
(2019) 12 UK CK 0037
In the Uttarakhand High Court
Case No : Special Appeal No. 960 Of 2018

Amrish Kumar Agrawal

APPELLANT

Vs

Bar Council Of Uttarakhand And Another

RESPONDENT

Date of Decision : 07-12-2019

Acts Referred:

Advocates Welfare Fund Act, 2001 — Section 3, 3(1), 3(2)(a), 3(2)(b), 3(2)(c), 3(2)(d), 3(2)(e), 3(2)(f), 3(2)(g), 3(2)(h), 3(2)(i), 3(2)(j), 3(3), 3(3)(2), 16, 16(1), 16(2), 16(4), 16(5), 18, 18(1), 18(2)(a), 18(2)(b), 18(5), 18(8), 18(12), 19, 21, 21(1), 21(2)
Advocates Act, 1961 — Section 26A
General Clauses Act, 1897 — Section 21
Constitution Of India, 1950 — Article 12, 32, 226, 226(1)

Citation : (2019) 12 UK CK 0037

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : A.S. Rawat, P.C. Petshali, Piyush Garg, Shakti Singh

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. A.S. Rawat, learned Senior Advocate assisted by Mr. P.C. Petshali, learned Advocate for the appellant, Mr. Piyush Garg, learned

Standing Counsel for respondent No.1 and Mr. Shakti Singh, learned Advocate for respondent No.2.

2. This is yet another case where a District Bar Association appears to believe that the membership of an advocate can be terminated at its mere

whim without even complying with the basic rules of natural justice. The petitioner is an advocate practicing in the courts at Kashipur, and is a

member of the Kashipur Bar Association. It is his case that the Kashipur Bar Association had passed a resolution on 20.09.2018 expressing

condolence on the death of the mother of Smt. Savitri Devi, Advocate; they had resolved, as a mark of respect, that advocates would abstain from attending all the courts at Kashipur on that day; and the Kashipur Bar Association had terminated the membership of the petitioner, by its resolution dated 03.10.2019, for having attended court on 20.09.2018 despite the resolution of the Kashipur Bar Association dated 20.09.2018 not to attend courts on that day.

3. This practice of advocates in Udham Singh Nagar District, boycotting courts on the death of relatives of their advocate colleagues, has been deprecated by a Division Bench of this Court in *Ishwar Shandilya Vs. State of Uttarakhand and others* (order in Writ Petition (PIL) No.31 of 2016, dated 25.09.2019).

4. According to the petitioner, a non-bailable warrant was issued against his client; he had filed an application seeking recall of the non-bailable warrant; the matter was initially listed on 12.09.2018 and was adjourned to 15.09.2018; it was again adjourned from 15.09.2018 to 20.09.2018; and eventually, on his appearing in the Court on 20.09.2018, the Magistrate had, by her order dated 20.09.2018, recalled the non-bailable warrant of arrest issued against his client. The petitioner has enclosed copies of the Court docket proceedings dated 12.09.2018 whereby hearing was deferred to 15.09.2018, the docket proceedings dated 15.09.2018 deferring hearing till 20.09.2018, and the order dated 20.09.2018 whereby the non-bailable warrant issued earlier was recalled.

5. While the petitioner claims that the resolution passed on 03.10.2018, by the Kashipur Bar Association, was because he had appeared in court on 20.09.2018, the resolution dated 03.10.2018 does not assign any reasons. It merely records that the Bar Association had unanimously resolved to terminate the membership of the petitioner as he had acted against the dignity of the Association. On the petitioner invoking the jurisdiction of this Court, by way of WPMS No.3043 of 2018, the learned Single Judge dismissed the writ petition in limine holding that the petitioner was not able to satisfy the Court as to the maintainability of the writ petition, since the writ petition can only be filed against the State or its instrumentalities; and the petitioner had not been able to show in which manner the Kashipur Bar Association is an instrumentality of the State. Aggrieved thereby, the present

Appeal.

6. When the appeal was listed on 04.12.2018, a Division Bench of this Court noted the submission of Mr. A.S. Rawat, learned Senior Counsel

appearing on behalf of the appellant-writ petitioner, that the appellant was being punished for not acceding to the illegal demand of the Kashipur Bar

Association to abstain from Court work. Since Mr. Piyush Garg, learned Counsel for the Bar Council of Uttarakhand, sought time to obtain

instructions as to what action the Bar Council of Uttarakhand proposes to take against the Kashipur Bar Association, he was granted time to do so.

