Supreme Court of India Ex-Capt. Harish Uppal vs Union Of India & Anr on 17 December, 2002 Author: S N Variava Bench: Cji, Doraiswamy Raju, S. N. Variava, D. M. Dharmadhikari CASE NO.: Writ Petition (civil) 132 of 1988

PETITIONER: Ex-Capt. Harish Uppal

RESPONDENT: Union of India & Anr.

DATE OF JUDGMENT: 17/12/2002

BENCH: CJI, DORAISWAMY RAJU, S. N. VARIAVA, D. M. DHARMADHIKARI

JUDGMENT: J U D G M E N T (WITH W. P. (C) No. 394/93, W. P. (C) No. 821/90, W. P. (C) No. 320/93 and W. P. (C) 406/2000) S. N. VARIAVA, J. 1) All these Petitions raise the question whether lawyers have a right to strike and/or give a call for boycotts of Court/s. In all these Petitions a declaration is sought that such strikes and/or calls for boycott are illegal. As the questions vitally concerned the legal profession, public notices were issued to Bar Associations and Bar Councils all over the country. Pursuant to those notices some Bar Associations and Bar Councils have filed their responses and have appeared and made submissions before us. 2) In Writ Petition (C) No. 821 of 1990, an interim order came to be passed. This Order is reported in (1995) 1 Scale p.6. The circumstances under which it is passed and the nature of the interim order are set out in the Order. The relevant portion reads as under: "2. The Officiating Secretary, Bar Council of India, Mr. C. R. Balaram filed an affidavit on behalf of the Bar Council of India wherein he states that a 'National Conference' of members of the Bar Council of India and State Bar Councils was held on 10th and 11th September, 1994 and a working paper was circulated on behalf of the Bar Council of India by Mr. V. C. Misra, Chairman, Bar Council of India, inter alia on the question of strike by lawyers. In that working paper a note was taken that Bar Association had proceeded on strike on several occasions in the past, at times, State-wide or Nationwide, and 'while the profession does not like it as members of the profession are themselves the losers in the process' and while it is not necessary to sit in judgment over the wider question whether members of the profession can at all go on strike or boycott of courts, it was felt that even if it is assumed that such a right enures to the members of the profession, the circumstances in which such a steps should be restored should be clearly indicated. Referring to an earlier case before the Delhi High Court it was stated that the Bar Council of India had made its position clear to the effect"(a) Bar Council of India is against resorting to strike excepting in rarest of rare cases involving the dignity and independence of the judiciary as well as of the Bar; and (b) whenever strikes becomes inevitable, efforts shall be made to keep it short and peaceful to avoid causing hardship to the litigant public." (emphasis supplied). It was in response to the above that a consensus emerged at the Bar at the hearing of the matter that instead of the Court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from appearing

in cases in Court in which they are engaged, the Court may see the working of the interim arrangement and if that is found to be satisfactory it may perhaps not be required to go into the wider question at this stage. Pursuant to the discussion that took place at the last hearing on 30th November, 1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India's thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to avoid causing hardship to the litigant public. The learned counsel suggested that to begin with the following interim measures may be sufficient for the present:- "(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 practising lawyers in court such as, for instance, wearing of arm bands 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) and (2) and (3) above." 3: Mr. P. N. Duda, Sr. Advocate representing the Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate Clauses (1), (2) and (3) and (4) in the Bar Council of India (Conduct & Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in clauses (1) to (4) above for a period of at least six months by making the said clauses the rule of the Court. Accordingly we make clauses (1) to (4) mentioned above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. We also suggest to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in Court notwithstanding strike calls given by the Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of Judge of different Courts refusing adjournments merely on the ground of their being a strike call and insisting on proceeding with cases." The above interim Order was passed in the hope that better sense could prevail and lawyers would exercise self restraint. In spite

