District Bar Association Dehradun vs Ishwar Shandilya on 28 February, 2020

Equivalent citations: AIR 2020 SUPREME COURT 1412, AIRONLINE 2020 SC 263, (2020) 4 SCALE 445

Author: M. R. Shah

Bench: M. R. Shah, Arun Mishra

1

REPOR

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 5440 OF 2020
[@ DIARY NO. 1476 OF 2020]

District Bar Association, Dehradun
through its Secretary .. Peti

Versus

Ishwar Shandilya & Ors. .. Resp

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.09.2019 passed by the High Court of Uttarakhand at Nainital in Writ Petition (PIL) No. 31 of 2016, the District Bar Association, Dehrarun, through its Secretary, has preferred the present SLP. That by the impugned judgment and order, the High Court in the writ petition (PIL) filed by the private respondent herein has issued the following directions:

> "The District Bar Associations of Dehradun, Haridwar and Udham Singh Nagar shall, forthwith, withdraw their call for a strike, Reason:
>
> and start attending Courts on all working Saturdays. All the District Bar Associations in the State shall forthwith refrain from abstaining from Courts because of condolence references for family members of Advocates, or for other reasons. In case

they do not start attending Courts, as directed hereinabove, the District Judges concerned shall submit their respective reports to the High Court for it to consider whether action should be initiated against the errant Advocates under the Contempt of Courts Act.

The Bar Council of India shall at the earliest, and in any event within three months from today, take action against the recalcitrant Bar Associations pursuant to its show-cause notice dated 12.07.2019, and ensure that these Bar Associations desist from continuing such strikes/boycott of Courts.

The Uttarakhand State Bar Council shall, within a period of four weeks from today, initiate disciplinary action against the office bearers of the aforesaid District Bar Associations for their having given a call for illegal strikes/boycott of Courts on Saturdays in the judgeship of Dehradun, Haridwar and Udham Singh Nagar.

The District Judges of these districts shall ensure that Courts function on Saturdays, and sufficient cases are listed and are disposed of by Courts, under their judgeship, on all working Saturdays.

The Commissioner of Police/Senior Superintendent of Police, of the concerned districts, shall, as and when requested by the District Judge or a Judicial Officer, regarding the possibility of Court proceedings being impeded because of strike/boycott of Courts by Advocates, forthwith provide necessary police protection to ensure smooth functioning of Courts, and thereby prevent any impediment to Court proceedings because of strikes/boycott by Bar Associations/Advocates.

The High Court is requested to consider taking appropriate measures to ensure functioning of Courts on Saturdays, that judicial work is not hampered by such illegal strikes/boycott of Courts and wholly unjustified condolence references, and that the Circular issued by it earlier on 12.03.2019 is implemented."

2. From the impugned judgment and order passed by the High Court, it appears that the Advocates in the entire District of Dehradun, in several districts of Haridwar and Udham Singh Nagar district in the State of Uttarakhand have been boycotting the Courts on all Saturdays for the past more than 35 years. As the strikes are seriously obstructing the access to justice to the needy litigants, respondent No. 1 was compelled to approach the High Court by way of Writ Petition (PIL). Having noted from the information sent by the High Court to the Law Commission that with respect to the State of Uttarakhand for the years 2012- 2016 showed that in Dehradun district, the Advocates were on strike for 455 days (on an average 91 days per year) and in Haridwar district it is 515 days (about 103 days per year), the High Court was of the opinion that on all such working days on account of strikes and the conduct of the Advocates in boycotting Courts, it has affected the functioning of the Courts and it contributes to the ever-mounting pendency of the cases, and therefore aforesaid directions have been issued by the High Court.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the District Bar Association, Dehradun has preferred the present SLP.

4. Shri Mahabir Singh, learned Senior Advocate appearing on behalf of the petitioner has vehemently submitted that the High Court has not properly appreciated and considered the fact that the right to go on strike/boycott courts is a fundamental right to Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Constitution of India.

4.1 It is vehemently submitted by the learned Senior Advocate appearing on behalf of the petitioner that the strike is a mode of peaceful representation to express the grievances by the lawyers' community in absence of no other forum is available.

