

Chief Justice's Court**Case :-** PUBLIC INTEREST LITIGATION (PIL) No. - 2099 of 2023**Petitioner :-** In Re**Respondent :-** Bar Council Of U.P.**Counsel for Petitioner :-** Suo Moto**Hon'ble Pritinker Diwaker, Chief Justice****Hon'ble Mahesh Chandra Tripathi, J.**

Owing to the ongoing lawyers' strike on account of the incident occurred in District Hapur, the Bar Council of U.P. has decided to abstain from judicial work on 30th August, 2023 and, thereafter, it has resolved to abstain from judicial work for a further period of three days i.e. 4th, 5th and 6th September, 2023.

2. Considering the ongoing strike, which creates huge loss to the litigants, we took judicial notice of it and requested learned Presidents and Secretaries of the High Court Bar Association and the Advocates Association as well as the Chairman and the members of Bar Council of Uttar Pradesh to address the Court in the present matter. Accordingly we assembled at 2.30 p.m. and the request conveyed by this Court has been graciously accepted.

3. Sri Ashok Singh, learned President, High Court Bar Association submits that the lawyers are aggrieved by non-inclusion of any judicial officer in the SIT, which is already constituted by the State to look into the incident occurred at Hapur. He submits that the State action is wholly one sided inasmuch as atrocities were actually committed by the local administration and the local police had assaulted the lawyers. It is urged that only one sided FIR has been lodged in the matter and despite the best efforts of the lawyers' their FIR has not been lodged till date. He further apprised the Court that the Chairman of the Bar Council of U.P. and other members have gone to the District Hapur for further deliberations with the local Bar members, so as to ascertain the ground realities. He has further placed reliance on the Press Note issued by the Bar Council of U.P. dated 3.9.2023, wherein it was resolved that they

will continue to abstain from judicial work on 4th, 5th and 6th September, 2023 and, thereafter, they will decide further course of action.

We deem it appropriate to reproduce the demand of the Bar Council of U.P., which is as under:-

1. जिलाधिकारी व पुलिस अधीक्षक हापुड़ का अविलम्ब स्थानान्तरण ।
2. दोषी पुलिस कर्मियों जिन्होंने बर्बरतापूर्वक लाठी चार्ज किया है तथा महिला अधिवक्ताओं को भी पीटने का कार्य किया है, पर मुकदमा दर्ज हो।
3. प्रदेश भर में अधिवक्ताओं के विरुद्ध पुलिस ने मनगढन्त झूठी कहानी बनाकर जो मुकदमें दर्ज किये हैं, उन्हें वापस (स्पंज) किया जाये।
4. एडवोकेट्स प्रोटेक्शन एक्ट पारित कर तुरन्त प्रदेश में लागू किया जाये।
5. हापुड़ के घायल अधिवक्ताओं को तुरन्त मुआवजा दिया जाये।

4. Sri Singh submits that if the SIT in the manner constituted is allowed to proceed it would cause great injustice to lawyers because the guilty police personnel shall be the judge in their own cause. Argument is that one cannot be a judge in his own cause and such act would go contrary to principles of natural justice.

5. In this backdrop, we have called upon Shri Manish Goyal, learned Addl. Advocate General to examine the feasibility of inclusion of a judicial officer in the SIT, so as to make the body more inclusive and transparent. Shri Manish Goyal sought a short time to obtain appropriate instructions in the matter.

6. Accordingly, the matter was adjourned to be taken up again at 4:30 p.m.

7. We have re-assembled at 4:30 pm when Sri Manish Goyal on the instructions obtained from the State made a statement that the State Government has no objection in inclusion of a judicial officer in the SIT and has suggested names of three judicial officers of the rank of District Judge.

8. Before proceeding further, it is worth noticing that the act of Bar Associations/Councils in resorting to strike has been frowned

consistently by this Court and also by the Hon'ble Supreme Court as such acts on part of the lawyers does great damage not only to the litigants but it affects the administration of justice itself which is an important facet of our Constitutional democracy. The representative body of advocates have the right to raise grievance on behalf of their members but it has to be in a manner that the ultimate cause of justice itself is not defeated. As responsible citizens and soldiers of the justice dispensation system, we expect the lawyers and their representative bodies to be conscious of their obligations to the Society at large and act in a responsible manner.

9. We deem it apt to draw guidance from the words of wisdom expressed by the Supreme Court in **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.

10. In **Ex. Capt. Harish Uppal** (Supra), the Court observed as under:

“30. Thus the law is already well settled. It is the duty of every Advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend Court because a boycott call is given by the Bar Association. It is settled law that it is unprofessional as well as unbecoming for a lawyer who has accepted a brief to refuse to attend Court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council. It is settled law that Courts are under an obligation to hear and decide cases brought before it and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of Courts to go on with matters or otherwise it would

tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers it would amount to scandalising the Courts to undermine its authority and thereby the Advocates will have committed contempt of Court. Lawyers have known, at least since Mahabir Singh's case (supra) that if they participate in a boycott or a strike, their action is ex-facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of Court/s. Lawyers have also known, at least since Roman Services' case, that the Advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

31. It must also be remembered that an Advocate is an officer of the Court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the Court. They owe a duty to their client. Strikes interfere with administration of justice. They cannot thus disrupt Court proceedings and put interest of their clients in jeopardy. In the words of Mr. H. M. Seervai, a distinguished jurist:-

"Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our

Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For, once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts. "In my submission", he said that "it is high time that the Supreme Court and the High Court make it clear beyond doubt that they will not tolerate any interference from anybody or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Court maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill-will."

32. *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.”

11. In light of what is observed above, we hope and trust that the Bar Council of Uttar Pradesh as also the respective Bar Associations across the State as well as this Court and its Bench at Lucknow shall introspect and act in due deference to the law laid down by the Hon’ble Supreme Court of India such that this Court is not required to take any unpleasant steps in the matter and forthwith resume their work. We also make it clear that doors of this Court would remain open in the event any unjust treatment is shown to be meted out to any person aggrieved. We also direct the State Government to include Sri Hari Nath Pandey, Retd. Principal Judge, Family Court, Lucknow as a member in the SIT, which is already constituted by the State Government to look into the incident in question. The SIT will proceed to conduct its enquiry and submit its report in a sealed cover at the earliest possible. An interim report shall be submitted before the Court by the next date fixed. The Superintendent of Police, Hapur shall ensure that the complaint lodged by the advocates of the incident is also duly registered and investigated as per law.

12. Put up this matter again on 15.09.2023 at 2.00 p.m.

Order Date :- 4.9.2023

RK/SP/

(M C Tripathi, J)

(Pritinker Diwaker, CJ)