of the above interim directions and the statement of Mr. P. N. Duda the Bar Council of India has not incorporated clauses (1) to (4) in the Bar Council of India (Conduct & Disciplinary) Rules. The phenomenon of going on strike at the slightest provocation is on the increase. Strikes and calls for boycott have paralysed the functioning of Courts for a number of days. It is now necessary to decide whether lawyers have a right to strike and/or give a call for boycott of Court/s. 3) We have heard Mr. Dipanker Gupta, learned Amicus Curie. We have heard the Petitioner in person and Advocates for the various Writ Petitioners. We have heard the Bar Councils and Bar Associations who desired to be heard. 4) Mr. Dipanker Gupta referred to various authorities of this Court and submitted that the reasons why strikes have been called by the Bar Associations and/or Bar Councils are : (a) confrontation with the police and/or the legal administration; (b) grievances against the Presiding Officer; (c) grievances against Judgments of Courts; (d) clash of interest between groups of lawyers and (e) grievances against the legislature or a legislation. Mr. Gupta submitted that the law was well established. He pointed out that this Court has declared that strikes are illegal. He submitted that even a call for strike is bad. He submitted that it is time that the Bar Council of India as well as various State Bar Councils monitor strikes within their jurisdiction and ensure that there are no call for strikes and/or boycotts. He submitted that in all cases where redressal can be obtained by going to a Court of law there should be no strike. 5) Mr. Nigam, on behalf of Petitioner in Writ Petition (C) No. 406 of 2000, submitted that strike as a mean for collective bargaining is recognised only in industrial disputes. He submitted that lawyers who are officers of the Court cannot use strikes as a means to blackmail the Courts or the clients. He submitted that the call for strike by lawyers is in effect a call to breach the contract which lawyers have with their clients. He submitted that it has already been declared by Courts that a strike is illegal. He submitted that it is now time that Courts cast responsibility on the Bar Councils and the Bar Associations to see that there is no strike and/or call for boycott. He submitted that now the Executive Committee of any Bar Council or Bar Association which calls for a strike or boycott should be held responsible by the Courts. He submitted that the Courts must take action against the Committee members for giving such calls on the basis that they have committed contempt of court. He submitted that the law is that a lawyer who has accepted a Vakalat on behalf of a client must attend Court and if he does not attend Court it would amount to professional misconduct and also contempt of court. He submitted that Court should now frame rules whereby the Courts regulate the right of lawyers to appear before the Court. He submitted that Courts should frame rules whereby any lawyer who mis-conducts himself and commits contempt of court by going on strike or boycotting a Court will not be allowed to practice in that Court. He submitted that it should now be held that even if a requisition for a meeting to consider a strike is received, the Committee members of a Bar Association or the Bar Council should refuse to call a meeting for that purpose. He submitted that no Association or Bar Councils can have any legal or moral right to call a meeting to consider a call for an

illegal act. He submitted that this Court should now issue a mandamus to the Bar Councils to frame rules in consonance with the interim directions which have been passed by this Court. 6) Mr. Prashant Bhushan, for the Petitioner in W. P. (C) No. 821 of 1990, supported Mr. Dipanker Gupta and Mr. Nigam. He further submitted that the Court should also declare that lawyers who do not want to participate in a strike should not be coerced by other lawyers or Committee members. He submitted that such coercion amounts to interference with the administration of justice and is therefore clearly contempt of court. He submitted that this coercion need not necessarily be by physical prevention from appearance but could also be by a threat to withdraw facility or to terminate the membership of the Associations. He submitted that if any such threats are given or any such coercion is used then the Court must punish for contempt the party so coercing. 7) Submissions were made before us by the Bar Councils of Delhi, U.P., Maharashtra, Goa, West Bengal, Andhra Pradesh and Tamil Nadu. Submissions were also made before us on behalf of Bar Associations of Madras, Kerala, Calcutta, Nainital and the Supreme Court Bar Association. Counsels for the Bar Councils and Bar Associations submitted that they were not in favour of strikes and/or call for strikes. Many of them stated that their Associations had not gone on strike at all and/or only on token strikes of not more than one day. The consensus at the Bar was that lawyers cannot and should not resort to strike in order to vent their grievances where a legal remedy was available. The consensus at the Bar was that even where a legal remedy was not available strike should be resorted to in the rarest of rare cases like when the dignity of the Court or the Bar was at stake. The consensus was that even in such cases only a token strike of one day may be resorted to. The consensus was that other methods of protests must be resorted to, viz. passing of resolutions, making representations, taking out silent processions without causing disturbance to Court work, holding dharnas or relay fast and wearing white ribbons. The consensus of the Bar was that there must be a mechanism for redressing the grievances of the lawyers. It was suggested that the Committees be set up to whom grievances can be submitted. 8) It must however be mentioned that counsel on behalf of U. P. Bar Council struck a discordant note. He submitted that lawyers had a right to go on strike or give a call for boycott. He submitted that Courts had no power of supervision over the conduct of lawyers. He submitted that Section 50 of the Advocates Act, 1950 repealed earlier provisions which had permitted Courts to control rights of Advocates to practice in Courts. He submitted that there are many occasions when lawyers require to go on strike or gave a call for boycott. He submitted that this Court laying down that going on strike amounts to misconduct is of no consequence as the Bar Councils have been vested with the power to decide whether or not an Advocate has committed misconduct. He submitted that this Court cannot penalise any Advocate for misconduct as the power to discipline is now exclusively with the Bar Councils. He submitted that it is for the Bar Councils to decide whether strike should be resorted to or not. 9) The learned Attorney General submitted that strike by lawyers cannot be equated with strikes resorted to by other sections of society.

