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

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

Present:

Petitioner in person.
Shri Amit Seth, Government Advocate for the respondent/State.
Shri Ravindra Nath Tripathi, Advocate for the Intervener.

Whether Approved for Reporting: Yes

Law Laid Down:

- ✓ The High Court has power to issue a writ to any person or Authority including any Government within its territory for enforcement of any of the rights conferred by Part-III of the Constitution of India and/or any other purpose. The writ jurisdiction is being exercised to protect the fundamental rights of the members of the Bar to appear in the Court and also the fundamental rights of the citizens of the State to get their cases decided with the assistance of the Advocates engaged by them. Therefore, the writ petition against call by the Bar to abstain from work has not become *infructuous* and that the writ court is bound to protect the rights of the citizens.

- ✓ The strike or abstention from work impairs the administration of justice and is inconsistent with the duties of an Advocate. The Bar Association is not a Trade Union under the Trade Union Act, 1926. The Trade Union has a right to demonstrate as a mode of redress for resolving the grievances of the workers but the Advocates though are members of Bar Association but
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are professionals engaged by the litigants for the redressal of their grievances by intervention of the Court. By abstaining from work, the members of the Bar do not help anybody.

- ✓ The members of the Bar are protectors of independence of the judiciary. They must rise to maintain independence of judiciary by being an active participant in the administration of justice and not by withdrawing from the pious duty enjoined on them in terms of the Advocates Act, 1961.

- ✓ The litigant has a right to get justice. He will get justice only if the Courts are functioning in the country but the members of the Bar cannot make the third pillar of democracy non-functional by deciding to withdraw from work. Their action is antitheses of democratic life of the country.

- ✓ The High Court of Madhya Pradesh (Conditions of Practice) Rules, 2012 framed by the High Court in exercise of powers under Section 34 of the Advocates Act, 1961 do not contemplate the consequences of the members of the Bar of abstaining from work either voluntarily or in terms of resolution of the State Bar Council or the High Court or the District Bar Associations. Therefore, the High Court is directed to examine and incorporate in the said Rules, the consequences of the members of the Bar, the office bearers of the Bar Association(s) and of the State Bar Council of not appearing in the Court including the action of the debarment of such erring members and the period thereof.

Significant Paragraphs: 6, 8 to 23

Heard/Reserved on: 17.07.2018

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O R D E R

(Passed on this 31st day of July, 2018)

Per: Hemant Gupta, Chief Justice:

This order be read in continuation of the order dated 10.04.2018.

2. In the present petition the challenge was to a call by the State Bar Council to abstain from work for one week. By a detailed order passed on
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10.04.2018, the Advocates in the State were directed to resume work forthwith so that poor, needy, under-trials, convicts and numerous other persons desirous of seeking justice from the Courts do not suffer on account of lack of legal assistance.

3. Subsequently, on 01.05.2018, an order was passed to examine the question as to what will be the reasonable reasons for the District Bar Associations or the High Court Bar Associations calling upon its members to abstain from work and if such call is given, what steps can be taken by the statutory or non-statutory Authorities.

4. On 09.05.2018, the suggestions were invited from the general public and the members of the Bar Associations as to in what circumstances, Bar Association can give call to its members to abstain from Court work and if the Bar Association gives the said call, how the situation is required to be addressed so that fundamental rights of the Advocates to appear before the Court are not infringed.

5. The State Bar Council has submitted written-submissions on 19.07.2018, *inter alia* alleging that the writ petition has become *infructuous* as the reliefs claimed in the writ petition have already been granted. However, it is stated that the Hon'ble Supreme Court has given a detailed and exhaustive judgment in **Ex-Capt. Harish Uppal vs. Union of India and Another**, **(2003) 2 SCC 45** as well as in **Common Cause, A Registered Society and others vs. Union of India and others, (2006) 9 SCC 295**. Therefore, there is no need for this Court to discuss and decide the issues, which have already been settled by the Supreme Court. It is further stated that the question: as to whether fundamental right of an

Advocate to appear before the Court is infringed or not, is purely hypothetical and academic in nature and should be answered only in an appropriate petition. It is also said that call for abstaining from work is purely voluntary in nature and thus, there is no question of violation of anyone's fundamental right when a member voluntarily abstains from work. It is also pointed out that the Supreme Court is seized of a matter in Writ Petition (Criminal) No.144/2018 (Deepak Kalra vs. State of M.P. and others). It is also pointed out that the Supreme Court can travel beyond the *lis* involved in the matter under Article 142 of the Constitution of India to do complete justice but no such parallel power is available with the High Court. Therefore, the issue raised by this Court could not be answered in the present petition.

