

HIGH COURT OF MADHYA PRADESH: JABALPUR**(Division Bench)****Writ Petition No. 8078/2018**

Praveen Pandey **Petitioner**
 - V/s -
The State of Madhya Pradesh **Respondents**
 and others

CORAM :

Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge

Present:

Petitioner in person.

None for the respondents.

Shri Mohd. Fahim Anwar, Registrar General and Shri A.K. Shukla, Principal Registrar (Judicial), M.P. High Court.

ORDER

(Passed on this 10th day of April, 2018)

Per : Hemant Gupta, Chief Justice:

The present petition in public interest has been filed by the petitioner, a practicing Advocate of this Court, challenging the call to all the Advocates in the State by the State Bar Council to abstain from Court work from 9th April, 2018 to 14th April, 2018. The demand is of appointment of High Court Judges, enactment of Advocates' Protection Act and seating arrangement of Advocates in the High Court premises.

02. The Chairman, State Bar Council of Madhya Pradesh is said to have addressed a Press Conference on 28th March, 2018 giving an

ultimatum to the State for fulfillment of their demands by 8th of April, 2018 otherwise the State Bar Council will call the strike in whole of State of Madhya Pradesh and that no Advocate will appear before any Court. The Chairman has also threatened the Advocates that, whosoever will appear in the Courts, shall be subjected to a disciplinary action. News with regard to holding of Press Conference was published in the newspapers such as Patrika: Jabalpur (Annexure P-1) and Dainik Bhaskar: Jabalpur dated 29.03.2018 (Annexure P-2).

03. It is contended that the State Bar Council is a statutory body and it has no jurisdiction to call for the strike. The call of strike affects the urgent hearing matters which are pending in the Courts. The petitioner refers to a Constitution Bench judgment of the Supreme Court reported as **(2003) 2 SCC 45 (Ex-Capt. Harish Uppal vs. Union of India and Another)**.

04. As per the listing mechanism in this Court, a Short Messaging Service (SMS) of hearing of the petition on 05.04.2018 was sent to Shri Kuldeep Singh, Panel Lawyer of State Bar Council of M.P on 05.04.2018 at 12:46:34. The case was called for hearing at 2.30 p.m. when Shri Naman Nagrath, Senior Advocate appeared for the State Bar Council and the case was adjourned to 06.04.2018. On 06.04.2018, at about 12 p.m., the case was called. Shri Nagrath, stated that meeting of the office bearers of the State Bar Council with the office bearers of all the Bar Associations at the Principal Seat of High Court was convened at about 4.30 p.m. on 5th April, 2018 and it has been decided to call for voluntary abstaining from work by the members of the Bar. The case was ordered to be taken up at 01.00 p.m. with the direction that Shri Naman Nagrath to disclose the issues on which

the members have decided to abstain from work and the names of the office bearers of the State Bar Council; office bearers of the different Bar Associations of the High Court of Principal Seat at Jabalpur, Gwalior and Indore so that further action, as may be permissible in law, can be considered. At 01.00 p.m. on 6th April, 2018, when the case was taken up, Shri Nagrath sought time to comply with the order passed earlier in the day. On his request, the case was ordered to be taken up on 09.04.2018 at 02.30 p.m. . However, when the case was called for hearing yesterday, Shri Nagrath did not appear.

05. The Registrar General of this Court produced on record a Press release and an appeal to the members of the different Bar Associations to attend the Court work issued earlier in the day on 9.4.2018. It was circulated that by abstaining from work from 9th April, 2018 to 15th April, 2018, approximately 960 court working hours of the High Court will be jeopardized and about 40,000 working hours (of approximately 1315 Judicial Officers) in the Subordinate Courts will be affected. Shri A.K. Shukla, Principal Registrar (Judicial) has produced the record of the cases decided, as also the status of appointments in the Subordinate judiciary and the present vacancy position. Such details have been kept on record.