He submitted that the basic difference is that members of the legal profession are officers of the Court. He submitted that they are obliged by the very nature of their calling to aid and assist in the dispensation of justice. He submitted that strike or abstention from work impaired the administration of justice and that the same was thus inconsistent with the calling and position of lawyers. He submitted that abstention from work, by lawyers, may be resorted to in the rarest of rare cases, namely, where the action protested against is detrimental to free and fair administration of justice such as there being a direct assault on the independence of the judiciary or a provision is enacted nullifying a judgment of a Court by an executive order or in case of supersession of judges by departure from the settled policy and convention of seniority. He submitted that even in cases where the action eroded the autonomy of the legal profession, e.g. dissolution of Bar Councils and recognized Bar Associations or packing them with government nominees a token strike of one day may be resorted to. He submitted even in the above situations the duration of abstention from work should be limited to a couple of hours or at the maximum one day. He submitted that the purpose should be to register a protest and not to paralyse the system. He suggested that alternative forms of protest can be explored, e.g., giving press statements, TV interviews, carrying banners and/or placards, wearing black arm-bands, peaceful protest marches outside court premises etc. He submitted that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. He submitted that all attempts should be made to seek redressal from the concerned authorities. He submitted that where such redressal is not available or not forthcoming, the direction of the protest can be against that authority and should not be misdirected, e.g., in cases of alleged police brutalities Courts and litigants should not be targeted in respect of actions for which they are in no way responsible. He agreed that no force or coercion should be employed against lawyers who are not in agreement with the "strike call" and want to discharge their professional duties. The learned Attorney General relied upon the following observations of a Full Bench of the Kerala High Court in the case of Bharat Kumar K. Paricha & Anr. V. State of Kerala & Ors. which are reproduced below: "No political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation." [See (1998) 1 SCC 201 at 204, para 17] [emphasis added] 10) He pointed out that the judgment of the Kerala High Court has been approved by this Hon'ble Court in the case of Communist Party of India (M) v. Bharat Kumar & Ors. (1998) 1 SCC 201 at 202. 11) Before considering the question raised it is necessary to keep in mind the role of lawyers in the administration of justice and also their duties and obligations as officers of this Court. In the case of Lt. Col. S. J. Chaudhary vs. State (Delhi Administration) reported in (1984) 1 SCC 722, the High Court had directed that a criminal trial go on from day to day. Before this Court it was urged that the Advocates were not willing to attend day to day as the trial

was likely to be prolonged. It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend. 12) In the case of K. John Koshy & Ors. vs. Dr. Tarakeshwar Prasad Shaw reported in (1998) 8 SCC 624, one of the questions was whether the Court should refuse to hear a matter and pass an Order when counsel for both the sides were absent because of a strike call by the Bar Association. This Court held that the Court could not refuse to hear the matter as otherwise it would tantamount to Court becoming a privy to the strike. 13) In the case of Mahabir Prasad Singh vs. Jacks Aviation Pvt. Ltd. reported in (1999) 1 SCC page 37, an application had been made to the trial Court to suo moto transfer the case to some other Court as the Bar Association had passed a resolution to boycott that Court. It was stated that the lawyers could not thus appear before that Court. The trial Court rightly rejected the application. In a revision petition the High Court stayed the proceedings before the trial Court. This Court held that the High Court had committed grave error in entertaining the revision petition and passing an Order of stay. Following the ratio laid down in Lt. Col. S.J. Chaudhary's case, this Court held as follows: "15. This is not a case where the respondent was prevented by the Additional District Judge from addressing oral arguments, but the respondent's counsel prevented the Additional District Judge from hearing his oral arguments on the stated cause that he decided to boycott that Court for ever as the Delhi Bar Association took such a decision. Here the counsel did not want a case to be decided by that Court. By such conduct, the counsel prevented the judicial process to have flowed on its even course. The respondent has no justification to approach the High Court as it was the respondent who contributed to such a situation. 16. If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No Court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating." 14) In the case of Koluttumottil Razak vs. State of Kerala reported in (2000) 4 SCC 465, counsel did not appear in Court as advocates had called for a strike. As the appellant was languishing in jail this Court held that an adjournment would not be justified. This Court held that it is the duty of the Court to look into the matter itself. 15) In the case of U.P. Sales Tax Service Association vs. Taxation Bar Association reported in (1995) 5 SCC 716, the question was whether the High Court could issue a writ or direction prohibiting a statutory authority from discharging quasi judicial functions i.e. direct the State Government to withdraw all powers from it and transfer