6. In terms of order dated 09.05.2018, a notice has been displayed on the website of this Court as also on the notice boards of the District Courts. In terms of the order passed, the suggestions have been received from Shri V.K. Nagpal; District Bar Association, Shahdol; Shri Anil Tiwari, Advocate; Shri R.N. Tripathi, Advocate; one Shri Sandeep Tiwari (through email) and also from petitioner Shri Praveen Pandey, Advocate. The suggestions so received, in brief, are as under:-

(i) **SHRI V.K. NAGPAL**:

It is stated that a Mafia is active in M.P. State Bar Council, who are pressurizing the judiciary on the basis of manipulated data and take resort to strike every day. The judiciary has become a silent spectator and that the Advocates are becoming bold every day, who are influencing the judiciary, administration and police. Under the guise of profession, the anti-social

elements are receiving patronage and on the complaints of members of the Bar, the complainants are attacked with the threat to their lives. It is also alleged that CCTV cameras should be installed in the office of the Bar Council and in the judiciary complexes, so that the suspicious activities of the Advocates can be monitored.

(ii) **DISTRICT BAR ASSOCIATION, SHAHDOL**:

The said Bar has made a grievance that non-practising advocates play a vital role in disturbing the peace between Bench and the Bar at the time of strike. Therefore, it is suggested for verification and striking off the names of non-practising advocates and the advocates who do not practise regularly in the courts. Such process will curb uncalled for and illegal abstention from work. It is further suggested that State Bar Council by virtue of its powers should not compel any advocate or Advocates Bar Association to call for strike. The Bar has also emphasized upon the need of enacting Advocates' Protection Act.

(iii) **SHRI ANIL TIWARI, ADVOCATE, REWA**:

Shri Tiwari has stated that if the State Government or the Central Government does not act to redress the issues of public importance, the action by the members of the Bar for abstaining from work would be justified as the members of the Bar have no other option. But, on local issues, the abstaining from work in the entire State and country will not be proper as all the grievances of the public cannot be addressed by the High Court.

(iv) **SHRI R.N. TRIPATHI, ADVOCATE**:

Shri Tripathi expressed his anguish over the manner in which strikes are called and Advocates are compelled not to work and the manner in which the present petition was filed. He has also expressed his anguish in the manner in which security was provided to the petitioner. Having said so, it is stated that right to call for the strike is a fundamental right but it is not in derogation of other rights of the individual and there is need for expression of thought and strike is manifestation of that thought. Therefore, it should not be curtailed. He has made the following suggestions:-

> **"6.** Any decision to call for strike can only be taken when procedure prescribed hereinbelow is followed.
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> **7.** The Association, at whateverlevel (sic) same must display a notice in advance, to all office bearer of bar that they are require to meet, and take a decision, on the question posed, and this may result in taking a decision that strike may be called.
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> **8.** That, the meeting must be called, by signature of President and Secretary of that Bar.
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> **9.** That, meeting can also be called, by signature of fixed number of Bars, which may be one third to discuss such issued (sic).
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> **10.** When meeting is called and quorum is complete, bar may discuss the issue and take a decision. If that decision is to call for strike, it can't be from same day or next day of decision. But demand on which strike is going to be called, shall be conveyed in writing, with the decision of the bar, giving atleast three days time to the person or authority concerned, to fulfill the demand, failing which from fixed date strike will be called. But before sending this threat of strike to the concerned authority, same may be placed for referendum, before the General Body of that Bar, and after 24 hour, voting on the subject may be taken, this can be done online to avoid unwarranted expences (sic), or may be conducted on hard copy, with minimum expenses, and if majority of members are of the opinion that such notice may be sent, than (sic) only notice to strike with demand may be sent to the

> concerned authority, giving them minimum three days time to fulfill the demand, and if after the given time line demand is not filled, than (sic) strike can be called for one day."