4.2 It is further submitted by the learned Senior Advocate appearing on behalf of the petitioner that the High Court ought to have held that the protection conferred by Section 48 of the Advocates Act is for any act done in good faith and therefore the directions issued by the High Court to take action against the Advocates on strike would be contrary to the protection conferred by Section 48 of the Advocates Act.

5. The learned Senior Advocate appearing on behalf of the petitioner has stated at the Bar that, as such, the Bar Association has already withdrawn the strike and/or boycotting Courts on all Saturdays, his statement is taken on record.

6. Having heard the learned Senior Advocate appearing on behalf of the petitioner and considering the impugned judgment and order passed by the High Court, more particularly, the directions issued by the High Court, which are reproduced hereinabove, we are of the firm opinion that the High Court is absolutely justified in issuing such directions. As such, the directions issued by the High Court are absolutely in consonance with the decisions of this Court in the cases of Ex-Capt. Harish Uppal v. Union of India (2003) 2 SCC 45; Common Cause, A Registered Society v. Union of India (2006) 9 SCC 295 and Krishnakant Tamrakar v. State of M.P. (2018) 17 SCC 27.

6.1 In the case of Ex-Capt. Harish Uppal (supra), this Court has specifically observed and held that the lawyers have no right to go on strike or even token strike or to give a call for strike. It is also further observed that nor can they while holding Vakalat on behalf of clients, abstain from appearing in courts in pursuance of a call for strike or boycott. It is further observed by this Court that it is unprofessional as well as unbecoming for a lawyer to refuse to attend the court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is further observed that an Advocate is an officer of the court and enjoys a special status in the society; Advocates have obligations and duties to ensure the smooth functioning of the court; they owe a duty to their clients and strikes interfere with the administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy.

6.2 While considering the role of the Bar Councils, it is observed in paragraphs 25 and 26 of the aforesaid decision as under:

"25. In the case of Supreme Court Bar Assn. v. Union of India [(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: (SCC pp. 444-46, paras 79-80) "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 by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving 'reference' from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such

a situation would not arise.

> 80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals." Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct.

This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott the State Bar Council concerned and on their failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott.

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 Ramon Services case [(2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152] 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." 6.3 In the aforesaid decision, this Court took note of the resolution dated 29.09.2002 passed by the Bar Council of India, by which it was resolved, inter alia, to constitute the Grievance Redressel Committees at the Taluk/Sub-Division or Tehsil levels, at the District level, High Court and Supreme Court levels.

Thereafter, this Court further observed that merely holding strikes as illegal would not be sufficient in the present-days situation nor would it serve any purpose.

Some concrete joint action is required to be taken by the Bench and the Bar to see that there are no strikes any more. That, thereafter, this Court directed that (a) all the Bar Associations in the country shall implement the resolution dated 29.09.2002 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 actions can be taken against defaulting advocate/advocates.

6.4 Despite the law laid down by this Court in the aforesaid decisions and even the concern expressed by this Court against the strikes by the lawyers, things did not improve and again the issue of lawyers going on strikes came to be considered in the case of Common Cause, A Registered Society (supra) and this Court in paragraph 4 of that judgment, held as under:

> "4. The Constitution Bench has, in Ex Capt. Harish Uppal case [(2003) 2 SCC 45] culled out the law in the following terms: (SCC pp. 64 & 71-74, paras 20-21 & 34-36) "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 them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since Mahabir Singh case [Mahabir Prasad Singh v. Jacks Aviation (P) Ltd., (1999) 1 SCC 37] that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court(s).

Lawyers have also known, at least since Ramon Services case [Ramon Services (P) Ltd. v Subhash Kapoor, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152] , that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy.

***

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 practise 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 the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelops 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 a 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 practise, 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 its majesty 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 practise 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 practise 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 armbands, 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 refuse to attend courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest, abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all courts to go on with matters on their boards even in the absence of lawyers. In other words, courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a vakalat of a client, abstains from attending court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.