all pending cases before the officer to any other officer and whether advocates would be justified to go on strike as a pressure group. In that context this Court observed as follows: "11. It is fundamental that if rule of law is to have any meaning and content, the authority of the court or a statutory authority and the confidence of the public in them should not be allowed to be shaken, diluted or undermined. The courts of justice and all tribunals exercising judicial functions from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice. It is that expectation and confidence of all those, who have or are likely to have business in that court or tribunal, which should be maintained so that the court/tribunal perform all their functions on a higher level of rectitude without fear or favour, affection or ill-will. Casting defamatory aspersions upon the character, ability or integrity of the judge/judicial officer/authority undermines the dignity of the court/authority and tends to create distrust in the popular mind and impedes the confidence of the people in the courts/tribunals which is of prime importance to the litigants in the protection of their rights and liberties. The protection to the judges/judicial officer/authority is not personal but accorded to protect the institution of the judiciary from undermining the public confidence in the efficacy of judicial process. The protection, therefore, is for fearless curial process. Any scurrilous, offensive, intimidatory or malicious attack on the judicial officer/authority beyond condonable limits, amounts to scandalising the court/tribunal amenable to not only conviction for its contempt but also liable to libel or defamation and damages personally or group libel. Maintenance of dignity of the court/judicial officer or quasi-judicial authority is, therefore, one of the cardinal principles of rule of law embedded in judicial review. Any uncalled for statement or allegation against the judicial officer/statutory authorities, casting aspersions of court's integrity or corruption would justify initiation of appropriate action for scandalising the court or tribunal or vindication of authority or majesty of the court/tribunal. The accusation of the judicial officer or authority or arbitrary and corrupt conduct undermines their authority and rudely shakes them and the public confidence in proper dispensation of justice. It is of necessity to protect dignity or authority of the judicial officer to maintain the stream of justice pure and unobstructed. The judicial officer/authority needs protection personally. Therefore, making wild allegations of corruption against the presiding officer amounts to scandalising the court/statutory authority. Imputation of motives of corruption to the judicial officer/authority by any person or group of persons is a serious inroad into the efficacy of judicial process and threat to judicial independence and needs to be dealt with the strong arm of law." 16) It was held that the High Court did not have power to issue a writ of direction prohibiting a statutory authority from discharging quasi judicial functions. The question whether lawyers had a right to strike was not gone into. 17) In the case of B. L. Wadehra vs. State (NCT of Delhi) & Ors. reported in AIR (2000) Delhi 266, one of the questions was whether a direction should be issued to the lawyers to call off a strike. The Delhi High Court noted certain observations of this Court which are worth reproducing: "In Indian Council of Legal Aid and Advice

v. Bar Council of India reported in (1995) 1 SCC 732 : (AIR 1995 SC 691), the Supreme Court observed thus :"It is generally believed that members of the legal profession have certain social obligations, e.g., to render "pro bono publico" service to the poor and the underprivileged. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefore, he must strictly and scrupulously abide by the Code of Conduct behoving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession." In Re: Sanjeev Datta, reported in (1995) 3 SCC 619 : (1995 AIR SCW 2203) the Supreme Court has stated thus: "20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practise it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible." The Delhi High Court then considered various other authorities of this Court, including some set out above, and concluded as follows: "30. In the light of the above-mentioned views expressed by the Supreme Court, lawyers have no right to strike i.e. to abstain from appearing in Court in cases in which they hold vakalat for the parties, even if it is in response to or in compliance with a decision of any association or body of lawyers. In our view, in exercise of the right to protest, a lawyer may refuse to accept new engagements and may even refuse to appear in a case in which he had already been engaged, if he has been duly discharged from the case. But so long as a lawyer holds the vakalat for his client and has not been duly discharged, he has no right to abstain from appearing in Court even on the ground of a strike called by the Bar Association or any other body of lawyers. If he so abstains, he commits a professional misconduct, a breach of professional duty, a breach of contract and also a breach of trust and he will be liable to suffer all the consequences thereof. There is no fundamental right, either under Article 19 or under Article 21 of the Constitution, which permits or authorises a lawyer to abstain from appearing in Court in a case in which