06. In the first representation dated 21st March, 2018, the State Bar Council has sought the resolution of three issues; (1) immediate steps for appointment of Judges to the High Court, (2) enactment of Advocates' Protection Act and (3) appropriate arrangement for working space/ chambers.

07. The Registrar General of this Court sent an information to the Chairman, State Bar Council on 22.03.2018 itself that the Chief Justice is conscious of the prevailing situation regarding the vacancies and necessary steps are being taken whereas the Issue Nos.2 and 3 pertain to the State Government for which they need to directly approach the State Government. Therefore, there is no cause to propose to go for a week-long protest or for abstaining from judicial work. It is, thereafter, the Press Conference was held on 28th March, 2018. A supplementary representation was submitted on 5th April, 2018 raising grievance of non-sanctioning of 16 additional posts of High Court Judges; the vacant posts of District Judges and Additional District Judges; non-appointment of Presiding Officers of the District Consumer Redressal Forums and other Quasi-Judicial Tribunals; the system of payment of e-court fee and new criminal listing mechanism. Therefore, the Bar Council has decided to continue with the protest from 9th April, 2018 to 14th April, 2018.

08. It cannot be disputed that the enactment of Advocates' Protection Act or arrangement for working space/chambers, as sought, is to be considered by the State Government. As per information given by the Principal Registrar (Judicial), a public interest litigation bearing **W.P. No.4436/2018 (Dr. P.G. Najpande vs. The State of M.P. and another)** is pending in the High Court for non-appointment of the Presidents of the District Consumer Redressal Forums, which is now fixed for 30th April, 2018 in view of the statement of the State counsel that Chairpersons of 13 District Consumer Redressal Forum shall be appointed before the said date.

09. In respect of the vacancies in the subordinate Courts, it is pointed out that as many as 560 posts i.e. 235 in the Higher Judicial Service and 325 in Madhya Pradesh Judicial Services have been created by the State Government on 5th October, 2016 and such posts have been decided to be filled up in staggered manner i.e. 111 posts in 2016, 150 posts in 2017, 150 posts in 2018 and 149 posts in 2019 in order to ensure that necessary infrastructure is available for working of the officers. After sanction of 560 additional posts, the total posts as on 31st March, 2018 are 2021 out of which 706 posts are vacant including the newly created 560 posts. The appointment/selection of 424 Judicial Officers is in progress out of which 253 posts are to be filled in the year 2018 and the process of appointment of 171 officers is near completion. The selection process of 149 Judicial Officers i.e. 59 of Higher Judicial Service and 90 of State Judicial Service will be taken up in the year 2019. Therefore, it cannot be said that there is an acute shortage of the Judicial Officers.

10. The Principal Registrar (Judicial) furnished information regarding appeals preferred and decided in last two years. It shows that from 1st April, 2017 to 31st March, 2018 as many as 1717 Division Bench criminal appeals and 4476 Single Bench criminal appeals, total 6193 criminal appeals were decided. Out of such appeals 1656 criminal appeals i.e. 1239 Division Bench appeals and 417 Single Bench appeals, the accused persons were in custody. Still further, in 140 cases, *Amicus Curiae* were appointed. It may also be noticed that in the year 2016, 1658 Division Bench appeals were preferred out of which 519 appeals were decided whereas in the year 2017, total 1617 Division Bench appeals were

preferred out of which 1390 appeals were decided. On the other hand, in the years 2016 and 2017, total number of 5631 and 7904 Single Bench criminal appeals were preferred and out of which 1464 and 4290 appeals were decided in the years 2016 and 2017 respectively. Thus, we find that disposal of the cases at the High Court level has not deteriorated but has substantially improved in the year 2017.

11. Though the statement of Shri Nagrath was that abstaining from work is voluntary but even Shri Nagrath has failed to appear on 9th April, 2018 when the present writ petition was called for hearing. None of the members of the Bar appeared for hearing though in few cases, on mention memo by the Members of the Bar, the writ petitions were listed for hearing on the same day. Therefore, it is not a voluntary act but a call given by a statutory body which is competent to take disciplinary action against the Advocates enrolled with it and is compelling the members of the Bar to abstain from work. The so-called object to abstain from work is that there are huge arrears. There is no doubt about it. But, the abstaining of work is not addressing the issue of reducing the arrears but is increasing the same. One can understand if the State Bar Council has to request the Courts to work extra to address the problem of arrears or the members of the Bar decide not to seek adjournments and to avoid repetitive arguments so that the disposal could be much better.

