

(2001) 1 Supreme Court Cases 118

(BEFORE K.T. THOMAS AND R.P. SETHI, JJ.)

RAMON SERVICES PVT. LTD.

Appellant;

Versus

SUBHASH KAPOOR AND OTHERS

Respondents.

Civil Appeal No. 6385 of 2000[†], decided on November 14, 2000

A. Advocates — Strike/Boycott by lawyers — Held, lawyers striking work failed in their contractual and professional duty, which they had been paid to perform — Legal profession put to notice by Supreme Court — In future advocates would be answerable for the consequences, at least the monetary loss, suffered by their clients, if non-appearance by advocates were due solely to a strike call — Clarified that a court which imposes costs on a litigant for the failure of his advocate to appear in court, also has the power to permit such litigant to realise the costs from his advocate — However, such a direction should only be passed after affording the advocate an opportunity to show any justifiable cause for his non-appearance — Costs of Rs 5,000 imposed on appellant company and ex parte decree against it set aside — Half of the amount to be realised from its advocates — Full amount not to be realised from the advocates because such a direction being given for the first time — Further clarified that litigant's remedy of suing his advocate for damages not affected — Civil Procedure Code, 1908, Or. 9 Rr. 7 and 13 — Default due to strike by advocates

B. Judicial Process — Strike/Boycott by lawyers — Held, affects not just the members of the legal profession, but obstructs the process of court, which is intended to secure justice — Strike by professionals including advocates cannot be equated with strikes by industrial workers

C. Constitution of India — Art. 38 — Social justice — As a goal of the Constitution — Held, not possible to be achieved without active and concerted support of persons connected with the justice dispensation system, the Bench and the Bar

D. Advocates — Generally — Relationship between lawyer and his client held, is one of trust and mutual confidence

E. Advocates — Generally — Services rendered by advocates — Held, are regulated by a contract between lawyer and client, by the Advocates Act and rules for procedure framed by Supreme Court and High Courts

F. Advocates — Strike/Boycott by lawyers — Attitude of courts towards — Per Thomas, J., contention rejected that prior to *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.* (1999) 1 SCC 37 courts used to agree to adjourn cases during strikes and boycotts due to sympathy with the Bar — Contention that Supreme Court declared that strikes and boycotts to be illegal only when deciding *Mahabir Prasad Singh case* also rejected — Per Sethi J., (contra) regrettably courts have contributed to continuance of strikes by sympathising with the Bar and by failing to discharge their legal

[†] From the Judgment and Order dated 10-9-1999 of the High Court of Delhi at New Delhi in FAO No. 199 of 1999

obligations — In future, inaction by courts may result in contempt of Supreme Court

a The appellant Company were the tenants in an eviction suit filed by respondent landlord. The tenanted premises were in Delhi, where the case was therefore filed. The main office of the appellant was located in Mumbai. After the framing of issues the case was posted to 26-8-1998 for trial. On that date none of the advocates belonging to the firm engaged by the appellant appeared in court, because of a strike call given by the Bar Association concerned. The advocates' firm informed the appellant on 24-8-1998 about the strike call. On b 26-8-1998 the court set the appellant Company ex parte and recorded the evidence of the respondent-plaintiffs. Thereafter when information about the court's order reached them, the appellants applied under Order 9 Rule 7 CPC seeking to get the ex parte order set aside. Their application was dismissed and on 13-11-1998 the suit for eviction was decreed. The trial court and the High Court both dismissed the appellants' application to have the ex parte decree set c aside, primarily on the reasoning that strikes and boycotts by advocates were no ground for courts to adjourn cases. Both courts relied on *Mahabir Prasad Singh v. Jacks Aviation* (1999) 1 SCC 37.