he holds the vakalat for a party in that case. On the other hand a litigant has a fundamental right for speedy trial of his case, because, speedy trial, as held by the Supreme Court in Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81: (AIR 1979 SC 1360) is an integral and essential part of the fundamental right to life and liberty enshrined in article 21 of the Constitution. Strike by lawyers will infringe the above-mentioned fundamental right of the litigants and such infringement cannot be permitted. Assuming that the lawyers are trying to convey their feelings or sentiments and ideas through the strike in exercise of their fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. We are of the view that the exercise of the right under Article 19(1)(a) will come to an end when such exercise threatens to infringe the fundamental right of another. Such a limitation is inherent in the exercise of the right under Article 19(1)(a). Hence the lawyers cannot go on strike infringing the fundamental right of the litigants for speedy trial. The right to practise any profession or to carry on any occupation guaranteed by Article 19(1)(g) may include the right to discontinue such profession or occupation but it will not include any right to abstain from appearing in Court while holding a vakalat in the case. Similarly, the exercise of the right to protest by the lawyers cannot be allowed to infract the litigant's fundamental right for speedy trial or to interfere with the administration of justice. The lawyer has a duty and obligation to cooperate with the Court in the orderly and pure administration of justice. Members of the legal profession have certain social obligations also and the practice of law has a public utility flavour. According to the Bar Council of India Rules, 1975"an Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his non- professional capacity, may still be improper for an Advocate". It is below the dignity, honour and status of the members of the noble profession of law to organize and participate in strike. It is unprofessional and unethical to do so. In view of the nobility and tradition of the legal profession, the status of the lawyer as an officer of the court and the fiduciary character of the relationship between a lawyer and his client and since strike interferes with the administration of justice and infringes the fundamental right of litigants for speedy trial of their cases, strike by lawyers cannot be approved as an acceptable mode of protest, irrespective of the gravity of the provocation and the genuineness of the cause. Lawyers should adopt other modes of protest which will not interrupt or disrupt court proceedings or adversely affect the interest of the litigant. Thereby lawyers can also set an example to other sections of the society in the matter of protest and agitations. 31. Every Court has a solemn duty to proceed with the judicial business during Court hours and the Court is not obliged to adjourn a case because of a strike call. The Court is under an obligation to hear and decide cases brought before it and it cannot shirk that obligation on the ground that the advocates are on strike. If the counsel or/and the party does not appear, the necessary consequences contemplated in law should follow.

The Court should not become privy to the strike by adjourning the case on the ground that lawyers are on strike. Even in the Common Cause case the Supreme Court had asked the members of the legal profession to be alive to the possibility of Judges refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with the cases. Strike infringes the litigant's fundamental right for speedy trial and the Court cannot remain a mute spectator or throw up its hands in helplessness on the face of such continued violation of the fundamental right. 32. Either in the name of a strike or otherwise, no lawyer has any right to obstruct or prevent another lawyer from discharging his professional duty of appearing in Court. If anyone does it, he commits a criminal offence and interferes with the administration of justice and commits contempt of Court and he is liable to be proceeded against on all these counts. 33. In the light of the above discussion we are of the view that the present strike by lawyers is illegal and unethical. Whatever might have been the compelling circumstances earlier, now there is absolutely no justification for the continuance of the strike in view of the appointment of the Commission of Inquiry and the directions being issued in this case." 18) In our view the conclusions reached are absolutely correct and the same need to be and are hereby approved. 19) Thereafter in the case of Roman Services Pvt. Ltd. vs. Subhash Kapoor reported in (2001) 1 SCC 118, the question was whether a litigant should suffer a penalty because his advocate had boycotted the Court pursuant to a strike call made by the Association of which the advocate was a member. In answer to this question it has been held that when an advocate engaged by a party is on strike there is no obligation on the part of the Court to either wait or adjourn the case on that account. It was held that this Court has time and again set out that an advocate has no right to stall court proceedings on the ground that they have decided to go on a strike. In this case it was noted that in Mahabir Prasad's case (supra), it has been held that strikes and boycotts are illegal. That the lawyers and the Bar understood that they could not resort to strikes is clear from statement of Senior Counsel Shri. Krishnamani which this Court recorded. The statement is as follows: "13. Shri Krishamani, however, made the present position as unambiguously clear in the following words:"Today, if a lawyer participates in a Bar Association's boycott of a particular court that is ex facie bad in view of the clear declaration of law by this Hon'ble Court. Now, even if there is boycott call, a lawyer can boldly ignore the same in view of the ruling of this Hon'ble Court in Mahabir Prasad Singh (1999) 1 SCC 37." This Court thereafter directed the concerned advocate to pay the half the amount of the cost imposed on his client. The observations in this behalf are as follows: "15. Therefore, we permit the appellant to realise half of the said amount of Rs. 5000 from the firm of advocates M/s B.C. Das Gupta & Co. or from any one of its partners. Initially we thought that the appellant could be permitted to realise the whole amount from the said firm of advocates. However, we are inclined to save the firm from bearing the costs partially since the Supreme Court is adopting such a measure for the first time and the counsel would not have been conscious of such a consequence befalling them. Nonetheless we put the profession to notice that in future the

advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. We may further add that the litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client such a claim is repugnant to any principle of fair play and canons of ethics. So when he opts to strike work or boycott the court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate. 16. In all cases where the court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realise the costs from the advocate concerned without driving such party to initiate another legal action against the advocate. 17. We may also observe that it is open to the court as an alternative course to permit the party (while setting aside the ex parte order or decree earlier passed in his favour) to realise the cost fixed by the court for the purpose, from the counsel of the other party whose absence caused the passing of such ex parte order, if the court is satisfied that such absence was due to that counsel boycotting the court or participating in a strike." (emphasis supplied) 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 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. 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 Court make it clear beyond doubt that they will not tolerate any interference from anybody or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Court 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 above mentioned 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 pretense 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. 23) It is held that submissions made on behalf of Bar Councils of U. P. merely need to be stated to be rejected. The submissions based on Advocates Act are also without merit. Section 7 of the Advocates Act provides for the functions of the Bar Council of India. None of the functions mentioned therein authorise paralising of the working of Courts in any manner. On the contrary, Bar Council of India is enjoined with the duty of laying down standards of professional conduct and etiquette for advocates. This would mean that the Bar Council of India ensures that Advocates do not behave in unprofessional and unbecoming manner. Section 48A gives a right to Bar Council of India to give directions to State Bar Councils. The Bar Associations may be separate bodies but all Advocates who

are members of such Association are under disciplinary jurisdiction of the Bar Councils and thus the Bar Councils can always control their conduct. Further even in respect of disciplinary jurisdiction the final appellate authority is, by virtue of Section 38, the Supreme Court. 24) In the case of Abhay Prakash Sahay Lalan v. High Court of Judicature at Patna reported in AIR 1998 Patna 75, it has been held that Section 34(1) of the Advocates Act empowers High Courts to frame rules laying down conditions subject to which an Advocate shall be permitted to practice in the High Court and Courts subordinate thereto. It has been held that the power under Section 34 of the Advocates Act is similar to the power under Article 145 of the Constitution of India. It is held that other Sections of the Advocates Act cannot be read in a manner which would render Section 34 ineffective. 25) In the case of Supreme Court Bar Association v. Union of India reported in (1998) 4 SCC 409, 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 b 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 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 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 of 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 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 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. 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. 27) During hearing nobody, except on behalf of U. P. Bar Council, could deny that the above legal position was well settled. On behalf of Bar Council of India a request was made not to sign judgment as a meeting had been called to formulate guidelines through consensual process. We had therefore deferred delivery of Judgment. 28) The Bar Council of India has since filed an affidavit wherein extracts of a Joint meeting of the Chairman of various State Bar Councils and members of the Bar Council of India, held on 28th and 29th September, 2002, have been annexed. The minutes set out that some of the causes which result in lawyers abstaining from work are: I. LOCAL ISSUES 1. Disputes between lawyer / lawyers and the police and other authorities 2. Issues regarding corruption / misbehaviour of Judicial Officers and other authorities. 3. Non filling of vacancies arising in Courts or non appointment of Judicial Officers for a long period. 4. Absence of infrastructure in courts. II. ISSUES RELATING TO ONE SECTION OF THE BAR AND ANOTHER SECTION 1. Withdrawal of jurisdiction and conferring it to other courts (both pecuniary and territorial). 2. Constitution of Benches of High Courts. Disputes between the competing District and other Bar Associations. III) ISSUES INVOLVING DIGNITY, INTEGRITY, INDEPENDENCE OF THE BAR AND JUDICIARY. IV) LEGISLATION WITHOUT CONSULTATION WITH THE BAR COUNCILS. V) NATIONAL ISSUES AND REGIONAL ISSUES AFFECTING THE PUBLIC AT LARGE/THE INSENSITIVITY OF ALL CONCERNED. 29) At the meeting it is then resolved as follows: "RESOLVED to constitute Grievances Redressal Committes at the Taluk/Sub Division or Tehsil level, at the District level, High Court and Supreme Court levels as follows: - I) (a) A committee consisting of the Hon'ble Chief Justice of India or his nomineee, Chairman, Bar Council of India, President, Supreme Court Bar Association, Attorney General of India. (b) At the High Court level a Committee consisting of the Hon'ble Chief Justice of the State High Court or His nominee, Chairman, Bar Council of the State, President or Presidents High Court Bar Association, Advocate General, Member, Bar Council of India from the State. (C)At the District level, District Judge, President or Presidents of the District Bar Association, District Government Pleader, Member of the Bar Council from the District, if any, and if there are more than one, then senior out of the two. (d) At taluka/Tehsil/Sub Divn, Senior most Judge, President or Presidents of the Bar Association, Government Pleader, representative of the State Bar Council, if any. II)Another reason for abstention at the District and Taluka level is arrest of an advocate or advocates by police in matters in which the arrest is not justified. Practice may be adopted that before arrest of an advocate or advocates, President, Bar Association, the District Judge or the Senior most Judge at the place be consulted. This will avoid many instances or abstentions from court. III) IT IS FURTHER RESOLVED that in the past abstention of work by Advocates for more than a day was due to inaction of the authorities to solve the problems that the advocates placed.