12. This Bench has been hearing criminal appeals in which the accused persons are in custody for more than 10 years at 03.30 p.m every day for almost a year but the Bench is deprived of assistance of the Advocates, who are engaged by the convicts and this Bench has to take

assistance from the Legal Aid counsels to argue the appeals on behalf of the accused persons who are in custody for more than 10 years. Therefore, the State Bar Council was expected to address the problem of the members of the Bar of not appearing in Court but instead, a decision taken to abstain from work is, in fact, aggravation of problem of mounting arrears.

13. A Single Bench of Calcutta High Court in a judgment reported as **AIR 1996 Calcutta 331 (Arunava Ghosh and others vs. Bar Council of West Bengal and other)** was examining the resolution of the Bar Council of West Bengal to call the Advocates to abstain from attending the Courts in view of lack of court infrastructure. The Court held that the Bar Council is to ensure safe place of work for all lawyers, as the lawyers were adjunct to the administration of justice and that the Bar Council had to ensure that the cause of administration of Justice did not suffer. The Court held as under:-

“8. Quoting from observations of the Supreme Court and the English Courts in different cases relating to the nature and character of the legal profession and the standard of ethics to be followed by the Advocates and also referring to the rules framed by the Bar Council under Section 49(1)(c) of the Advocates Act relating to standard of the professional conduct and etiquette, it has been further contended by the petitioners that the Advocates practise the profession of law to serve the people to secure justice for them and to do everything as agent of his client to espouse honourably and fearlessly the cause of his client although not as his client's mouthpiece, having allegiance to a higher cause, namely the cause of truth and justice which he secures as an officer of the Court. It is contended that such standard of professional conduct and etiquette imposes a compulsive duty on an Advocate to accept brief of a litigant unless exempted by the rules and to plead his cause in Court and not to withdraw from such duty without notice to his client and without reasonable cause.

10. It has been prayed by the writ petitioners, inter alia, for a declaration that the respondents have no jurisdiction or power to call upon Courts/Tribunal/Authorities or the Advocates to cease work or to boycott (sic) any Court or to resort to strike so that normal works of the Courts are disrupted and the Advocates are prevented from practising profession of law; for a further direction upon the respondents to forebear from interfering with or suspending or prohibiting the Advocates from (sic) performing their professional work by calling upon them to cease work and for issue of a writ in the nature of prohibition prohibiting the respondents from giving any effect or further effect to the resolution dated 3rd May, 6th May, 11th May and 13th May 1994 and for writ in the nature of mandamus directing the respondents to withdraw and/or rescind such resolutions. A writ in the nature of quo warranto has also been asked for commanding the respondent No. 2 and respondent Nos. 5 to 27 to vacate the office of the members of the West Bengal Bar Council to withdraw and rescind such resolution.

28. The Bar Council of West Bengal and some other respondents supporting the stand of the Bar Council in their submission have not disputed the facts that the Bar Council being a statutory body its powers are circumscribed by the statute. But all of them have submitted, inter alia, that the Bar Council does possess the power even to call upon the Advocates to cease work for the purpose of protecting the interest of the entire legal fraternity in exercise of its function under Section 6(1)(d) and (i) of the Advocates Act and all of them have justified such action of Bar Council by contending, inter alia, that such a measure was resorted to by the Bar Council as a last resort, for protecting the interest of the legal fraternity and as all other methods failed to rouse the State Government into action.

41. Admittedly the Bar Council of West Bengal is State within the meaning of Article 12 of the Constitution of India. Every Act of State must be presumed to be informed with reason and in public interest. Whosoever seeks to displace this presumption has a heavy onus to discharge.

