

Court No. - 21

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1951 of 2023

Petitioner :- Jang Bahadur Kushwaha

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Sunil Kumar Yadav

Counsel for Respondent :- C.S.C.,Ashok Kumar Tiwari

Hon'ble Manoj Kumar Gupta,Acting Chief Justice

Hon'ble Kshitij Shailendra,J.

1. This writ petition, filed in public interest, highlights an alarming situation which not only relates to disruption of functioning of courts at Tehsil Rasra, District Ballia but also raises serious concerns which immediately need to be addressed by the State Bar Council of Uttar Pradesh.

2. The prayer, inter alia, made in the writ petition is to issue a direction commanding the competent authorities to take necessary, effective and immediate action against the concerned lawyers/ concerned office bearers of Tehsil Bar Association, Rasara, District Ballia, who are responsible for calling strike, which is still continuing since 31.01.2023 till date, against the several verdicts of Hon'ble Apex Court, so that judicial functioning of concerned courts of Tehsil Rasara, District Ballia is restored immediately.

3. Although, on 19.01.2024, a statement was made by the learned counsel representing the Bar Council of Uttar Pradesh that now there is no strike and usual work is being transacted, this Court directed the respondent no.3, i.e. the President/ Chairman of Bar Council of Uttar Pradesh, to disclose as to what action has been taken in respect of strike

by the Tehsil Bar Association, Tehsil Rasara, District Ballia which was continuing since 31.01.2023.

4. Learned counsel for the Bar Council of Uttar Pradesh has placed written instructions on record and the stand taken there is that as of date there is no strike, however, it has not been disclosed as to how many days the advocates were on strike in the concerned Tehsil.

5. It is admitted in the own letter of Tehsil Bar Association, Rasara, Ballia that the lawyers remain on strike when any advocate dies or the U.P. Bar Council sends request for abstainment from work, however, the said statement does not appear to be correct.

6. On record, there is a supplementary affidavit filed on behalf of the petitioner, which is supported by voluminous evidence disclosing that lawyers abstain from work even if any family member of an advocate dies or for various other reasons totally unconnected with the profession. On 04.12.2023, on account of death of elder brother of the grand father of an advocate and death of uncle of another advocate, lawyers abstained from work and the condolence meeting was called at 1.00 p.m. with a decision to abstain from work for the whole day. On the next day on 05.12.2023, lawyers again abstained from work on account of death of mother of one Stamp Vendor and condolence meeting was held at 12.00 noon. On 20.11.2023, lawyers decided not to work due to death of mother of another advocate. Similar thing happened on 21.11.2023. The situation went to the extent that on 26.12.2023, the Bar Association passed a Resolution that the lawyers were very sad due to death of Ex-Chairman of Samajwadi Party and present District President of Samajwadi Party and abstained from work due to this reason. Material on record further suggests that recourse to strike was taken on other dates also due to directions issued by Bar Council of Uttar Pradesh.

7. We may note that 'STRIKE', in common parlance, is considered as a temporary withdrawal of services by a group of an organisation with an aim to express the grievance or push some bargaining demand. Such an action may incur some temporary benefits but, ultimately, poses adverse effects all-around. In our judicial system, strike brings the wheels of justice to a standstill, bringing cheer and happiness amongst enemies of justice. Their whips get thicker, sticks more brutal to deepen bleeding wounds day-by-day, their apathy to listen the cry stronger and their sleep against call for justice turning into a deep slumber, so long as the saviours of justice, i.e. the lawyers and the Judges, do not come for rescue of the victims of injustice.

8. The institution of justice and courts of law cannot be equated with industrial establishments where concept of Trade Unions is utilized to justify strikes by industrial labours owing to their demand from employers. Neither State Bar Council nor a Bar Association can be treated alike a Trade Union bargaining for their demands. They are well-equipped with all legal means to find out solutions to any problem. Lawyers' strike waste not only judicial time but also cause immense loss and harm to all the social values and leads to rising pendency of cases, adversely affecting the system of justice delivery, bringing more and more hardships to the litigant(s) for whom the courts are meant. Abstainment from work for the whole day without any substantial cause also falls in the same category.