(IV)IT IS FURTHER RESOLVED that in all cases of legislation affecting the legal profession which includes enactment of new laws or amendments of existing laws, matters relating to jurisdiction and creation of Tribunal the Government both Central and State should initiate the consultative process with the Representatives of the profession and take into consideration the views of the Bar and give utmost weight to the same and the State Government should instruct their officers to react positively to the issues involving the profession when they are raised and take all steps to avoid confrontation and inaction and in such an event of indifference, confrontation etc. to initiate appropriate disciplinary action against the erring officials and including but not limited to transfer. V) The Councils are of the view that abstentions of work in courts should not be resorted to except in exceptional circumstances. Even in exceptional circumstances, the abstention should not be resorted to normally for more than one day in the first instance. The decision for going on abstention will be taken by the General Body of the Bar Association by a majority of two-thirds members present. VI) It is further resolved that in all issues as far as possible legal and constitutional methods should be pursued such as representation to authorities, holding demonstrations and mobilising public opinion etc. VII) It is resolved further that in case the Bar Associations deviate from the above resolutions and proceed on cessation of work inspite or without the decision of the concerned Grievances Redressal Committee except in the case of emergency the Bar Council of the State will take such action as it may deem fit and proper the discretion being left to the Bar Council of the State concerned as to enforcement of such decisions and in the case of an emergency the Bar Association concerned will inform the State Bar Council. The Bar Council of India resolves that this resolution will be implemented strictly and the Bar Associations and the individual members of the Bar Associations should take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated above." 30) Whilst we appreciate the efforts made, in view of the endemic situation prevailing in the country, in our view, the above resolutions are not enough. It was expected that the Bar Council of India would have incorporated clauses as those suggested in the interim Order of this Court in their disciplinary rules. This they have failed to do even now. What is at stake is the administration of justice and the reputation of the legal profession. It is the duty and obligation of the Bar Council of India to now incorporate clauses as suggested in the interim Order. No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. It must be remembered that if such omission continues, particularly when there is an apparent threat to the administration of justice and fundamental rights of citizens, i.e. the litigating public, Courts will always have authority to compel or enforce the exercise of the power by the statutory authority. The Courts would then be compelled to issue directions as are necessary to compel the authority to do

what it should have done on its own. 31) It must immediately be mentioned that one understands and sympathisises with the Bar wanting to vent their grievances. But as has been pointed out there are other methods e.g. 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. More importantly in many instances legal remedies are always available. A lawyer being part and parcel of the legal system is instrumental in upholding the rule of law. A person casts with the legal and moral obligation of upholding law can hardly be heard to say that he will take law in his own hands. It is therefore time that self restraint be exercised. 32) Now let us consider whether any of the reasons set out in the affidavit of Bar Council of India justify a strike or call for boycott. The reasons given are: 1) Local Issues: A dispute between a lawyer/lawyers and police or other authorities can never be a reason for going on even a token strike. It can never justify giving a call for boycott. In such cases an adequate legal remedy is available and it must be resorted to. The other reasons given under the item "Local Issues" and even items (IV) and (V) are all matters which are exclusive within the domain of Courts and/or Legislatures. Of course the Bar may be concerned about such things but there can be no justification to paralyse administration of justice. In such cases representations can and should be made. It will be for the appropriate authority to consider those representations. We are sure that a representation by the Bar will always be seriously considered. However, the ultimate decision in such matters has to be that of the concerned authority. Beyond making representations no illegal method can be adopted. At the most, provided it is permissible or feasible to do so, recourse can be had by way of legal remedy. So far as problems concerning Courts are concerned we see no harm in setting up Grievance Redressal Committees as suggested. However, it must be clear that the purpose of such Committees would only be to set up a forum where grievance can be ventilated. It must be clearly understood that recommendations or suggestions of such Committees can never be binding. The deliberations and/or suggestions and/or recommendations of such Committee will necessarily have to be placed before the appropriate authority viz. the concerned Chief Justice or the District Judge. The final decision can only be of the concerned Chief Justice or the concerned District Judge. Such final decision, whatever it be, would then have to be accepted by all and no question then arises of any further agitation. Lawyers must also accept the fact that one cannot have everything to be the way that one wants it to be. Realities of life are such that, in certain situations, after one has made all legal efforts to cure what one perceives as an ill, one has to accept the situation. So far as legislation, national and regional issues are concerned, the Bar always has recourse to legal remedies. Either the demand of the Bar on such issues is legally valid or it is not. If it is legally valid, of all the persons in society, the Bar is most competent and capable of getting it enforced in a Court of law. If the demand is not legally valid and cannot be enforced in a Court of law or is not upheld by a Court of law, then such a demand cannot