(v) **SHRI SANDEEP TIWARI (through email)**:

Shri Tiwari has given an incident of threat given by an office bearer of the Bar Association to SDM, Sohagpur during court hearing. He has also requested the High Court to pass strict orders against responsible office bearers of the State Bar Council and non-practising advocates having criminal tendency.

(vi) **SHRI PRAVEEN PANDEY, ADVOCATE**:

On the other hand, the petitioner has suggested to constitute a committee of five members in each and every District under the control and supervision of learned District Judge which can settle and resolve the problems of the members of the Bar. Similarly, a committee is suggested to be constituted each at Principal Seat of the High Court and Gwalior and Indore Benches and that there should be an appropriate committee under the control and administration of the Chief Justice or Administrative Judge at the Principal Seat or at the Benches to address the problems of the members of the Bar.

7. On 02.07.2018, the Registrar (I & L), High Court of M.P. has placed on record copy of the information sought by Government of India in terms of the direction of the Supreme Court in Criminal Appeal No.470/2018 **(Krishnakant Tamrakar vs. State of M.P.)** on 28.03.2018. The information is in respect of first quarter of the year i.e. from 01.01.2018 to 31.03.2018. As per the information, 200 working hours were

lost in three Benches of the High Court whereas 8658.5 working hours were lost in the subordinate Courts. The call for strike by the State Bar Council from 09.04.2018 to 14.04.2018 is after the said period.

8. The argument that the writ petition has become *infructuous* is not tenable for the reason that in exercise of power under Article 226 of the Constitution of India, the Court can issue any direction or order. The High Court has power to issue a writ to any person or Authority including any Government within the territory of this Court for enforcement of any of the rights conferred by Part-III of the Constitution of India and/or any other purpose. The writ jurisdiction is being exercised to protect the fundamental rights of the members of the Bar to appear in the Court and also the fundamental rights of the citizens of the State to get their cases decided with the assistance of the Advocates engaged by them.

9. In **Ex. Capt. Harish Uppal**'s case (**supra**), the learned Attorney General has submitted before the Constitution Bench that strike by lawyers cannot be equated with strikes resorted to by other sections of the society as the basic difference is that members of legal profession are officers of the Court and that they are obliged by the very nature of their calling to aid and assist in the dispensation of justice. The strike or abstention from Court work impairs the administration of justice. Thus, the same was inconsistent with the calling and position of lawyers. It was argued that the abstention from work by the members of the Bar may be resorted to in the rarest of rare cases where the action protested against is detrimental to free and fair administration of justice such as there being a direct assault on the independence of the judiciary or a provision is enacted nullifying a

judgment of a Court by an executive order or in case of supersession of judges by departure from the settled policy and convention of seniority. It was suggested that a token strike of one day can be resorted to if the action eroded the autonomy of the legal profession e.g. dissolution of Bar Councils and Bar Associations or packing them with the government nominees, which abstention from work can be for couple of hours or for one day. The purpose should be to register a protest and not to paralyse the system. It was further suggested that alternative forms of protest can be explored i.e. giving press statements, TV interviews, carrying banners and/or placards, wearing black arm-bands, peaceful protest marches outside court premises etc. and further that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. The Bench held 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 it and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers it would amount to scandalising the courts to undermine its authority and thereby the Advocates will have committed contempt of court. Lawyers have known, at least since *Mahabir Singh's case [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 [*Roman Services (P) Ltd. v. Subhash Kapoor (2001) 1 SCC 118*], 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.
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> **22**. It was expected that having known the well-settled law and having seen that repeated strikes and boycotts have shaken the confidence of the public in the legal profession and affected administration of justice, there would be self regulation. The above mentioned interim order was passed in the hope that with self-restraint and self-regulation the lawyers would retrieve their profession from lost social respect. The hope has not fructified. Unfortunately strikes and boycott calls are becoming a frequent spectacle. Strikes, boycott calls and even unruly and unbecoming conduct are becoming a frequent spectacle. On the slightest pretense strikes and/or boycott calls are resorted to. The judicial system is being held to ransom. Administration of law and justice is threatened. The rule of law is undermined."

