

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (LDG.) NO. 37 OF 2017

Adv. Manoj Laxman Shirsat. ... Petitioner.  
V/s.  
Bar Council of India and another. ... Respondents.

WITH  
PUBLIC INTEREST LITIGATION (LDG.) NO. 38 OF 2017

Yawar Hussain Gulam Hussain Oomatia  
and another. ... Petitioners.  
V/s.  
Bar Council of India and others. ... Respondents.

Manoj Shirsat, petitioner in person (in PIL 37/2017)

Tanveer Nizam for the petitioners (in PIL 38/2017)

Amit Sale for the Bar Council of India.

Makarand Bakare for the Bar Council of Maharashtra and Goa.

A.I. Patel, Addl. G.P. for the State.

**CORAM : DR. MANJULA CHELLUR, C.J.  
AND G.S. KULKARNI, J.**

**DATE : 30<sup>th</sup> March 2017.**

**P.C. :**

These two Public Interest Litigations (PIL), are at the stage of lodging numbers, one filed by an Advocate Manoj Laxman Shirsat and another by the resident of Mumbai City as *pro bono publico*. Both the writ petitions are filed seeking similar reliefs concerning the resolution dated 26<sup>th</sup> March 2017 passed by the Bar Council of India wherein they have passed the following resolutions which are at page 22, which read as under:

“1. The Council gives a call and request to all the Bar Councils, Bar Associations to abstain from court's work on 31.3.2017, this will be in the token of protest of the lawyers against the proposed amendment Bill, 2017 of Law Commission of India.

2. The Council further resolves to convene a meeting of all the Members of State Bar Councils/ representatives, members of ad-hoc Committee of Special Committees, the President/ Secretaries of all the High Court Bar Associations and the representatives of Bar Associations of Delhi and NCR on 8<sup>th</sup> April, 2017 in the premises of Bar Council of India to decide the date of demonstration as well as the future course of action to oppose the Bill.

3. It is further resolved to request to the members of the State Bar Councils, the representatives of Bar Associations of the country to meet their respective representatives (Member of Parliament) in the 2<sup>nd</sup> week of April, 2017 and to give a memorandum to concerned Member of Parliament with a request to reject the proposed amendment Bill, 2017. The Supreme Court Bar Association shall make a request to the Hon'ble

Members to put a white ribbon on their coat arms to make their protest on 31<sup>st</sup> March, 2017.

4. The Council further resolves to prepare a detailed memorandum and to give it to the Hon'ble the President of India, Hon'ble the Prime Minister of India, Hon'ble Union Minister for Finance, Hon'ble Union Minister of Law & Justice and all other Hon'ble the Union Ministers.”

2. In pursuance of the above resolution, the Bar Council of India has addressed a communication dated 26<sup>th</sup> March 2017 (Exh.B, page-24) to all the Secretaries of the State Bar Councils, informing of the said resolution and requesting the Bar Councils and Bar Associations to abstain from Court work on 31<sup>st</sup> March 2017. We have also gone through page-25 which is an appeal said to have been made by the Bar Council of Maharashtra and Goa dated 27<sup>th</sup> March 2017, which reads as under:

“APPEAL is made to ALL THE ENROLLED ADVOCATES of Bar Council of Maharashtra & Goa, that the Law Commission of India has proposed Amendments in Advocates Act, 1961 by “Amendment Bill 2017”. The said proposed amendments are undemocratic and Anti-lawyers. Therefore, the Bar Council of India has given call to all the Bar Councils and Bar Associations to abstain from Court Work on 31/03/2017. Therefore in the form of a token of protest against the proposed Amendment Bill 2017, we have to abstain from Court Work on 31/03/2017 for One Day.”

3. The petitioners have referred to the popular judgment of the Apex Court in the case of *Ex-Capt. Harish Uppal v. Union of India*, AIR 2003 SC 739. According to the petitioners, a stage has not yet come, where the community of lawyers are required to protest, since the suggestions made by the Law Commission against which the Bar Council of India has a grievance, has to pass through several stages before it becomes an enactment or a statute. They also indicate the procedure to be followed before the suggestions made by the Law Commission becomes a law. It is further submitted that even after the proposed suggestions become a law, the same can be challenged in the Court of law and the Court of law can always intervene and quash the amendment to the Act if it does not stand the test of law. In other words, according to them, it is a premature for the Bar Councils to give a call for abstaining from work and abstaining from work also amounts to strike which cannot be approved in the light of several judgments of the Apex Court and this High Court.

