i) All the advocates throughout the State of Madhya Pradesh are hereby directed to attend to their court work forthwith. They shall represent their clients in the respective cases before the respective courts forthwith;
- (ii) If any lawyer deliberately avoids to attend the court, it shall be presumed that there is disobedience of this order and he will be faced with serious consequences including initiation of proceedings for contempt of court under the Contempt of Courts Act;
- (iii) If any lawyer prevents any other lawyer from attending the court work, the same would be considered as disobedience of these directions and he will be faced with serious consequences including initiation of proceedings under the Contempt of Courts Act;
- (iv) Each of the judicial officers are directed to submit a report as to which lawyer has deliberately abstained from attending the court;
- (v) The judicial officers shall also mention the names of advocates who have prevented other advocates from entering the court premises or from conducting their cases in the court;
- (vi) Such advocates shall be dealt with seriously which may even include proceedings under the Contempt of Courts Act as well as being debarred from practice.

The Registry is directed to ensure that all the respondents are served with the notice of this petition as well as of this order forthwith.

Post after service of notice.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

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