10. That apart, the Supreme Court in **Ex. Capt. Harish Uppal** (**supra**) quoted an extract from a Constitution Bench decision rendered in **Supreme Court Bar Association vs. Union of India, (1998) 4 SCC 409** wherein it was held that the professional misconduct may also amount to contempt of court, and held as under:-

> "**25**. ..... Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of Courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to

> the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott the concerned State Bar Council and on their failure the Bar Council of India must immediately take disciplinary action against the Advocates who give a call for strike and if the Committee Members permit calling of a meeting for such purpose against the Committee Members. Further it is the duty of every Advocate to boldly ignore a call for strike or boycott."

11. Further, in **Ex.Capt. Harish Uppal**'s case (**supra**), the affidavit filed on behalf of the Bar Council of India after meeting with the State Bar Councils, delineates the common reasons which prompt the lawyers to abstain from work. The relevant extract of such decision as reproduced in the Judgment reads, thus:-

> "**28**. The Bar Council of India has since filed an affidavit wherein extracts of a Joint meeting of the Chairman of various State Bar Councils and members of the Bar Council of India, held on 28-9-2002 and 29-9-2002, have been annexed. The minutes set out that some of the causes which result in lawyers abstaining from work are:
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> *(I) Local Issues*
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> 1. Disputes between lawyer / lawyers and the police and other authorities.
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> 2. Issues regarding corruption / misbehaviour of Judicial Officers and other authorities.
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> 3. Non filling of vacancies arising in Courts or non appointment of Judicial Officers for a long period.
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> 4. Absence of infrastructure in courts.
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> *(II) Issues relating to one section of the Bar and another section*
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> 1. Withdrawal of jurisdiction and conferring it to other courts (both pecuniary and territorial).
>
> 2. Constitution of Benches of High Courts. Disputes between the competing District and other Bar Associations.
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> *(III) Issues involving dignity, integrity, independence of the Bar and judiciary*
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> *(IV) Legislation without consultation with the Bar Councils*
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> *(V) National issues and regional issues affecting the public at large/ the insensitivity of all concerned."*

The Court found that the decision of the Bar Council of India is not enough. It was observed, thus:-

> **"30**. Whilst we appreciate the efforts made, in view of the endemic situation prevailing in the country, in our view, the above resolutions are not enough. It was expected that the Bar Council of India would have incorporated clauses as those suggested in the interim order of this Court in their disciplinary rules. This they have failed to do even now. What is at stake is the administration of justice and the reputation of the legal profession. It is the duty and obligation of the Bar Council of India to now incorporate clauses as suggested in the interim order. No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. It must be remembered that if such omission continues, particularly when there is an apparent threat to the administration of justice and fundamental rights of citizens i.e. the litigating public, courts will always have authority to compel or enforce the exercise of the power by the statutory authority. The courts would then be compelled to issue directions as are necessary to compel the authority to do what it should have done on its own.
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> **31**. It must immediately be mentioned that one understands and sympathises with the Bar wanting to vent their grievances. But as has been pointed out there are other methods e.g. giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. More importantly in many instances legal remedies are always available. A lawyer being part and parcel of the legal system is instrumental in upholding the rule of law. A person casts with the legal and moral obligation of upholding law can hardly be heard to say that he will take law in his own hands. It is therefore time that self-restraint be exercised.
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> **33**. The only exception to the general rule set out above appears to be item (III). We accept that in such cases a strong protest must be lodged. We remain of the view that strikes are illegal and that courts

must now take a very serious view of strikes and calls for boycott. However, as stated above, lawyers are part and parcel of the system of administration of justice. **A protest on an issue involving dignity, integrity and independence of the Bar and judiciary, provided it does not exceed one day, may be overlooked by Courts, who may turn a blind eye for that one day.**

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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."

(Emphasis supplied)

12. In a separate but concurring opinion, the Court held as under:-

"**39**. Further, strike was a weapon used for getting justice by downtrodden, poor persons or industrial employees who were not having any other method of redressing their grievances. But by any standard, professionals belonging to a noble profession who are considered to be an intelligent class, cannot have any justification for remaining absent from their duty. The law laid down on the subject is succinctly referred to in the judgment rendered by Brother Variava, J.