The Division Bench had also permitted the counsel for the petitioner to effect service of notice on the President and the Secretary of the Kashipur

Bar Association by dasti. The Special Appeal was directed to be listed on 11.12.2018, and the Bar Council of Uttarakhand was directed to file an

affidavit regarding the action, if any, they proposed to take against the Kashipur Bar Association for their, prima facie, illegal act of terminating the

membership of the appellant for having attended Court on a day the Association had decided to abstain from attending Court.

7. In our order dated 21.10.2019, we had observed that, prima facie, the order removing the appellant-writ petitioner from membership was bereft of

reasons; and the earlier notices placed on record, on behalf of the respondents, disclosed the appellant-writ petitioner's failure to deposit

Advocates Welfare Fund stamp of Rs. 10/-, for each Vakalat filed by him, on the specious plea that Standing Counsel for local bodies were similarly

situated to Government Advocates and were, therefore, exempt from affixing Advocates Welfare Fund stamps. While observing that the appellant-

writ petitioner was obligated to deposit the amounts due, towards Advocates Welfare fund stamps, we noted the submission of Mr. M.C. Pant,

learned counsel appearing on behalf of the Kashipur Bar Association, that the association would intimate the petitioner of the amounts due from him

towards Advocates Welfare fund stamps, which had not been affixed on the Vakalats filed by him, on or before 06.11.2019; and that Mr. A.S. Rawat,

learned Senior Counsel appearing on behalf of the appellant-writ petitioner, undertook that the appellant-writ petitioner would pay the amounts due,

towards Advocates Welfare Fund Stamps, within ten days thereafter.

8. On Mr. A.S. Rawat, learned Senior Counsel, informing us that the amounts due

towards Advocates Welfare Fund stamps had been deposited by the appellant-writ petitioner, we had, in our order dated 02.12.2019, recorded the request of Mr. M.C. Pant, learned counsel appearing for the second respondent, that the matter be taken up on 07.12.2019 to enable him to attempt to resolve the dispute amicably. We had, accordingly, directed that the matter be listed today, i.e. 07.12.2019.

9. Curiously, another counsel Mr. Shakti Singh, appears in Court today, on behalf of the second respondent, in the place of Mr. M.C. Pant, learned counsel, who appeared for the second respondent all through. Mr. Shakti Singh, learned counsel, submits that he now holds their Vakalat (which has not yet been filed in the Registry) as Mr. M.C. Pant, learned counsel, is not in station today.

10. Mr. Shakti Singh, learned counsel, would rely on the order under appeal to submit that, as the Kashipur Bar Association is not an instrumentality of the State under Article 12 of the Constitution of India, a writ petition would not lie against them. It is necessary therefore to examine, at the outset,

whether or not the appellant-writ petitioner is entitled to invoke the jurisdiction of this Court, under Article 226 of the Constitution of India, questioning termination of his membership of the Kashipur Bar Association. Article 226(1) of the Constitution of India provides that, notwithstanding anything in

Article 32, every High Court shall have the power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or

authority, including in appropriate cases any Government, within those territories, directions, orders or writs, including writs in the nature of habeas

corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any

other purpose.

11. Article 226 of the Constitution empowers the High Court to issue writs, directions or orders for the enforcement of any of the rights conferred by

Part III and "for any other purpose". It is essentially a power conferred upon the High Court for issuance of high prerogative writs for

enforcement of fundamental rights as well as non-fundamental, or ordinary legal rights which may come within the expression "for any other

purpose". The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive. (Director of

Settlements : A.P. v. M.R. Apparao : (2002) 4 SCC 638). The power to issue prerogative writs under Article 226 of the Constitution is plenary in

nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court for "any other purpose".

(Whirlpool Corpn. v. Registrar of Trade Marks : (1998) 8 SCC 1). The expansive and extraordinary power of the High Courts under Article

226 is as wide as the amplitude of the language used indicates, and so can affect any person " even a private individual " and be available for any

(other) purpose " even one for which another remedy may exist. (Rohtas Industries Ltd. v. Rohtas Industries Staff Union : (1976) 2 SCC

82).