36. It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self-restraint will be exercised. The petitions stand disposed of accordingly." The Court also dealt with the role of Bar Councils on the following terms: (SCC pp. 66-68, paras 25-26) "25. In the case of Supreme Court Bar Assn. v. Union of India [(1998) 4 SCC 409 : AIR 1998 SC 1895 : 1998 AIR SCW 1706] it has been held that professional misconduct may also amount to contempt of court (para 21). It has further been held as follows: (SCC pp. 444-46, paras 79-80) '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 contemnor 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 contemnor advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemnor advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals.' Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of

law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott, the State Bar Council concerned and on its 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 Ramon Services case [Ramon Services (P) Ltd. v. Subhash Kapoor, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152] 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." Apart from reiterating the above law, we do not propose to take any further action. The contempt notices stand discharged." 6.5 While considering the issue of delay/speedy disposal, in case of Krishnakant Tamrakar (supra), this Court had the occasion to consider how uncalled for frequent strikes obstructs the access to justice and what steps are required to remedy the situation. In the aforesaid decision, it is observed by this Court that access to speedy justice is a part of the fundamental rights under Articles 14 and 21 of the Constitution of India. This Court was of the opinion that one of the reasons/root cause for delay is uncalled for strikes by the lawyers. In the aforesaid decision, this Court also took note of 266 th Law Commission Report, in which there was a reference to the strikes by the lawyers in the Dehradun and Haridwar districts itself. In the aforesaid decision, this Court also took note of the recommendations made by the Law Commission. This Court further observed that since the strikes are in violation of the law laid down by this Court, the same amounts to contempt and at least the office bearers of the Associations who give call for the strikes cannot disown their liability for contempt. In paragraphs 41 to 50, this Court held as under:

> "41. We may also deal with another important aspect of speedy justice. It is well known that at some places there are frequent strikes, seriously obstructing access to justice. Even cases of persons languishing in custody are delayed on that account. By every strike, irreversible damage is suffered by the judicial system, particularly consumers of justice. They are denied access to justice. Taxpayers' money is lost on account of judicial and public time being lost. Nobody is accountable for such loss and harassment.
>
> 42. Dr Ambedkar in his famous speech on 25-11-1949 had warned:

> (CAD Vol. 11) "The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us."
>
> 43. The above warning of the Constitution-maker needs to be adhered to at least by the legal fraternity. The Bar has the tradition of placing their professional duty of assisting the access to justice above every other consideration. How is the situation to be tackled.

Competent authorities may take a final call.

44. In Harish Uppal v. Union of India [Harish Uppal v. Union of India, (2003) 2 SCC 45] , this Court held that lawyers have no right to go on strike or to give a call for boycott of courts nor can they abstain from the courts. Calls given by Bar Association or Bar Council for such purpose cannot require the court to adjourn the matters. Strike or abstaining from court is unprofessional. Even though more than 15 years have passed after the said judgment was rendered, the judgment of this Court is repeatedly flouted and no remedial measures have been adopted. Regulation of right of appearance in courts is within the jurisdiction of the courts. This Court also asked the Law Commission to suggest appropriate changes in the regulatory framework for the legal profession [Mahipal Singh Rana v. State of U.P., (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 : (2016) 2 SCC (L&S) 390] . The Law Commission has submitted 266th Report [Ed.:

> On The Advocates Act, 1961 (Regulation of Legal Profession)] . The problem continues seriously affecting the rule of law.
>
> 45. In Mahipal Singh Rana [Mahipal Singh Rana v. State of U.P., (2016) 8 SCC 335 : (2016) 4 SCC (Civ) 1 : (2016) 3 SCC (Cri) 476 :
>
> (2016) 2 SCC (L&S) 390] , this Court noted that the High Courts can frame rules to lay down conditions on which advocates can be permitted to practise in courts. An advocate can be debarred from appearing in court even if the disciplinary jurisdiction for misconduct is vested with the Bar Councils [Mahipal Singh Rana v State of U.P., (2016) 8 SCC 335, paras 20, 30 to 35] . This Court requested the Law Commission to look into all relevant aspects relating to regulation of legal profession [Mahipal Singh Rana v. State of U.P., (2016) 8 SCC 335, para 58] .