The Supreme Court while allowing the appeal, imposed costs on the appellants to be shared by their advocates, and

Held :

d *Per Thomas, J.*

When the advocate engaged by a party is on strike there is no obligation on the part of the court either to wait or to adjourn the case on that account. Time and again the Supreme Court has said that an advocate has no right to stall the court proceedings on the ground that advocates have decided to strike or to boycott the courts or even boycott any particular court. (Para 5)

e *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37 : 1998 R LR 644; *U.P. Sales Tax Service Assn. v. Taxation Bar Assn.*, (1995) 5 SCC 716; *K. John Koshy v. (Dr) Tarakeshwar Prasad Shaw*, (1998) 8 SCC 624; *Koluttumottil Razak v. State of Kerala*, (2000) 4 SCC 465 : 2000 SCC (Cri) 829, *relied on*

f The fact remains that the appellant was set ex parte due to the absence of the appellant and his counsel in the court when the case was taken up for hearing. The appellant shall pay a sum of Rs 5000 as costs to the respondent-plaintiff within one month from today and on such payment (or deposit with the trial court) the ex parte order dated 26-8-1998 would stand set aside.

(Paras 10 and 11)

g It is not possible to agree with the contention that the courts had earlier sympathised with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a counsel. Further, it is not conceded that the Supreme Court declared the legal position only when *Mahabir Prasad Singh* was decided that strikes or boycotts are illegal. (Para 14)

U.P. Sales Tax Service Assn. v. Taxation Bar Assn., (1995) 5 SCC 716; *K. John Koshy v. (Dr) Tarakeshwar Prasad Shaw*, (1998) 8 SCC 624; *Koluttumottil Razak v. State of Kerala*, (2000) 4 SCC 465 : 2000 SCC (Cri) 829, *relied on*

h Therefore, the appellant is permitted to realise half of the said amount of Rs 5000 from its advocates' firm or from any one of its partners. The legal

profession is put to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. The litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, it is made clear that the same court has power to permit the party to realise the costs from the advocate concerned without driving such party to initiate another legal action against the advocate. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client such a claim is repugnant to any principle of fair play and canons of ethics.

(Paras 15 and 16)

Per Sethi, J.

The profession by and large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of mankind. The lawyers, who have been acknowledged as being sober, task-oriented, professionally-responsible stratum of the population, are further obliged to utilise their skills for socio-political modernisation of the country. The lawyers are a force for the preservice and strengthening of constitutional government as they are guardians of the modern legal system:

(Para 20)

After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system. The prevailing ailing socio-economic-political system in the country needs treatment which can immediately be provided by judicial incision. Such a surgery is impossible to be performed unless the Bench and the Bar make concerted effort. The role of the Members of the Bar has thus assumed great importance in the post-independence era in the country.

(Para 21)

Generally strikes are antithesis of progress, prosperity and development. Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions.

(Para 22)

Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service-oriented profession. The relationship between the lawyer and his client is one of trust and confidence. With the strike by the lawyers, the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the Advocates Act. Law is no trade

and briefs of the litigants not merchandise. By striking work, the lawyers fail in their contractual and professional duty to conduct the cases for which they are engaged and paid. (Paras 22, 23 and 25)

- a *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37 : 1998 R LR 644; *U.P. Sales Tax Service Assn. v. Taxation Bar Assn.*, (1995) 5 SCC 716; *Bar Council of Maharashtra v. M.V. Dabholkar*, (1976) 2 SCC 291; *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra*, (1984) 2 SCC 556 : 1984 SCC (Cri) 335; *Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani*, 1993 Supp (3) SCC 256; *Common Cause, A Regd. Society v. Union of India*, (1994) 5 SCC 557; *Hussainara Khatoon (I) v. Home Secy., State of Bihar*, (1980) 1 SCC 81 : 1980 SCC (Cri) 23; *Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting, In re*, (1995) 3 SCC 619; *Brahma Prakash Sharma v. State of U.P.*, AIR 1954 SC 10 : 1954 Cri LJ 238 : 1953 SCR 1169; *Tarini Mohan Barari, Re*, AIR 1923 Cal 312 : 26 CWN 580 : 35 CLJ 403; *Pleader, Re*, AIR 1924 Rang 320 : 25 Cri LJ 1352; *Lt. Col. S.J. Chaudhary v. State (Delhi Admn.)*, (1984) 1 SCC 722 : 1984 SCC (Cri) 163, *relied on*
- b *Federal Trade Commission v. Superior Court Trial Lawyers' Assn.*, 493 US 411: 107 L Ed 2d 851 (1989), *relied on*
- c *Warvelle's Legal Ethics*, p. 182, *relied on*