42. Section 6 of the Advocates Act lists within the functions of the Bar Council the doing of all other things necessary for discharging the functions from sub-sections 1(a) to 1(h). It was not possible for the

legislature to visualise and accordingly to enumerate the specific actions that the Bar Council could take in the eventualities that might arise in course of time. The situation was singular. The Advocates were denied a safe place of work. The Bar Council which is State within the meaning of Article 12, found that exhortations were fruitless and in exasperation decided upon the cease work for a limited period with advance notice that if in the meantime anything meaningful was done, the cease work would not take effect. It was in the interest of all Advocates to ensure what the Bar Council was striving for and unless the action proposed was binding and unless the Bar Council had the authority to punish a violation, it would be a meaningless step and would hardly be a method of persuading the Government to take action.

43. The Bar Council had, therefore, to ensure safe place of work for all lawyers, not only the Lawyers affected in particular Courts, and also, since lawyers were adjunct of the administration of justice, the Bar Council had to ensure that the cause of administration of Justice did not suffer.

51. Under Section 35 of the Advocates Act when the State Bar Council on receipt of a complaint or otherwise has a reason to believe that any Advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee. In the instant case although by the impugned resolution dated 13th May 1994 the Bar Council did not resolve that it had already reason to believe that the Advocates, who defied the call of the Bar Council for ceasing work have committed other misconduct, it resolved that show cause notices be issued against such Advocates and in the event the State Bar Council has reason to believe that such Advocates are guilty of other misconduct the case may be referred to the Disciplinary Committee.

54. As to the merits of the controversy between the parties, it is pertinent to note, that in the instant case the Court is concerned only the existence or lack of jurisdiction of Bar Council to give call for cease work and to compel the Advocates on its roll to follow such resolution and the Court is not concerned with the question whether an association of Advocates can call for such a cease work or whether an Advocate individually or collectively has the right to strike work.

55. While examining, the issues which have been raised before this Court, it is necessary to keep in mind that the Bar Council of West Bengal or for the matter of that any State Bar Council or Bar Council of India is neither an Association nor a Guild of the Advocates nor the same is a Trade Union. The Bar Council of West Bengal and for the matter that all State Bar Council and All India Bar Council admittedly are statutory bodies created and/or reconstituted under the Advocates Act 1961. The fact that the Bar Council being a Statutory body its powers and functions are circumscribed by the provisions of the Statute as asserted by the petitioners, is not really disputed by the respondents. The fact that the Bar Council has also not been invested specifically with the power of giving a call to the members on its roll to cease work either under the Advocates Act 1961 or under any other statute is not also disputed by the respondent. But the respondents have contended inter alia, that one of the functions of the Bar Council under Section 6(1)(d) of the Advocates Act is to safeguard the rights, privileges and interest of Advocates on its roll and under Section 6(1) (i) of the said Act, it has the power to do all other things necessary for discharging the functions enumerated in the other clause including clause (d) of sub-section (1) of Section 6 of the said Act. It has been contended that to protect the rights, privileges and interest of the Advocates on its roll the Bar Council has the power under aforesaid clause (i) of subsection (1) of Section 6 to do all other things necessary to discharge such functions, and therefore it had the power to give call for cease work as the same bona fide was thought necessary by the Bar Council to protect the interest of the Advocates, all other methods to protect the interest of the Advocates, because of the failure of the State Government to shift the Courts from the dilapidated building to a safer building, having failed to obtain result.

