

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A. NO.1 IN WRIT PETITION (CIVIL) NO.132 OF 1988

EX-CAPT. HARISH UPPAL

Petitioner(s)

VERSUS

UNION OF INDIA AND ANR.

Respondent(s)

(For directions and office report)

Date: 27/02/2006 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Mr. Dipankar Gupta, Sr. Adv. (A.C.) (N/P)

For Applicant(s)

In-person

For Respondent(s)

Mr. Sanjeev Sachdeva, Adv.

Mr. B. Balaji, Adv.

Mr. Satya Mitra Garg, Adv.

Mr. F.S. Nariman, Sr. Adv.

Mr. E.R. Kumar, Adv.

Ms. Shakun Sharma, Adv.

Mr. P.H. Parekh, Adv.

UPON hearing counsel the Court made the following

O R D E R

This contempt petition treated as an interlocutory application

has been filed by an advocate, who was a member of the Coimbatore Bar Association [for short, "the Association"]. The respondents arrayed in the application are various

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office bearers of the Association and that of the Bar Council of Tamil Nadu.

In response to the application, a reply was filed by the President and the

Secretary of the Association. Now, additional affidavit has also been filed

by the President of the Association. According to the applicant, these office

bearers have deliberately disrespected and disregarded the judgement of

this Court in Ex-Capt. Harish Uppal vs. Union of India & Anr., reported in

2003 (2) S.C.C.45., in expelling her from the membership of the Association

and withdrawing from her all the facilities available as a member thereof

for her appearing in court despite the resolution of boycott passed by the

Association. According to the applicant, the resolution and the consequent

action of the Association are wholly illegal and in teeth of the judgement

aforesaid.

In the affidavits, above-referred, circumstances which led to the resolution of boycott passed by the General Body on 29th April, 2005, have been set out. In view of the submissions now made, it is not necessary to go into the facts and circumstances of the resolution of boycott. The submission made by Mr. F.S. Nariman, learned senior counsel appearing for the Association, is that the Association, on mature consideration as to the legal position enunciated in the case of Ex-Capt. Harish Uppal (supra), has now realised that prior to the resolution of boycott, there ought to have been consultations with the High Court/District Judge and this was absent in the present case resulting in error in respect whereof regret is expressed. In

Ex-Capt. Harish Uppal (supra), this court stated:

"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

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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 advocates 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."

Resolution dated 29th April, 2005, expelling the applicant from the membership, it is submitted, was neither wilful nor contumacious. It is further stated that, in view of this position, the resolution dated 29th April, 2005, stands withdrawn. The result of the withdrawal of the resolution is that the membership and all benefits and facilities connected therewith stand restored to the applicant.

Before parting, we may place on record our deep appreciation for the applicant, Ms. Vanita Rosy, for having taken a stand on principle and mustering

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courage and incurring expenses for coming from coimbatore to Delhi as also for Mr. F.S. Nariman, learned senior counsel, having assisted the court more as an amicus curiae than as an advocate representing the Association. We also appreciate that Bar Association, having realised the mistake, has not persisted with it and admitted the error. This brings to an end to the present controversy regarding the boycott and the expulsion of the applicant but we do hope that the other Bar Associations and other concerned persons may like to follow the example set up in this case keeping in view the law settled by this Court and the interests of the litigating public.

The interlocutory application is, accordingly, disposed of.

[T.I. Rajput]
A.R.-cum-P.S.

[V.P. Tyagi]
Court Master