40. However, by merely holding strikes as illegal, it would not be sufficient in present-day situation nor serve any purpose. The root cause for such malady is required to be cured. It is stated that resort to strike is because the administration is having deaf ears in listening to the genuine grievances and even if grievances are heard appropriate actions are not taken. To highlight, therefore, the cause call for strike is given. In our view, whatever be the situation in other fields lawyers cannot claim or justify to go on strike or give a call to boycott the judicial proceedings. It is rightly pointed out by the Attorney-General that by the very nature of their calling to aid and assist in the dispensation of justice, lawyers normally should not resort to strike. Further, it had been repeatedly held that strike is an attempt to interfere with the administration of justice.

41. It is no doubt true that the Bar should be strong, fearless and independent and should be in a position to lead the society. These qualities could be and should be utilized in assisting the judicial system, if required, by exposing any person, whosoever he may be, if he is indulging in any unethical practice. It is hoped that instead of resorting to strike, the Bar would find out other ways and means of redressing their grievances including passing of resolutions, making representations and taking out silent processions, holding *dharnas* or to resort to relay fast, having discussion by giving T.V. interviews and press statements.

42. At present it is admitted that judiciary is overburdened with pending litigation. If strikes are resorted to on one or the other ground, litigants would suffer as cases would not be decided for years

to come. Therefore, some concrete joint action is required to be taken by the Bench and the Bar to see that there are no strikes any more.

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44. It is true that advocates are part and parcel of judicial system as such they are the foundation of justice-delivery system. It is their responsibility of seeing that justice-delivery system works smoothly. Therefore, it is for each and every Bar association to be vigilant in implementing the resolution passed by the Bar Council of India of seeing that there are no further strikes any more. The Bar Council of India in its resolution has also stated that the resolution passed by it would be implemented strictly and hence, the Bar Associations and the individual members of the Bar Associations would take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated in the resolution."

13. In the judgment reported as **T.K. Rangarajan vs. Government of T.N. and others, (2003) 6 SCC 581**, the Supreme Court held that employees have no fundamental rights to resort to strike and that there is no statutory provision empowering the employees to go on strike. It was held that there is no moral or equitable justification to go on strike. The relevant extract from the said judgment reads as under:-

"***(A) There is no fundamental right to go on strike***

12. Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In *Kameshwar Prasad v. State of Bihar* [AIR 1962 SC 1166] this Court (Constitution Bench) held that the rule insofar as it prohibited strikes was valid *since there is no fundamental right to resort to strike*.

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14. In *Ex-Capt. Harish Uppal v. Union of India [(2003) 2 SCC 45*], the Court (Constitution Bench) held that lawyers have no right to go on strike or give a call for boycott and they cannot even go on a token strike. The Court has specifically observed that for just or unjust cause, strike cannot be justified in the present-day situation. Take

strike in any field, it can be easily realised that the weapon does more harm than any justice. Sufferer is the society — the public at large.

15. In *Communist Party of India (M) v. Bharat Kumar [(1998) 1 SCC 201*], a three-Judge Bench of this Court approved the Full Bench decision of the Kerala High Court [*Bharat Kumar K. Palicha v. State of Kerala, AIR 1997 Ker 291*] by holding thus: (SCC p. 202, para 3)

> "There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court, particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement."

16. The relevant paragraph 17 of the Kerala High Court judgment reads as under:—

> "17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it."

(B) There is no legal/statutory right to go on strike

17. There is no statutory provision empowering the employees to go on strike.

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(C) There is no moral or equitable justification to go on strike

19. Apart from statutory rights, government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery

> provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, the entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill: business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike."

14. In **Common Cause**'s case (**supra**), the question was: whether the punitive action of suspension against the members of the Bar, who refused to participate in the strike call is proper. Considering the judgment in **Ex. Capt. Harish Uppal'**s case (**supra**), the Court discharged the contempt notices.

15. The Supreme Court in **Krishnakant Tamrakar**'s case (**supra**) directed the Ministry of Law and Justice to present quarterly report in respect of loss caused due to strike or decision to abstain from work. Such information supplied by this Court for the first quarter of this year shows that approximately 9000 hours of the Court work were lost on account of the decisions of the Bar Associations from time to time in the first quarter of the year. The Supreme Court held as under:-

> "**Reforms in the legal profession - remedying uncalled for strikes**.
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> **43**. 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. Tax payers' money is lost on account of judicial and public time being lost. Nobody is accountable for such loss and harassment.