46. The Law Commission, accordingly, examined the relevant aspects relating to regulation of the legal profession. The Law Commission in its 266th Report found that such conduct of the advocates

affects functioning of courts and particularly it contributes to pendency of cases. It analysed the data on loss of working days on account of call of strikes. The analysis is as follows:

> "7.2. In the State of Uttarakhand, the information sent by the High Court for the years 2012-2016 shows that in Dehradun District, the advocates were on strike for 455 days during 2012- 2016 (on an average, 91 days per year). In Haridwar District, 515 days (103 days a year) were wasted on account of strike.
>
> 7.3. In the case of the State of Rajasthan, the High Court of Judicature at Jodhpur saw 142 days of strike during 2012-

2016, while the figure stood at 30 for the Jaipur Bench. In Ajmer District Courts, strikes remained for 118 days in the year 2014 alone, while in Jhalawar, 146 days were lost in 2012 on account of strike.

7.4. The case of Uttar Pradesh appears to be the worst. The figures of strike for the years 2011-2016 in the subordinate courts are alarmingly high. In the State of Uttar Pradesh, the District Courts have to work for 265 days in a year. The period of strike in five years period in worst affected districts has been as Muzaffarnagar (791 days), Faizabad (689 days), Sultanpur (594 days), Varanasi (547 days), Chandauli (529 days), Ambedkar Nagar (511 days), Saharanpur (506 days) and Jaunpur (510 days). The average number of days of strike in eight worst affected districts comes to 115 days a year. Thus, it is evident that the courts referred to hereinabove could work on an average for 150 days only in a year.

7.5. In this regard, the situation in subordinate courts in Tamil Nadu had by no means, been better. The High Court of Tamil Nadu has reported that there are 220 working days in a year for the courts in the State. During the period 2011-2016, districts like Kancheepuram, 687 days (137.4 days per year); Kanyakumari, 585 days (117 days per year); Madurai, 577 days (115.4 days per year); Cuddalore, 461 days (92.2 days per year); and Sivagangai, 408 days (81.6 days per year), were the most affected by strike called by advocates.

7.6. As per the responses received from the High Courts of Madhya Pradesh and Odisha, the picture does not emerge to be satisfactory.

7.7. The Commission noted that the strike by advocates or their abstinence from the court were hardly for any justifiable reasons. It could not find any convincing reasons for which the advocates resorted to strike or boycott of work in the courts. The reasons for strike call or abstinence from work varied from local, national to international issues, having no relevance to the working of the courts. To mention a few, bomb blast in Pakistan school, amendments to Sri Lanka's Constitution, inter-State river water disputes, attack on/murder of advocate, earthquake in Nepal, to condole the death of their near relatives, to show solidarity to advocates of other State Bar Associations, moral support to movements by social activists, heavy rains, or on some religious occasions such as shraadh, Agrasen Jayanti, etc. or even for kavi sammelan.

7.8. The Commission is of the view that unless there are compelling circumstances and the approval for a symbolic strike of one day is obtained from the Bar Council concerned, the advocates shall not resort to strike or abstention from the court work."

47. Thereafter, the Law Commission referred to observations in the judgment of this Court in Harish Uppal case [Harish Uppal v. Union of India, (2003) 2 SCC 45] that there should be no strikes by the Bar except in rarest of rare situations which should also not exceed one day. The Bar Councils were called upon to take appropriate action in the matter. The Law Commission noted that the strikes were continuing and causing great obstruction to the access to justice. It was observed: (Report No. 266) "8.3. In spite of all these, the strikes have continued unabated. The dispensation of justice must not stop for any reason. The strike by lawyers have lowered the image of the courts in the eyes of the general public. The Supreme Court has held that right to speedy justice is included in Article 21 of the Constitution. In Hussainara Khatoon (1) v. State of Bihar [Hussainara Khatoon (1) v. State of Bihar, (1980) 1 SCC 81 :