4. As against this, learned counsel appearing for the Bar Council of India brings to our notice paragraphs from the judgment of *Ex-Capt. Harish Uppal v. Union of India* (supra) especially observations that in rarest of rare cases where dignity or integrity or independence of the Bar and/or the Bench is at stake, the Court may ignore (turn a blind eye) to protest/ abstain from work for not more than one day. According to learned counsel appearing for the Bar Council of India, such occasion has arisen on account of

suggestions made by the Law Commission, therefore, there is justification on the part of the Bar Council of India in calling for abstain from work in terms of the resolution referred to above.

5. Learned counsel appearing for the Bar Council for State of Maharashtra and Goa tries to distinguish between the strike undertaken by the local Bar Association on account of several circumstances and a national/ apex body of lawyers giving call in the common interest of all the lawyers community. Therefore, according to him, this is a special situation where the Courts must appreciate the situation from a different angle having regard to various grievances espoused at Annexure-A before passing the resolution in question. He further submits that since the parent/ apex body i.e. Bar Council of India gave the call, the respondent- State Bar Council of Maharashtra and Goa simply gave an appeal and no separate resolution as such has been passed by them.

6. At this stage, we are not deciding correctness or otherwise of the so-called suggestions which are still in the process of becoming part of the statute. As already stated above, certain process and procedure is required to be undergone before the said proposed amendment is to be implemented. It is submitted that the suggestions made by the Bar Council of India were not considered and, therefore, they are aggrieved by the suggestions now made by the Law Commission. There is still scope for considering the grievances or objections raised to the suggestions which may become

part of the draft of the Bill, because the Cabinet approval to the draft of the Bill has to be followed by the Standing Committee approval. Then only the Bill can be introduced in any of the Houses. At that stage, there is scope for a debate on the issue before it gets approval on the floor of the Houses. At that point of time, any suggestions/ objections could be raised to the draft of the bill which has to be considered by the Parliamentary Standing Committee and thereafter the Bill can be reintroduced, if any modifications are suggested. If the bill fails to get approval of the House having regard to the grievances of the stakeholders, then the suggestions or the proposal will never see the light of the day. Above procedure has to be followed before the suggestions made could be implemented.

7. Then coming to the present situation, according to the petitioners, the call now given for the lawyers to abstain from Court work on 31<sup>st</sup> March 2017, is nothing but a strike which cannot be undertaken by the lawyers community. In *Ex-Capt. Harish Uppal v. Union of India* (supra), the relevant paragraphs are 45 and 46, which read as under:

45. In conclusion it is held that lawyers have no right to go on strike or give a call for boycott, not even 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 protect

marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot attend Courts in pursuance to 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 addition to damages which he might have to pay his client for loss suffered by him.

46. It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self restraint will be exercised. The Petitions stand disposed off accordingly.

8. If one has to understand the implication or consequences of abstaining from work in general terms, the strike would mean abstaining from work apart from other meanings. It is nothing but demonstration of protest against the suggestions or resolution denying in line with the demand. It can also mean temporary stoppage of activities in protest against any act or a condition imposed. Petitioners' counsel also rely upon the order dated 5<sup>th</sup> December 2016 passed in Contempt Petition (C) No.19/2016 in Writ Petition (C) No.132/1988 (*Prem Prakash Panigrahi v. Md.Shabbir Ahmed and others*) on the file of the Apex Court so also the judgment of the Division Bench of this Court dated 27<sup>th</sup> October 2014 passed in PIL No.75/2014 (*Adv.Manoj Laxman Shirsat v. Bar Council of Maharashtra and Goa*) The observations in the case of ***Ex-Capt. Harish Uppal v. Union of India*** (supra) indicate that the proceedings inside the Court are always expected to be held which commands confidence of the public in the efficacy of the institution of the Courts. In the said decision, the Apex Court has also referred to the duties, obligations, responsibilities and the divine work of the community of the lawyers while discharging their professional duties. One has to remember fundamental rights of the litigant.

Advocate is an Officer of the Court and plays an important role in the administration of justice. Lawyer must remember nobility and tradition of the legal profession. One cannot forget the past history of this country where lawyers community played a great role, be it political or social revolution. They contributed a great deal even by sacrificing their lives for the sake of the country during freedom struggle. They understand the problems of the litigants as well as the proceedings in the Court better than any one else in the system of dispensation of justice. The lawyers have a significant role to play, in the mechanism of dispensation of justice. The lawyers in performance of their professional obligations, are pillars of strength and hope for the society. We are confident of the wisdom of the lawyers as professionals. In the light of various judgments of the Apex Court and this Court, we hope that wisdom would prevail on the lawyers, so far as the present call to abstain from work is taken by the respondents. It is needless to say that everyone including the community of lawyers have to abide by the directions of the Apex Court in terms of Article 141 of the Constitution. In that view of the matter, we hope that the lawyers community would appreciate their responsibility in discharging the duties of their profession.

9. With the aforesaid observations, both the petitions are disposed of.

(G.S.KULKARNI, J.)

CHIEF JUSTICE

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