44. Dr. Ambedkar in his famous speech on 25th November, 1949 had warned:

> "The first thing in my judgement 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."

45. 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.

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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."

16. In **Ex. Capt. Harish Uppal**'s case (**supra**), the Court delineated steps to be taken before the call for abstaining from work is to be given. It was held that a protest on an issue involving dignity, integrity and independence of the Bar and Judiciary, can be taken provided it does not exceed one day. But, such decision has to be taken by the court as to whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore, it was directed that 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 will have to be abided by the Bar. Still the State Bar Council as well as the Bar Associations has not cared to follow the directions of the Supreme Court or to give respect to said decision though they are duty bound to follow the law laid down by the highest court of the country.

17. The Advocates are officers of the Court. Their duty is to aid and assist in dispensation of justice. The strike or abstention from work impairs the administration of justice and is inconsistent with the duties of an Advocate. The Bar Association is not a Trade Union under the Trade Union Act, 1926. The Trade Union has a right to demonstrate as a mode of redress for resolving the grievances of the workers but the Advocates though are members of Bar Association but are professionals engaged by the sufferers for redressal of their grievances by intervention of the Court. By abstaining from work, the members of the Bar do not help anybody. The members of the Bar are protectors of independence of the judiciary. They must rise to maintain independence of judiciary by being an active participant in the administration of justice and not by withdrawing from the pious duty enjoined on them in terms of the Advocates Act, 1961.

18. The litigant has a right to get justice. He will get justice only if the Courts are functioning in the country but the members of the Bar cannot make the third pillar of democracy non-functional by deciding to withdraw from work. Their action is antitheses of democratic life of the country.

19. Even though the Supreme Court has held that strikes are illegal and the members of the Bar cannot resort to strike but the strikes are still common. Within the jurisdiction of this Court almost 9000 working hours have been lost on account of decision of the members of the Bar to abstain from work in three months. The situation will be alarming if yearly figures are tabulated. The judgment of the Supreme Court in the case of **Ex. Capt. Harish Uppal (supra)** has not deterred the State Bar Council or the Bar Associations at the State and the District level to abstain from work.

Though the Supreme Court has said that a protest or an issue involving dignity, integrity and independence of the Bar and Judiciary can be overlooked if it does not exceed one day. It has been further said that such call to abstain from work would be in the rarest of rare cases and that it will be for the Court to decide whether or not the issue involves dignity or independence of the Bar and/or the Bench. Therefore, it was ordered that the President of the Bar must first consult the Chief Justice or the District Judge before the Advocates decide to absent themselves from Court work. The decision of the Chief Justice or the District Judge will be final, to be followed by the Bar. But, such solemn hope has never been followed. Rather, after decision is taken by the State Bar Council or by the Bar Association(s), the Court is informed of the decision.

20. In these circumstances, the question is: how to address the menace of frequent calls of strike or of abstaining from Court work by the Bar Association(s) and or State Bar Council. There are different options available; one is to proceed with the decision of the cases listed for hearing. If the case is decided in the absence of an Advocate or it is dismissed in default, in either case, the litigant who may not be aware of the call of the strike, suffers. Such process, in fact, is not conducive to administration of justice as it leads to applications for recall of the orders passed and further burdens the docket of court. The second option is that the contempt proceedings be initiated against the office bearers and/or the members who abstain from work but initiation of contempt proceedings is also not a suitable option inasmuch as, by the time contempt proceedings could be decided, the mischief of abstaining from work would be done.

Still further, the initiation of contempt proceedings against the members of the Bar is not a practical solution as large number of Advocates cannot be possibly proceeded against in contempt proceedings. Therefore, the third option is to oust the office bearers from managing the affairs of the Bar Association(s) or the State Bar Council so that the members of the Bar are not prohibited from appearing in the courts. By prohibiting the members of the Bar, not only the fundamental rights of the Advocates are defeated but also the fundamental right of the citizens to have decision on merits from the Courts of Law gets defeated.