> 1980 SCC (Cri) 23] ; and in some other cases, it was held that the litigant has a right to speedy justice. The lawyers' strike, however, result in denial of these rights to the citizens in the State.
>
> 8.4. Recently, the Supreme Court while disposing of the criminal appeal of Hussain v. Union of India [Hussain v. Union of India, (2017) 5 SCC 702 : (2017) 2 SCC (Cri) 638] deprecated the practice of boycotting the Court observing that:
>
> '27. One other aspect pointed out is the obstruction of court proceedings by uncalled for strikes/abstaining of work by lawyers or frequent suspension of court work after condolence references. In view of judgment of this Court in Harish Uppal v. Union of India [Harish Uppal v. Union of India, (2003) 2 SCC 45] , such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realises its duty to the society which is the foremost. Condolence references can be once in a while periodically say once in two/three months and not frequently. Hardship faced by witnesses if their evidence is not recorded on the day they are summoned or impact of delay on undertrials in custody on account of such avoidable interruptions of court proceedings is a matter of concern for any responsible body of professionals and they must take appropriate steps. In any case, this needs attention of all authorities concerned—the Central Government/State Governments/Bar Councils/Bar Associations as well as the High Courts and ways and means ought to be found out to tackle this menace. Consistent with the above judgment, the High Courts must monitor this aspect strictly and take stringent measures as may be required in the interests of administration of justice.' 8.5. In Ramon Services (P) Ltd. v. Subhash Kapoor [Ramon Services (P) Ltd. v. Subhash Kapoor, (2001) 1 SCC 118 : 2001 SCC (Cri) 3 : 2001 SCC (L&S) 152] , the Apex Court observed that if any advocate claims that his right to strike must be without any loss to him, but the loss must only be borne by his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. Therefore, when he opts to strike 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."

48. Examining other aspects of the regulation of legal profession, the Law Commission recommended review of regulatory mechanism of the Advocates Act as follows: (Report No. 266) "17.1. There is a dire necessity of reviewing the regulatory mechanism of the Advocates Act, not only in matters of discipline and misconduct of the advocates, but in other areas as well, keeping in view the wide expanse of the legal profession being involved in almost all areas of life. The very constitution of the Bar Councils and their functions also require the introduction of a few provisions in order to consolidate the function of the Bar Councils in its internal matters as well."

49. Since the strikes are in violation of law laid down by this Court, the same amount to contempt and at least the office-bearers of the associations who give call for the strikes cannot disown their liability for contempt. Every resolution to go on strike and abstain from work is per se contempt. Even if proceedings are not initiated individually against such contemnors by the court concerned or by the Bar Council concerned for the misconduct, it is necessary to provide for some mechanism to enforce the law laid down by this Court, pending a legislation to remedy the situation.

50. Accordingly, we consider it necessary, with a view to enforce fundamental right of speedy access to justice under Articles 14 and 21 and law laid by this Court, to direct the Ministry of Law and Justice to present at least a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can thereafter be considered in its contempt or inherent jurisdiction of this Court. The Court may, having regard to the fact situation, hold that the office-bearers of the Bar Association/Bar Council who passed the resolution for strike or abstaining from work, are liable to be restrained from appearing before any court for a specified period or until such time as they purge themselves of contempt to the satisfaction of the Chief Justice of the High Court concerned based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office-bearers of the Bar Association forthwith until the Chief Justice of the High Court concerned so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants." 6.6 In spite of the law laid down by this Court in the aforesaid decisions, this Court time and again deprecated the lawyers to go on strikes, the strikes were continued unabated. Even in the present case, the advocates have been boycotting the courts on all Saturdays, in the entire district of Dehradun, in several parts of the district of Haridwar and Udham Singh Nagar district of the State of Uttaranchal.