9. Each case that comes before a Judge or a lawyer, has an element of a human problem concerning the life, liberty, livelihood, family business, profession, work, shelter, safety and security of the citizen. Many of the litigants belong to the downtrodden and weaker sections of society who are defenceless, poor and ignorant. Their silent cry for a civilised human solution to their grievances and problems, and for a

level playing field is a call for justice, to be felt and heard by all the components of justice delivery system.

10. If courts of law remain closed for long periods, people may take recourse to other means for redressal of their grievances, including those which may have no sanction of law, like approaching the criminals to settle their disputes, or either turning themselves into criminals and adopting all other polluted means for getting the work done. If this situation persists for a considerable period of time, the resultant effect on the society as well as individuals and the nation as a whole would be unassessable. In that eventuality, we would certainly shatter the faith reposed by us in ourselves while giving us the Constitution and its soul and that would be the most unfortunate day for all of us.

11. The Hon'ble Supreme Court, in the cases of **Ex. Capt. Harish Uppal vs. Union of India and another**, AIR, 2003 SC 736; **Supreme Court Bar Association v. Union of India**, (1998) 4 SCC 409; **Krishnakant Tamrakar vs. State of Madhya Pradesh**, 2018 (17) SCC 27 and **Hussain v. Union of India**, (2017) 5 SCC 702, has already settled that it is unprofessional as well as unbecoming for a lawyer, who has accepted a brief, to refuse to attend the Court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council.

12. It is pertinent to note that in case of any genuine grievance, it is always open to the Members of the Bar to ventilate the same before the Grievance Redressal Committee constituted by this Court by order dated 06.06.2023 which comprises of-

- (i) District Judge
- (ii) Additional District Judge-I

- (iii) CJM
- (iv) DGC (Civil & Criminal)
- (v) President, Bar Association of the concerned District.

13. At this stage, the Court refers to certain provisions of Advocates Act, 1961 as far as the role of Bar Council of India and the State Bar Councils is concerned.

14. Section 6 of the Act of 1961 defines functions of State Bar Councils which include entertainment and determination of cases of misconduct against advocates on roll, to promote and support law reforms, to organise legal aid to the poor in the prescribed manner, to perform all other functions conferred on it by or under the Act and to do all other things necessary for discharging the functions. Section 7 of the Act provides various functions of the Bar Council of India to lay down standards of professional conduct and etiquette for advocates. Section 9 deals with Disciplinary Committees. Section 28 describes power of State Bar Council to make rules to carry out the purposes of Chapter III. Chapter V contains provisions for punishment of advocates for misconduct which include removal of the name of the advocate from the State roll of advocates, either on receipt of a complaint or otherwise, if it has reason to believe that any advocate on its roll has been guilty of professional or other misconduct.

15. Section 49 empowers the Bar Council of India to make rules for discharging its functions under the Act of 1961. Rule 49(1)(c) speaks of framing of Rules prescribing the standards of professional conduct and etiquette to be observed by advocates.

16. Bar Council of India, in exercise of power under Section 49(1) (c) of the Act, has framed "**Rules for Standards of Professional Conduct and Etiquette**" with a preamble in so many words

describing the status of an Advocate as an officer of the Court, a privileged member of the community and a gentleman. Various rules incorporated therein cast an obligation on an advocate to uphold the dignity of the entire judicial system and not to indulge in any such activity by which the confidence reposed in him by his client is shaken.

17. The overall Scheme of the Advocates Act, 1961 read with the law laid down by the Supreme Court in the aforesaid judgments take this Court to reach to only one conclusion, that is to the effect that if any member of the Bar including office bearers of concerned Bar Association acts contrary to the judgments of the Apex Court or the provisions of the Act and the Rules, discussed above, the State Bar Council is competent to remove the concerned advocate/ office bearer from the State Roll of Advocates and to take any other measure(s) prescribed under the law, including against the concerned Bar Association.

18. Before us, no guidelines have been placed by the Bar Council of Uttar Pradesh (respondent no.3) which may control the strikes by Bar Association(s) and regulate observance of condolences.

19. We, therefore, direct the Bar Council of Uttar Pradesh to bring on record the guidelines framed by it, if any, in respect of observance of condolences and other instances under which the lawyers abstain from work in any district or Tehsil of the State of U.P. and whether any action has been taken by it in the instant case or not.

20. List as fresh on 05.02.2024.

Order Date :- 24.1.2024

AKShukla/-

(Kshitij Shailendra, J.) (Manoj Kumar Gupta, A.C.J.)