be pursued any further. 33) The only exception to the general rule set out above appears to be item (III). We accept that in such cases a strong protest must be lodged. We remain of the view that strikes are illegal and that Courts must now take a very serious view of strikes and calls for boycott. However, as stated above, lawyers are part and parcel of the system of administration of justice. A protest on an issue involving dignity, integrity and independence of the Bar and judiciary, provided it does not exceed one day, may be overlooked by Courts, who may turn a blind eye for that one day. 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 or 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 protect 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 not attend Courts in pursuance to 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 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 off accordingly. .....CJI. .....J. (DORAISWAMY RAJU) .....J. (S. N. VARIAVA) ..... (D. M. DHARMADHIKARI) New Delhi, December 17, 2002. IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) No.132 OF 1988

Ex. Capt. Harish Uppal ... Petitioner Versus Union of India and another ... Respondents

WITH

OF 1990 AND WP (C) No.406 OF 2000

J U D G M E N T

Shah, J. We fully agree with what has been stated and discussed by brother Variava, J. However, we would like to add as under: For just or unjust cause, strike cannot be justified in the present day situation. Take strike in any field, it can be easily realised that that weapon does more harm than any justice. Sufferer is the society - public at large. On occasions result is - violence or excess use of force by the administration. Mostly the target is to damage public properties. Further, strike was a weapon used for getting justice by downtrodden, poor persons or industrial employees who were not having any other method of redressing their grievances. But by any standard, professionals belonging to noble profession who are considered to be an intelligent class, cannot have any justification for remaining absent from their duty. The law laid down on the subject is succinctly referred to in the judgment rendered by brother Variava, J. However, by merely holding strikes as illegal, it would not be sufficient in 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, there-

fore, 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 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. It is no doubt true that the Bar should be strong, fearless and independent and should be in a position to lead the society. These qualities could be and should be utilized in assisting the judicial system, if required, by exposing any person, whosoever he may be, if he is indulging in any unethical practice. It is hoped that instead of resorting to strike, the Bar would find out other ways and means of redressing their grievances including passing of resolutions, making representations and taking out silent processions, holding dharnas or to resort to relay fast, having discussion by giving T.V. interviews and press statements. At present it is admitted that judiciary is over-burdened with pending litigation. If strikes are resorted to on one or the other ground, litigants would suffer as cases would not be decided for years to come. Therefore, some concrete joint action is required to be taken by the Bench and the Bar to see that there are no strikes any more. For this purpose, in our view, the suggestion made by the Bar Council of India in its resolution dated 29th September, 2002, requires to be seriously considered and implemented by each Bar Association. Grievances Redressal Committees at Taluka level, district level, High Court level and Supreme Court level should be established so that grievances of the advocates at all levels could be resolved. If action is required to be taken on the grievances made by the advocates it should be immediately taken. If grievances are found not to be genuine then it should be made clear so that there may not be any further misunderstanding. It is true that advocates are part and parcel of judicial system as such they are the foundation of Justice- Delivery System. It is their responsibility of seeing that justice delivery system works smoothly. Therefore, it is for each and every Bar association to be vigilant in implementing the resolution passed by the Bar Council of India of seeing that there are no further strike any more .The Bar Council of India in its resolution has also stated that the resolution passed by it would be implemented strictly and hence, the Bar associations and the individual members of the Bar associations would take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated in the resolution. Further appropriate rules are required to be framed by the High Courts under Section 34 of the Advocates Act by making it clear that strike by advocate/advocates would be considered interference with administration of justice and concerned advocate/advocates may be barred from practising before Courts in a district or in the High Court. Hence, it is directed that (a) all the Bar Associations in the country shall implement the resolution dated 29th September, 2002 passed by the Bar Council of India, and (b) under Section 34 of the Advocates Act, the High Courts would frame necessary rules so that appropriate action can be taken against defaulting advocate/advocates. .....J.
(M.B. SHAH) .....J. (D. M. DHARMADHIKARI)

New Delhi; December 17, 2002.