21. Section 34 of the Advocates Act, 1961 empowers the High Court to make Rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto. In exercise of such powers, the High Court has framed the High Court of Madhya Pradesh (Conditions of Practice) Rules, 2012 which are published in M.P. Gazette (Extraordinary) on 7.6.2012 but such Rules do not contemplate the consequences of the members of the Bar of abstaining from work either voluntarily or in terms of resolution of the State Bar Council or the High Court or the District Bar Associations. Therefore, we deem it appropriate to direct the High Court to prescribe in such Rules that the members of the Bar, who abstain from work shall stand debarred from appearing in Courts and the conditions thereof.

22. The State Bar Council is a statutory Authority created to enrol and impart discipline in the members enrolled with it. If such Authority fails to discharge its role as warranted under the law then severe action is warranted against the Disciplinary Authority itself.

23. Therefore, in these circumstances, to give effect to the mandate of the decision of the Supreme Court in **Ex. Capt. Harish Uppal**'s case (**supra**), we pass the following directions so that the functioning of courts is conducted smoothly in discharge of its duties of administration of justice:

(A) **IF THE CALL FOR ABSTAINING FROM WORK IS GIVEN BY THE STATE BAR COUNCIL - A STATUTORY BODY CONSTITUTED UNDER THE ADVOCATES ACT, 1961**:

(i) If the State Bar Council gives call to the Members/Advocates enrolled with it to abstain from the Court work, without the consent of the Chief Justice even for a day, the office bearers of the State Bar Council will be debarred to appear before any court for one month or till such time the office bearers direct resumption of court work;

(ii) if the decision is taken to strike or to abstain from work within one year of an earlier decision, leading to debarment of the office bearers to appear in Court, then the State Bar Council itself shall stand suspended from the day of call of strike or decision to abstain from work by whatever name called. Such suspension shall be initially for a period of one month or till such time, the decision is recalled;

(iii) during the abovesaid period, the affairs of the State Bar Council shall be conducted by the Advocate General as an ex-officio member of the Bar Council in terms of Section 3 of the Advocates Act; and

(iv) any further call for strike or abstaining from work shall entail supersession of the State Bar Council. The Advocate General shall manage the affairs of the State Bar Council and to conduct the elections of the State Bar Council within six months. In such elections, the defaulting members of the State Bar Council, as per the above directions, shall not be eligible to contest the election for a period of three years.

(B) **IF THE CALL FOR ABSTAINING FROM WORK IS GIVEN BY THE HIGH COURT BAR ASSOCIATION(S) OR DISTRICT COURT BAR ASSOCIATION(S)**:

(i) If the call for abstaining from work is given by any High Court Bar Association or District Court Bar Association, the State Bar Council shall intervene and forthwith declare such strike as illegal unless such strike has been resorted to in consultation with the Chief Justice and/or the District Judge, as the case may be;

(ii) as a consequence of declaring the action of the Bar Association(s) as illegal, the State Bar Council shall appoint an *ad hoc* committee to manage the affairs of such Bar Association(s) for a period of one month superseding the elected office bearers. The elected office bearers shall not be permitted to appear before any court for a period of one month. If the Bar Association resolves to resume work so as to not to resort to strike or from abstaining from work, the elected office bearers of the Bar Association shall resume their office;

(iii) if the office bearers of the Bar Association again call for strike or to abstain from work, the State Bar Council shall conduct fresh elections to such Bar Association, in which, all office bearers of the Bar Association shall not be eligible to contest the election for a period of three years either of Bar Associations or the State Bar council; and

(iv) if the State Bar Council fails to act in terms of the above directions, the members of the State Bar Council shall be deemed to have vacated their office and the fresh elections will be conducted in the manner mentioned in clause A(iv) above.

(C) The High Court is directed to examine and incorporate in the High Court of Madhya Pradesh (Conditions of Practice) Rules, 2012, the consequences of the members of the Bar, the office bearers of the Bar Association(s) and/or the State Bar Council of not appearing in the Court including the action of the debarment of such erring members and the period thereof. Necessary direction should be carried out within a period of three months.

The writ petition stands ***disposed of***.

(HEMANT GUPTA)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

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