d In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party, if the circumstances warrant, to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting counsel for the costs paid. In appropriate cases the court itself can pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. In the instant case the respondent has to be held entitled to the payment of costs, consequent upon the setting aside of the ex parte order passed in his favour. (Para 29)

e Though a matter of regret, yet it is a fact, that the courts in the country have been contributory to the continuance of the strikes on account of their action of sympathising with the Bar and failing to discharge their legal obligations obviously under the threat of public frenzy and harassment by the striking advocates. (Para 30)

f The majority of the courts in the country have been impliedly sympathisers by not rising to the occasion by taking a positive stand for the preservation of the high traditions of law and for continued restoration of the confidence of the common man in the institution of judiciary. It is not too late even now for the courts in the country to rise from the slumber and perform their duties without fear or favour particularly after the judgment of this Court in *Mahabir Singh case*. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting courts may also be contributory to the contempt of the Supreme Court. (Para 30)

g

A-M/TZ/23368/CRL

Advocates who appeared in this case :

V.K. Makhija and M.N. Krishnamani, Senior Advocates (Dr J.P. Verghese, S.P. Sharma, Abhay Makhija, Navin Chawla and Vipin Nair, Advocates, with them) for the appearing parties.

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Chronological list of cases cited**on page(s)**

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| 2. (1999) 1 SCC 37 : 1998 R LR 644, <i>Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.</i> | 123a-b, 123d, 123f-g, 125b-c, 125f, 125g-h, 131c-d, 133b | |
| 3. (1998) 8 SCC 624, <i>K. John Koshy v. (Dr) Tarakeshwar Prasad Shaw</i> | 123f-g | |
| 4. (1995) 5 SCC 716, <i>U.P. Sales Tax Service Assn. v. Taxation Bar Assn.</i> | 123f, 130c | |
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| 7. 1993 Supp (3) SCC 256, <i>Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani</i> | 128d | |
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| 15. AIR 1923 Cal 312 : 26 CWN 580 : 35 CLJ 403, <i>Tarini Mohan Barari, Re</i> | 130a-b | |

The Judgments of the Court were delivered by

THOMAS, J.— Leave granted.

2. Another ticklish issue concerning legal profession has winched to the fore which, perforce, has to be decided by us in this case. Should a litigant suffer penalty for his advocate boycotting the court pursuant to a strike call made by the association of which the advocate was a member? The question arose in this case after the suit was decreed ex parte by the trial court in consequence of the non-appearance of the counsel on a day fixed for hearing, on the premise of the strike call.

3. The appellant Company was in occupation of a building as tenant at Barakhamba Road, New Delhi. A suit was filed against the appellant for eviction from the building and other consequential reliefs which was resisted by the appellant by raising various contentions. Issues in the suit were framed by the court and the case was posted to 26-8-1998 for trial. None of the advocates belonging to the firm of lawyers which was engaged by the appellant appeared in the court on the day because the advocates were on a strike called by the advocates' association concerned. As nobody for the appellant was present the court set the defendant ex parte and evidence of the plaintiff was recorded. The appellant whose place of business was in Mumbai, on coming to know of the developments, applied under Order 9 Rule 7 of the Code of Civil Procedure (for short "the Code"). But the application was dismissed and eventually the suit was decreed on 13-11-

1998. Thereafter, the appellant filed an application to set aside the ex parte decree. The said application was dismissed by the trial court, for which the following reasoning, inter alia, has been stated:

a "It is settled law that strike or boycott by the advocates is no ground for adjournment. Hon'ble Supreme Court in *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.*¹ has held that all the courts have to do judicial business during court hours. It is the solemn duty of every lawyer to attend the court. The defendant and the counsel very well know that the case was fixed on 26-8-1998 for plaintiff's evidence. Counsel for the defendant (at least 8 counsels had been engaged by the defendant) and the defendant deliberately did not appear on 26-8-1998. There is no bona fide or reasonable ground put forward by the defendant or their counsel for non-appearance. They were knowing the consequences of non-appearance. I therefore, find no ground in allowing the application under Order 9 Rule 16 CPC. The application is hereby dismissed with costs."