Because of such strikes, the ultimate sufferers are the litigants. From the data mentioned in the impugned judgment and order, things are very shocking. Every month on 3-4 Saturdays, the Advocates are on strike and abstain from working, on one pretext or the other. If the lawyers would have worked on those days, it would have been in the larger interest and it would have achieved the ultimate goal of speedy justice, which is now recognized as a fundamental right under Articles 14

and 21 of the Constitution. It would have helped in early disposal of the criminal trials and therefore it would have been in the interest of those who are languishing in the jail and waiting for their trial to conclude. When the Institution is facing a serious problem of arrears and delay in disposal of cases, how the Institution as a whole can afford such four days strike in a month.

6.7 Now, so far as the submission on behalf of the petitioner that to go on strike/boycott courts is a fundamental right of Freedom of Speech and Expression under Article 19(1)(a) of the Constitution and it is a mode of peaceful representation to express the grievances by the lawyers' community is concerned, such a right to freedom of speech cannot be exercised at the cost of the litigants and/or at the cost of the Justice Delivery System as a whole. To go on strike/boycott courts cannot be justified under the guise of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution. Nobody has the right to go on strike/boycott courts. Even, such a right, if any, cannot affect the rights of others and more particularly, the right of Speedy Justice guaranteed under Articles 14 and 21 of the Constitution. In any case, all the aforesaid submissions are already considered by this Court earlier and more particularly in the decisions referred to hereinabove. Therefore, boycotting courts on every Saturday in the entire District of Dehradun, in several districts of Haridwar and Udham Singh Nagar district in the State of Uttarakhand is not justifiable at all and as such it tantamounts to contempt of the courts, as observed by this Court in the aforesaid decisions. Therefore, the High Court is absolutely justified in issuing the impugned directions. We are in complete agreement with the view expressed by the High Court and the ultimate conclusion and the directions issued by the High Court. Therefore, the present Special Leave Petition deserves to be dismissed and is accordingly dismissed. We further direct all concerned and the concerned District Bar Associations to comply with the directions issued by the High Court impugned in the present SLP in its true spirit. It is directed that if it is found that there is any breach of any of the directions issued by the High Court in the impugned judgment and order, a serious view shall be taken and the consequences shall follow, including the punishment under the Contempt of Courts Act.

7. As observed hereinabove, in spite of the decisions of this Court in the cases of Ex-Capt Harish Uppal (supra), Common Cause, A Registered Society (supra) and Krishnakant Namrakar (supra) and despite the warnings by the courts time and again, still, in some of the courts, the lawyers go on strikes/are on strikes. It appears that despite the strong words used by this Court in the aforesaid decisions, criticizing the conduct on the part of the lawyers to go on strikes, it appears that the message has not reached. Even despite the resolution of the Bar Council of India dated 29.09.2002, thereafter, no further concrete steps are taken even by the Bar Council of India and/or other Bar Councils of the States. A day has now come for the Bar Council of India and the Bar Councils of the States to step in and to take concrete steps. It is the duty of the Bar Councils to ensure that there is no unprofessional and unbecoming conduct by any lawyer. As observed by this Court in the case of Ex-Capt. Harish Uppal (supra), the Bar Council of India is enjoined with a duty of laying down the standards of professional conduct and etiquette for Advocates. It is further observed that this would mean that the Bar Council of India ensures that advocates do not behave in an unprofessional and unbecoming manner. Section 48 of the Advocates Act gives a right to the Bar Council of India to give directions to the State Bar Councils. It is further observed that the Bar Associations may be separate bodies but all advocates who are members of such associations are under disciplinary jurisdiction of

the Bar Councils and thus the Bar Councils can always control their conduct. Therefore, taking a serious note of the fact that despite the aforesaid decisions of this Court, still the lawyers/Bar Associations go on strikes, we take suo moto cognizance and issue notices to the Bar Council of India and all the State Bar Councils to suggest the further course of action and to give concrete suggestions to deal with the problem of strikes/abstaining the work by the lawyers. The Notices may be made returnable within six weeks from today. The Registry is directed to issue the notices to the Bar Council of India and all the State Bar Councils accordingly.

.....J. (ARUN MISHRA) .....J. (M. R. SHAH) New Delhi, February 28, 2020