12. Article 12, in Part III of the Constitution, stipulates that, in this Part (meaning thereby Part III), unless the context otherwise requires, the

"State" includes the Government and Parliament of India and the Government and the Legislature of each of the State, and all local or other

authorities within the territory of India or under the control of the Government of India. The State and its instrumentality, as defined in Article 12, are

for the purpose of Part-III of the Constitution relating to fundamental rights. The term "authority" used in Article 226, in the context, must receive

a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of the fundamental rights enshrined in Part-

III of the Constitution. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and

instrumentalities of the State. They may cover any other person or body performing a public duty. The form of the body concerned is not very

relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of the positive obligation owed by the

person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, relief cannot be denied. (Andi

Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani : (1989) 2 SCC 691).

13. The power conferred on the High Court, under Article 226(1) of the Constitution of India, is to issue writs, directions or orders to any person. The

High Court, in the exercise of such jurisdiction, can, besides violation of fundamental rights, issue a writ, order or direction at the request of any

individual against any person who has violated the statutory right of the person invoking its jurisdiction.

14. Yet another reason why we must reject the submission of Mr. Shakti Singh, learned counsel appearing for the second respondent-writ petitioner,

that a writ petition would not lie is that an advocate, an officer of the Court, discharges public law functions of providing access to justice to needy

litigants. He has also the responsibility of ensuring that administration of justice is carried on unhindered. The Bar Association is a collective of

advocates, and has certain statutory obligations which it is required to discharge under the Advocates Welfare Fund Act, 2001 (for short the 2001

Act). The central function that the legal profession must perform is nothing less than the administration of justice. (â??The Practice of Law is a

Public Utilityâ?? â?" â??The Lawyer, The Public and Professional Responsibilityâ?? by F. Raymond Marks et al â?" Chicago

American Bar Foundation, 1972, p. 288-89). The role of a Lawyer is indispensable in the system of delivery of justice. (R. Muthukrishnan v.

Registrar General of the High Court of Judicature at Madras : AIR 2019 SC 84)9. Lawyers owe a duty not only to the legal system, but also

to society. (Oudh Bar Association v. State of Uttar Pradesh : Order of the Supreme Court in Civil Appeal No. 6710 of 2019 dated

26.08.2019). An advocateâ??s duty is as important as that of a Judge, and they play a vital role in the preservation of the justice system. (O.P.

Sharma and others v. High Court of Punjab and Haryana : (2011) SCC 86). Since the duty of a lawyer is to assist the Court, in the

administration of justice, the practice of law has a public utility flavor. (Sri Jayendra Saraswathy Swamigal (II), T.N. v. State of T.N. : (2005) 8

SCC 771 and Indian Council of Legal Aid and Advice v. Bar Council of India and another : (1995) 1 SCC 732). The practice of law is thus

a public utility of great implications. (Bar Council of Maharashtra v. M.V.Dabholkar and others : (1976) 2 SCC 291; Ishwar Shandilya v.

State of Uttarakhand and others (Order in Writ Petition (PIL) No. 31 of 2016 dated 25.09.2019).) Since the practice of law has a public

utility flavor, and the Bar Associations discharge a public duty under the 2001 Act, abuse of authority by the Bar Associations, while discharging their

statutory duties, would also justify this Court exercising its jurisdiction, under Article 226 of the Constitution of India, to interfere.

15. We are satisfied, therefore, that a writ petition would lie against a Bar Association, including the Kashipur Bar Association, which, in terms of the 2001 Act, is statutorily required to be affiliated to the State Bar Council.

16. Once this hurdle, regarding the maintainability of the writ petition, is crossed the next question which necessitates examination is whether the

Kashipur Bar Association was justified in terminating the membership of the appellant-writ petitioner, and whether any statutory right of the appellant-

writ petitioner has been violated thereby. It is useful in this context to refer to certain provisions of the 2001 Act, an act made by Parliament to provide

for the Constitution of the Advocates Welfare Fund for the benefit of Advocates, and for matters connected therewith or incidental thereto. Section 3

of the 2001 Act relates to the constitution of an Advocates Welfare Fund and, under Sub-section (1) thereof, the appropriate Government shall

constitute a fund to be called the "Advocate Welfare Fund to which amounts, as stipulated under Clauses (a) to (j) of Section 3(2), shall be

credited. Section 3(3) stipulates that the sum, specified in sub-section (2), shall be paid to, or collected by, such agencies at such intervals, and in such

manner, as may be prescribed.