b
c 4. The appellant thereafter approached the High Court with an appeal against the aforesaid order. The High Court concurred with the reasoning of the trial court and dismissed the appeal. Learned Single Judge while dismissing the appeal stated thus:

d "In my considered opinion, the proposition of law as laid down in the decision of the Supreme Court in *Mahabir Prasad Singh case*¹ squarely applied to the facts of the present case. There was negligence and total lack of bona fide on the part of the defendants and therefore, they are not entitled to any relief in the present appeal. The appeal stands dismissed as without any merit leaving the parties to bear their own costs."

e 5. We have no doubt that the legal position adumbrated by the Additional District Judge as well as the High Court cannot be taken exception to. When the advocate who was engaged by a party was on strike there is no obligation on the part of the court either to wait or to adjourn the case on that account. Time and again this Court has said that an advocate has no right to stall the court proceedings on the ground that advocates have decided to strike or to boycott the courts or even boycott any particular court. Vide *U.P. Sales Tax Service Assn. v. Taxation Bar Assn.*²; *K. John Koshy v. (Dr) Tarakeshwar Prasad Shaw*³; *Mahabir Prasad Singh v. Jacks Aviation*¹ and *Koluttumottil Razak v. State of Kerala*⁴.

f
g 6. Now the party says that his absence may be viewed from a broader angle particularly on account of the following background. The appellant Company is situated at Mumbai and the court in which the suit was filed is situated in Delhi. On 24-8-1998 the counsel for the appellant transmitted a message to the appellant that none of the advocates would attend the court

h 1 (1999) 1 SCC 37 : 1998 RLR 644

2 (1995) 5 SCC 716

3 (1998) 8 SCC 624

4 (2000) 4 SCC 465 : 2000 SCC (Cri) 829

due to the strike call on 26-8-1998. The appellant says that it was not possible to make arrangements for appearing in court on the succeeding day at such a short notice and from such a long distance. He would have thought that the courts could not function when the advocates were on strike though he later realised that it was a wrong assumption. He made out a case for setting aside the ex parte order, at least on some terms because his non-appearance was attributable entirely to the firm of advocates whom he engaged (M/s B.C. Das Gupta & Co.).

7. In view of the aforesaid stand of the appellant we passed the following order on 8-5-2000:

“We tentatively propose to set aside the ex parte judgment on some terms, like payment of costs to the other side, because petitioner’s counsel was absent in the trial court when the case was called as he was participating in the lawyers’ strike. But it is difficult for us to mulct the petitioner with the cost portion as he is innocent. Hence we issue notice to M/s Das Gupta & Co., lawyers of Delhi, to show cause why the petitioner shall not be permitted to realise the said cost amount from the said advocates.”

8. A reply-affidavit has been filed on behalf of the said firm of advocates. It is admitted in the affidavit that the firm was engaged by the appellant in the said suit. The deponent tried to explain their non-appearance on two factual premises. First is that when the firm came to know that the Delhi Bar Association resolved to boycott the Court of Additional District Judge, Delhi, the appellant was informed of it and expressed the inability of the advocates to appear before the said court on 26-8-1998. Second is that in spite of such communication a member of the lawyers’ firm made an attempt to reach the court concerned, but he did not succeed as he was prevented by the other striking lawyers. The following is the statement made by the firm of advocates regarding their absence in the court:

“That on 26-8-1998, a member of our firm visited the Court of the aforesaid learned ADJ. However the office-bearers and Members of the Delhi Bar Association did not allow any counsel to appear before the Court of aforesaid learned ADJ. Therefore we could not appear in the aforesaid matter on 26-8-1998 and the aforesaid learned ADJ was pleased to pass the following order.”

9. About the second facet of the explanation offered by the lawyers’ firm there is no direct information from the particular person who is said to have tried to enter the court or as to who were the persons who prevented him from entering the court. Even the name of the advocate/member of the firm who tried to enter the court hall has not been mentioned. Be that as it may, if the firm of advocates thinks that they really wanted to attend the court but were physically prevented by somebody else from doing so it is open to the counsel concerned to resort to such steps as against those persons.