56. Assuming there is scope of such interpretation of Section 6(1), (d) and (i) of the said Act as it is sought to be made by the respondents, namely the impugned action resorted to by the Bar Council having been thought to be necessary for protecting the interest of the Advocate the same was permissible and the Bar Council had the jurisdiction to take such action, then the question obviously comes in how far the Bar Council can go in the matter of taking any action or doing anything which is considered necessary for protection and safeguard the interest the rights and privileges of the Advocates. In doing such things what is thought by the Bar Council to be necessary, can it do such a thing which although may be thought to

be necessary by the Bar Council for protecting the interest of the Advocates and their rights and privileges, which also takes away the statutory or constitutional right of an Advocate even though may be temporarily? The answer in my view will be in the negative. Such power to the Bar Council, which apart from being statutory body is also an authority within the meaning of Art. 12 of the Constitution, cannot be unbridled and uncontrolled, but like all state actions must be free from arbitrariness, must be reasonable. The Bar Council being a statutory body while exercising its functions under Section 6(1), (d) and (i) of the Advocates Act while doing all things which are necessary for discharging its various other functions enumerated in different clauses of sub-section 1 of Section 6 including safeguarding the rights, privileges and interest of the Advocates on its roll cannot do such things which are illegal, or which are against the public policy or against the law of the land, which are unreasonable, arbitrary or which adversely affects the livelihood, right and interest of other persons including Advocates. In my view in the name of safeguarding the rights, privileges and interests of the Advocates on its roll the Bar Council cannot certainly do something which will take away, even though temporarily, the statutory and the constitutional right of an Advocate to practise, except under the provisions of Section 35 of the Advocates Act.

60. An examination of the Bar Council Act 1926 and the Advocates Act 1961 will clearly indicate that the State Bar Council has no power or jurisdiction to take away the right of an Advocate to practice as of right either temporarily or permanently or to compel him not to practice even for a day or affect his right to practise in any manner whatsoever except by way of exercising, disciplinary jurisdiction under Section 35 of the Advocates Act 1961.

61. Such being the position of law and admittedly, the State Bar Council also not having been specifically invested with any power to call upon the Advocates on its roll to cease work or to compel an Advocate to cease work, to read the existence of such power impliedly under clause (i) of sub-section (1) section (6) of the Advocates Act will be against all canons of interpretation particularly when the effect of the same would be negation and affectation of statutory right of Advocates to practice as of right.

62. Such call for cease work by the Bar Council and compelling an

Advocate to cease work not only amounts to negation of such statutory right of Advocate under Section 14 of the Bar Council Act to practise as of right, the same is also an invasion of the fundamental right of an Advocate as guaranteed under Art. 19(1)(g) of the Constitution of India under which the freedom to practise any profession is guaranteed subject to reasonable restrictions that may be imposed. In exercise of such fundamental right every Advocate has the freedom to practise as a lawyer. Subject to reasonable restrictions that might be imposed. The only reasonable restriction upon such freedom and right of an Advocate is provided in the aforesaid provision of Section 14 of the Bar Council Act 1926 and in the various regulatory measures including disciplinary power which could be exercised by the Bar Council under the Advocates Act 1961. There is no other provision either in the Advocates Act or in the Bar Council Act or in any other legislation or enactment empowering the Bar Council to affect such right of an Advocate to practise as of right either by compelling him to cease work or in any other manner whatsoever.”

14. We respectfully approve the reasoning and findings given in the said Judgment dealing with the right of the Bar Council to give call for abstaining work from the Courts.

15. A Constitution Bench of the Supreme Court in **Ex. Capt. Harish Uppal's case (supra)** observed as under:-

“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 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 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 Courts 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 Courts 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."

35. In conclusion it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot 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 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 in addition to damages which he might have to pay his client for loss suffered by him.”

16. In another judgment reported as **2017 (5) SCC 702 (Hussain and Another vs. Union of India)**, the Court held that the speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21 of the Constitution of India. After saying so, the Court held as under:-

“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* [(2003) 2 SCC 45], such suspension of work or strikes is clearly illegal and it is high time that the legal fraternity realizes its duty to the society which is the foremost. Condolence references can be once in 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.

