

CASE NO.:  
Writ Petition (civil) 132 of 1988

PETITIONER:  
Ex. Capt. Harish Uppal

RESPONDENT:  
Union of India and another

DATE OF JUDGMENT: 17/12/2002

BENCH:  
M.B. SHAH, D. M. DHARMADHIKARI

JUDGMENT:  
J U D G M E N T  
WITH  
WP (C) Nos. 320 AND 394 OF 1993, WP (C) No. 821  
OF 1990 AND WP (C) No.406 OF 2000

Shah, J.

We fully agree with what has been stated and discussed by brother Variava, J. However, we would like to add as under:

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 that weapon does more harm than any justice. Sufferer is the society public at large.

On occasions result is violence or excess use of force by the administration. Mostly the target is to damage public properties.

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 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.

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 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.

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.

At present it is admitted that judiciary is over-burdened 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.

For this purpose, in our view, the suggestion made by the Bar Council of India in its resolution dated 29th September, 2002, requires to be seriously considered and implemented by each Bar Association. Grievances Redressal Committees at Taluka level, district level, High Court level and Supreme Court level should be established so that grievances of the advocates at all levels could be resolved. If action is required to be taken on the grievances made by the advocates it should be immediately taken. If grievances are found not to be genuine then it should be made clear so that there may not be any further misunderstanding.

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 strike 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.

Further appropriate rules are required to be framed by the High Courts under Section 34 of the Advocates Act by making it clear that strike by advocate/advocates would be considered interference with administration of justice and concerned advocate/advocates may be barred from practising before Courts in a district or in the High Court.

Hence, it is directed that (a) all the Bar Associations in the country shall implement the resolution dated 29th September, 2002 passed by the Bar Council of India, and (b) under Section 34 of the Advocates Act, the High Courts would frame necessary rules so that appropriate action can be taken against defaulting advocate/advocates.

...J.

(M.B. SHAH)

...J.

(D. M. DHARMADHIKARI)

New Delhi;

December 17, 2002.

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JUDIS