10. But the fact remains that the appellant was set ex parte due to the absence of the appellant and his counsel in the court when the case was taken

up for hearing. In the special circumstances of this case we are inclined to set aside the ex parte order dated 26-8-1998, on some terms.

a 11. The appellant shall pay a sum of Rs 5000 as costs to the respondent-plaintiff within one month from today and on such payment (or deposit with the trial court) the ex parte order dated 26-8-1998 would stand set aside.

b 12. Now comes the question of syphoning the said burden on to the advocate. Should the advocate be mulcted with that amount as he is primarily instrumental for setting his client ex parte. Shri M.N. Krishnamani, learned Senior Counsel, after disowning the liability of the counsel, adopted the alternative plea on that score like this: Till 10-9-1998, when the Apex Court pronounced in unmistakable terms while deciding *Mahabir Prasad Singh case*¹ that boycott of the court by the advocate is unquestionably illegal, the legal fraternity took it for granted that the courts would not proceed with the cases during strike periods. The following can be extracted from the written submission made by the senior counsel:

c "The courts were sympathising with the Bar and would agree for not dismissing cases for default and to take up the matter of disposal only if both the parties in person agree for an adjudication. This practice of the court unofficially cooperating with the strike and agreeing or adjourning the cases lulled the lawyers into a bona fide belief that even if he did not appear, the court would not do any harm to the case. It was in this belief and in this legitimate expectation which emanated on the basis of the convention and the practice for over 3 to 4 decades, the lawyers either participated in the strike and several of them were really physically prevented from entering the courts. Most of the lawyers participated passively rather than actively in strikes."

d 13. Shri Krishnamani, however, made the present position as unambiguously clear in the following words:

e "Today, if a lawyer participates in a Bar Association's boycott of a particular court that is ex facie bad in view of the clear declaration of law by this Hon'ble Court. Now, even if there is a boycott call, a lawyer can boldly ignore the same in view of the ruling of this Hon'ble Court in *Mahabir Prasad Singh*¹."

f 14. Though we appreciate the stand of the senior counsel that an advocate would hereinafter venture to ignore the boycott call, I am unable to agree with the learned Senior Counsel that the courts had earlier sympathised with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a counsel. Nor do we concede to the contention that this Court declared the legal position only when *Mahabir Prasad Singh*¹ was decided that strikes or boycotts are illegal. We have cited (supra) the earlier decisions rendered by this Court in tune with the same stand.

g 15. Therefore, we permit the appellant to realise half of the said amount of Rs 5000 from the firm of advocates M/s B.C. Das Gupta & Co. or from

any one of its partners. Initially we thought that the appellant could be permitted to realise the whole amount from the said firm of advocates. However, we are inclined to save the firm from bearing the costs partially since the Supreme Court is adopting such a measure for the first time and the counsel would not have been conscious of such a consequence befalling them. Nonetheless we put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. We may further add that the litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, we make it clear that the same court has power to permit the party to realise the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client such a claim is repugnant to any principle of fair play and canons of ethics. So when he opts to strike work or boycott the court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate.

16. In all cases where the court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realise the costs from the advocate concerned without driving such party to initiate another legal action against the advocate.

17. We may also observe that it is open to the court as an alternative course to permit the party (while setting aside the ex parte order or decree earlier passed in his favour) to realise the cost fixed by the court for that purpose, from the counsel of the other party whose absence caused the passing of such ex parte order, if the court is satisfied that such absence was due to that counsel boycotting the court or participating in a strike.

18. We, therefore, dispose of this appeal with the above direction.

SETHI, J. (concurring)— I agree both with the reasonings and the conclusions arrived at by Thomas, J. in his lucid judgment. However, the matter being important having far-reaching effects on the institution of the judiciary, and for my views with respect to the role of the courts during strikes by advocates, I have opted to pen down my own observations in addition.

a 20. Persons belonging to the legal profession are concededly the elite of the society. They have always been in the vanguard of progress and development of not only law but the polity as a whole. Citizenry looks at them with hope and expectations for traversing on the new paths and virgin fields to be marched on by the society. The profession by and large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of mankind. The lawyers, who have been acknowledged as being sober, task-oriented, professionally-responsible stratum of the population, are further obliged to utilise their skills for socio-political modernisation of the country. The lawyers are a force for the preservance and strengthening of constitutional government as they are guardians of the modern legal system.

