
(2015) 04 MP CK 0140
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3809 of 2015

Anand Trust

APPELLANT

Vs

The Bar Council of India and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Citation : (2015) 3 MPHT 313 : (2015) 3 MPLJ 677

Hon'ble Judges : Rajendra Menon, J;M.C. Garg, J

Bench : Division Bench

Judgement

Rajendra Menon, J—Shri S.P. Anand, petitioner appears in person along with Shri Gyan Prakash, who is also a party to the averments and the prayer made to this Court in I.A. No. 4277/2015. I.A. No. 4277/2015 is an application filed by the petitioners bringing to the notice of this Court the action of the High Court Bar Association, Jabalpur and the District Bar Association, Jabalpur in the matter of calling a one day token strike and boycott of Courts today. Petitioners submit that the agitations, the grievances of the District Bar Association in the matter do not fall in exception to the general rule as indicated by the Supreme Court in the case of Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another, (2002) 10 JT 310 : (2002) 2 SCALE 58 : (2003) 2 SCC 45 : (2002) 5 SCR 186 Supp : (2003) 1 UJ 137 : (2003) WritLR 140 . The action is contrary to the dictum of the Supreme Court as indicated in Para 35 of the judgment in the case of Ex-Capt. Harish Uppal (supra). Petitioner also points out that this Court has already taken cognizance of the original prayer made in this writ petition and in spite of notice again a call for strike is given.

2. Shri S.P. Anand further points out that he was one of the petitioner in the decision rendered by the Supreme Court and his petition was heard and decided as Writ Petition (Civil) No. 394/1993, which form part of the order passed by the Supreme Court in the case of Ex-Capt. Harish Uppal (supra).

3. Shri S.P. Anand and Shri Gyan Prakash vehemently emphasized that this Court should take action in the matter not only against the office bearers of the M.P.

High Court Bar Association and District Bar Association but also against each individual Advocate who has absented from Court work today and who have disobeyed to the directions of the Supreme Court. They submitted that if a call for strike is given by the Bar Association still the observations of the Supreme Court in Para 35 mandates the Advocates to disobey such a call and appear in the Court as their profession conduct and duty to the litigants so warrants. Shri S.P. Anand further prays that a notice be issued to the Bar Council of India and the State Bar Council of M.P. asking them as to why action be not taken against the Advocates who have gone on strike and as to why their registration with the Council be not cancelled.

4. Having considered the submissions, issue notice to all the Office Bears of the M.P. High Court Bar Association and District Bar Association, Jabalpur on I.A. No. 4277/2015. Notice be issued by the Registry without insisting upon payment of P.F. or any action by the petitioner. If any extra copy is required, registry is directed to prepare the same for the purposes of issuing notice.

5. We have considered the principles laid down by the Supreme Court in the case of Ex-Capt. Harish Uppal (supra). For the sake of convenience, the same is reproduced herein under:--

"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 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 Advocate decide to absent themselves from the 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.

(Emphasis supplied)

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 off accordingly."

6. On the perusal of the averments made in I.A. No. 4277/2015 and the press report and other documents available on record along with the notice received by the Registrar General of High Court, on 24-4-2015 from the M.P. High Court Bar Association, it transpires that Advocates are boycotting work today only because the Chief Justice has constituted a Committee to examine certain representation received from the certain Advocates and representative from Bhopal in the matter of creation of Circuit Bench at Bhopal.

7. In the case of Ex-Capt. Harish Uppal (supra) and in Para 35 while discussing the matter pertaining to justification or otherwise of the Bar Association in calling boycott and strike, the Supreme Court has clearly laid down that in such cases, the President of the Bar must consult Hon"ble Chief Justice before Advocate decided to abstain from Court work and they should abide by his decision. The issue in question was first raised by M.P. Bar Association and by passing a resolution by issuing a press statement, the Hon"ble Chief Justice called upon the Presidents and Secretaries of various Bar Association functioning in the High Court at Jabalpur, namely, M.P. High Court Bar Association, the Advocates Bar Association and the members of the Senior Counsel, certain Senior Member of the Bar and a meeting was organized in the Chamber of Hon"ble Chief Justice, wherein one of us (Shri Rajendra Menon, J.) participated in the meeting along with other Senior Judge. After discussion with the Chief Justice the Members in the meeting were satisfied with the constitution of the Committee. They were apprised of the fact that when the representation is received, it has to be considered and a decision taken and the High Court in the administrative side cannot discard the representation and throw it in the dustbin. The Members of the Bar Association were informed that the decision for constituting the Committee was taken after a resolution was passed by the Administrative Committee of the High Court. After such a meeting was held now the District Bar Association, Jabalpur even without making any request to the Chief Justice, without representing the Chief Justice and without taking up the issue on the administration of the High Court and in gross violation to the directions of the Supreme Court as indicated hereinabove, has passed the resolution and has called for boycott of the Court.

8. The reasons for boycott as is indicated in the communication received by District Bar Association on 24-4-2015 reads as under:--

and the further reasons, which are made out from the paper cutting available go

to show the reason for calling for the boycott is totally contrary to the dictum of the Supreme Court in the case of Ex-Capt. Harish Uppal (supra), and for such an issue boycott of the Court cannot be permitted. Prima facie, therefore, the action of the Bar Associations is violative to the law laid down by the Supreme Court. The same prima facie amounts to a case of Contempt of Court, violation of Supreme Court mandate and a case for taking action against the office bearers. Not only they are rendered themselves liable to be proceeded against for contempt but also to pay the cost to the litigants for damage, who has suffered because of the adjournment and non-hearing of the cases today. However, the principles of natural justice and process of law requires that before taking any action as indicated by us hereinabove, the law mandates us to issue notice to all concerned and thereafter proceed in accordance with law. Accordingly, we direct the office to issue notice to all the office bearers of M.P. High Court Bar Association and the District Bar association, along with a copy of this order directing them to show cause as to why action as contemplated by the Supreme Court in the case of Ex-Capt. Harish Uppal (supra), should not be taken against them. That apart, a copy of the order be also forwarded to the Chairman of M.P. State Bar Council and the Chairman of Bar Council of India asking them to show cause on the next date and to indicate as to why further action should not be taken as prayed for by the petitioners in the matter of frequent call for boycott being given by the Bar Association in the State of M.P. and any action to be taken for restraining them and prohibiting them from doing so.

Issue notice to all concerned returnable in four weeks.

List on 29th June, 2015.

C.c. today free of costs.