17. Chapter IV of the 2001 Act relates to the recognition of any association of advocates, and Section 16 thereunder relates to recognition, by the

State Bar Council, of any association of Advocates. Sub-sections (1) and (2) of Section 16 permit any association of advocates, registered as an

association, to apply for recognition to the State Bar Council. The explanation below Section 16(4) defines the word "registered", for the

purposes of Section 16, to be registered or deemed to be registered under the Societies Registration Act, 1860. Section 16(4) enables the State Bar

Council, after such enquiry as it deems necessary, to recognize the association and issue a certificate of recognition in such form as may be

prescribed. Section 16(5) stipulates that the decision of the State Bar Council on any matter, regarding recognition of an association under sub-section

(4), shall be final. Chapter V relates to the membership and payment out of advocates' welfare fund; Section 18 relates to membership in the fund

and, under sub-Section (1) thereof, every advocate practising before the commencement of the 2001 Act in any Court, Tribunal or other authority in a

State, and being a member of a State Bar Association or a State Advocates'

Association in that State, shall apply, within six months of his enrolment as an advocate, to the trustee Committee for admission as a member of the Fund in such form as may be prescribed. Section 18(2)(a) stipulates that every person admitted as an advocate on the roll of a State Bar Council, after the commencement of the 2001 Act, shall apply within six months, of enrolment as an Advocate, to the trustee committee for admission as a member of the fund in such form as may be prescribed. Section 18(5) requires every Advocate, being a member of the Fund, to pay an annual subscription of fifty rupees to the Fund on or before the 31st day of March of every year. Section 18(8) requires every member of the fund, at the time of admission to the membership in the Fund, to make a nomination conferring, on one or more of his dependants, the right to receive, in the event of his death, any amount payable to the member under the 2001 Act. Section 18(12) stipulates that every member of the Fund, whose name has been removed from the State roll under Section 26-A of the Advocates Act, 1961 (25 of 1961), or who voluntarily suspends practice, shall, within 15 days of such removal or suspension, intimate such removal or suspension to the Trustee Committee and, if any member of the fund fails to do so, the Trustee Committee may reduce, in accordance with such principles as may be prescribed, the amount payable to that member under the 2001 Act.

18. Section 19 of the 2001 Act relates to the ex-gratia grant to a member of the fund and, thereunder, the Trustee Committee, on an application made to it by a member of the Fund and after being satisfied about the genuineness of the claim, may allow ex-gratia grant to such member from the fund

(a) in the case of his hospitalisation or involving major surgical operation; or (b) if he is suffering from tuberculosis, leprosy, paralysis, cancer, unsoundness of mind or from such other serious disease or disability. Section 21(1) stipulates that every advocate who has been a member of the Fund for a period of not less than five years shall, on his cessation of practice, be paid an amount at the rate specified in Schedule I. Under Section 21(2) where a member of the Fund dies, before receiving the amount payable under sub-section (1), his nominee or legal heir, as the case may be, shall be paid the amount payable to the deceased member of the Fund.

19. In terms of Section 18(1), read with Section 18(2)(b), it is only an advocate practicing in Courts, and is a member of the State Bar Association,

who is entitled for membership of the fund. Unless the Advocate is a member of the Bar Association he is not entitled to be a member of the

Advocates Welfare fund, or to claim the benefits thereunder. The termination of membership of the Bar Association, of an advocate, would

automatically result in his not being entitled thereafter to claim the benefits, otherwise available to him under Section 19 and 21 of the 2001 Act. As

termination of his membership from the Kashipur Bar Association would, undoubtedly, result in the appellant-writ petitioner losing his statutory right of

claiming the amounts under Section 19 and 21 of the 2001 Act, the action of the Kashipur Bar Association, in terminating the membership of the

appellant-writ petitioner, is amenable to the Public Law Jurisdiction of this Court under Article 226 of the Constitution of India.

20. While the appellant claims that termination of his membership is because he attended Court on 20.09.2019, despite a resolution passed by Bar

Association to abstain from Court on that day, the resolution dated 03.10.2018, does not, per se, assign any reasons; and merely records that the Bar

Association had unanimously resolved to terminate the membership of the appellant-writ petitioner because he had acted against the dignity of the

Association.