28. Judicial service as well as legal service are not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of undertrials in custody is one of the priority areas. There are obstructions at every level in enforcement of right of speedy trial – vested interests or unscrupulous elements try to delay the proceedings. Lack of infrastructure is another handicap. In spite of all odds, determined efforts are required at every level for success of the mission. Ways and means have to be found out by constant thinking and monitoring. The Presiding Officer of a court cannot rest in the state of helplessness. This is the constitutional responsibility of the State to provide necessary infrastructure and of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases. The first step in this direction is preparation of an appropriate action plan at the level of the High Court and thereafter at the level of each and every individual judicial officer. Implementation of the action plan will require serious efforts and constant

monitoring.”

17. The Supreme Court in another judgment in **Criminal Appeal No.470/2018 (Krishnakant Tamrakar vs. State of M.P.)** decided on 28th March, 2018 considered various issues including the issue of uncalled for strikes by the members of the Bar. The Court held as under:-

“46. In *Ex-Capt. 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. The Law Commission has submitted 266th Report. The problem continues seriously affecting the rule of law.

47. In *Mahipal Singh Rana vs. State of U.P. [(2016) 8 SCC 335]*, 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. This Court requested the Law Commission to look into all relevant aspects relating to regulation of legal profession.

51. 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.

52. 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 concerned High Court 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 concerned High Court 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.”

18. The Bar Council is a creation of the Advocates Act, 1961 (in short “the Act”) and is a body corporate. The function of the State Bar Council is to admit persons as Advocates on its roll and to entertain and determine cases of misconduct against Advocates and to safeguard the rights, privileges and interests of Advocates on its roll but giving of a call by a statutory body established under the Act to entertain and to decide the cases of misconduct against Advocates, cannot itself indulge in an act which is not permissible under the Act nor is permissible in view of the Constitution Bench judgment of the Supreme Court in **Ex-Capt. Harish Uppal (supra)** and subsequent pronouncements of the Supreme Court in **Hussain's case (supra)**; **Krishnakant Tamrakar's case (supra)** as well as

the decision of the Calcutta High Court in **Arunava Ghosh's** case (**supra**), as referred to above.

19. If an Advocate does not appear at the time of hearing of the cases, he can be proceeded against for misconduct for negligence in defending the interest of his client. The call of the Bar Council to Advocates of the State to abstain from work, does not fall within the four corners of the Act and the role assigned to the Bar Council. The State Bar Council derives its authority from the Act and has to discharge functions which are conferred on it. None of the provisions of the Act confers power on the statutory body to call the members to abstain from judicial work which is a responsibility of every member of the Bar in terms of the provisions of the Act itself. It has been rightly held by the Calcutta High Court in **Arunava Ghosh (supra)** that the Act does not confer any power or jurisdiction on the State Bar Council to take away the right of an Advocate to practice as of right either temporarily or permanently or to compel him not to practice even for a day or affect his right to practice in any manner whatsoever except by way of exercising disciplinary jurisdiction under Section 35 of the Act. Therefore, the call given to the Advocates to abstain from Judicial work negates the statutory right of Advocates to practice and also is an violation of fundamental right of an Advocate where freedom to practice any profession is guaranteed under Section 19(1)(g) of the Constitution of India.

20. In view of the foregoing, we find that the decision of the State Bar Council calling upon the Advocates in the State to observe a week-long protest and to abstain from all judicial works and Court proceedings is

illegal, unconstitutional and against the statutory provisions as well as contrary to the judgments of the Supreme Court. Therefore, we hold the call to abstain from court work vide letters dated 21st March, 2018 and 5th April, 2018 as illegal and against the provisions of the Advocates Act and the Judgments on the subject.

21. Consequently, we direct the Advocates in the State to resume the work forthwith so that the poor, needy, under-trials, convicts and numerous other persons desiring to seek justice from the Courts do not suffer on account of lack of legal assistance for the reason that the members of the Bar are not available to work in the Courts.

22. A copy of this Order be served on the Bar Council of India, State Bar Council; Bar Associations on the Principal Seat and Benches of this Court; Chief Secretary and Principal Secretary (Law) of the State of Madhya Pradesh forthwith for information and necessary action. The order be displayed prominently on the website of this Court for information of the Advocates and General Public as well.

23. List on **11.04.2018** for further proceedings.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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