21. In the counter affidavit, filed in the Special Appeal, the Secretary of the Kashipur Bar Association states that the appellant has been indulging in

wrong doing, and has been misusing his power as an advocate; he was not been affixing Advocate Welfare coupons in the Vakalatnama before the

Court, and he has been working against the Kashipur Bar Association, for which show cause notices were issued earlier; but the appellant had not

paid any heed or attention thereto; consequently, a show cause notice was given to him on 26.09.2018, and ultimately on 03.10.2018 his primary

membership was removed. While reference is made to several other complaints, all that the show-cause notice dated 26.09.2018 states is that the

petitioner had acted against the dignity of the Bar Association, and a similar notice for acting against the dignity of the Bar Association had been given

earlier on 13.07.2018. What both the show cause notice dated 26.09.2018, and the resolution dated 03.10.2018, conveniently omit to state is the basis,

for the Kashipur Bar Association, to hold that the appellant-writ petitioner had acted in violation of the dignity of the Bar Association.

22. As already held by this Court, in *Ishwar Shandilya Vs. State of Uttarakhand and others*, (order in Writ Petition (PIL) No.31 of 2016

dated 25.09.2019) the obligation of every advocate is to attend Court despite a call for a strike/boycott being given by the Bar Association; and

merely because the Advocate had discharged his duties of attending the Court, despite a boycott call being given by the Bar Association, his

membership cannot be terminated. While the submission of Mr. A.S. Rawat, learned Senior Counsel, that termination of the membership of appellant-

writ petitioner was only because he had appeared in Court on 20.09.2018, despite the boycott call given by the Bar Association, does appear to have

considerable force, it is unnecessary for us to go into this aspect since, admittedly, neither the show cause notice dated 26.09.2018 nor the resolution

dated 03.10.2018 assign any reasons for termination of the membership of the appellant-writ petitioner herein.

23. In his affidavit, the Secretary of the Bar Council of Uttarakhand states that a letter was sent through e-mail on 05.12.2018, and a reminder was

send on 06.12.2018, to the Kashipur Bar Association. While the second-respondent appears to have sent a reply to the Uttarakhand State Bar Council

on 07.12.2018, making several allegations against the appellant-writ petitioner, which neither form part of the show cause notice dated 26.09.2018 nor

the subsequent order dated 03.10.2018, the fact remains that the Uttarakhand State Bar Council has done nothing thereafter for the past one year.

Mr. Piyush Garg, learned Standing Counsel for the State Bar Council, would submit that it is only because of the pendency of this writ petition, that the

State Bar Council did not take any action.

24. While we find this explanation wholly unsatisfactory, for nothing prevented the State Bar Council from exercising its powers both under the

Advocate Act, 1961 and under the Advocate Welfare Fund Act, 2001, and it does appear to us that the State Bar Council has conveniently refrained

from taking any action on this specious plea, we refrain from saying anything more except to express our hope that the State Bar Council will act

promptly in future to ensure that the District Associations in the State, including the Kashipur Bar Association, do not act whimsically. In view of

Section 21 of the General Clauses Act, 1897, the power conferred on the State Bar Council under Section 16(4), to issue a certificate of recognition,

would include the power to rescind the certificate issued by them, which power they can exercise in exceptional circumstances. We may not be

understood to have held that the Uttarakhand State Bar Council should rescind the certificate of recognition issued earlier to the Kashipur Bar

Association. We merely remind the Uttarakhand State Bar Council of its powers to control recalcitrant Bar Associations which flout the law, and

indulge in acts which affects the rights of advocates to appear on behalf of an accused, as also the fundamental right of the accused to be defended

by a lawyer of his choice. (Kuldeep Agarwal v. State of Uttarakhand and others : 2019 (2) U.D. 331; Ishwar Shandilya v. State of

Uttarakhand and others (Order in Writ Petition (PIL) No. 31 of 2016 dated 25.09.2019).

25. Suffice it also to make it clear that the order now passed by us shall not be understood as our having given a certificate of good conduct to the

appellant-writ petitioner, or as having held that the Kashipur Bar Association cannot take any action against its erring members, including the

appellant-writ petitioner. All that we have held is that it cannot take action against its members for having attended courts despite a boycott call given

by the Association. Needless to state that, before any action is taken for other valid reasons, the Bar Association shall comply with the rules of natural

justice, put the member on notice, give him an opportunity of being heard, and pass an order/resolution thereafter assigning reasons for the action

taken by it.

26. The impugned resolution dated 03.10.2018 is illegal, and is accordingly quashed. With the aforesaid observations, the Special Appeal is disposed of.

However, in the circumstances, without costs.