c 21. After independence the concept of social justice has become a part of our legal system. This concept gives meaning and significance to the democratic ways of life and of making the life dynamic. The concept of welfare State would remain in oblivion unless social justice is dispensed. Dispensation of social justice and achieving the goals set forth in the Constitution are not possible without the active, concerted and dynamic efforts made by the person concerned with the justice dispensation system. The prevailing ailing socio-economic-political system in the country needs d treatment which can immediately be provided by judicial incision. Such a surgery is impossible to be performed unless the Bench and the Bar make concerted effort. The role of the Members of the Bar has thus assumed great importance in the post-independence era in the country.

e 22. Generally strikes are antithesis of progress, prosperity and development. Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two besides statutory limitations, restrictions and guidelines incorporated in the Advocates Act, the rules made thereunder and rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and f large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service-oriented profession. The relationship between the lawyer and his client is one of trust and confidence.

g 23. With the strike by the lawyers, the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the Advocates Act. Law is no trade and briefs of the litigants not merchandise. This Court in *Bar Council of Maharashtra v. M.V. Dabholkar*⁵ placed on record its expectations from the Bar and observed: (SCC pp. 301-02, para 24)

h "24. We wish to put beyond cavil the new call to the lawyer in the economic order. In the days ahead, legal aid to the poor and the weak,

public interest litigation and other rule-of-law responsibilities will demand a whole new range of responses from the Bar or organised social groups with lawyer members. Indeed, the hope of democracy is the dynamism of the new frontiersmen of the law in this developing area and what we have observed against solicitation and alleged profit-making vices are distant from such free service to the community in the jural sector as part of the profession's tryst with the people of India."

24. In *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra*⁶ it was observed that: (SCC Headnote)

"An advocate stands in a *loco parentis* towards the litigants. Therefore, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. The client is entitled to receive disinterested, sincere and honest treatment."

It would be against professional etiquette of a lawyer to deprive his client of his services in the court on account of strike. No advocate can take it for granted that he will appear in the court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings.

25. This Court in *Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani*⁷ while deprecating the decreasing trend of service element and increasing trend of commercialisation of legal profession, pointed out that it was for the Members of the Bar to act and take positive steps to remove such an impression before it is too late. By striking work, the lawyers fail in their contractual and professional duty to conduct the cases for which they are engaged and paid. In *Common Cause, A Regd. Society v. Union of India*⁸ it was observed: (SCC p. 558, para 1)

"Since litigants have a fundamental right to speedy justice as observed in *Hussainara Khatoon (I) v. Home Secy., State of Bihar*⁹ it is essential that cases must proceed when they appear on board and should not ordinarily be adjourned on account of the absence of the lawyers unless there are cogent reasons to do so. If cases get adjourned time and again due to cessation of work by lawyers it will in the end result in erosion of faith in the justice delivery system which will harm the image and dignity of the court as well."

26. Noting the casual and indifferent attitude of some of the lawyers and expecting improvement in quality of service this Court in *Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting, In re*¹⁰ held: (SCC pp. 634-35, paras 19-20)

6 (1984) 2 SCC 556 : 1984 SCC (Cri) 335

7 1993 Supp (3) SCC 256

8 (1994) 5 SCC 557

9 (1980) 1 SCC 81 : 1980 SCC (Cri) 23

10 (1995) 3 SCC 619

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“19. Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant public and to the courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings — many times even illegible and without personal check and verification, the non-payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system.

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20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilized society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the

profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.”

27. In *Brahma Prakash Sharma v. State of U.P.*¹¹ a Constitution Bench of this Court held that a resolution passed by the Bar Association expressing want of confidence in the judicial officers amounted to scandalising the court to undermine its authority which amounted to contempt of court. In *Tarini Mohan Barari, Re*¹² the Full Bench of the High Court held that pleaders deliberately abstaining from attending the court and taking part in a concerted movement to boycott the court, was a course of conduct held not justified. The pleaders had duties and obligations to their clients in respect of matters entrusted to them which were pending in the courts. They had duty and obligation to cooperate with the court in the orderly administration of justice. Boycotting the court was held to be high handed and unjustified. In *Pleader, Re*¹³ a Division Bench of the High Court held that a pleader abstaining from appearing in the court without obtaining his client's consent and leaving him undefended, amounted to unprofessional conduct. In *U.P. Sales Tax Service Assn. v. Taxation Bar Assn.*² this Court observed: (SCC pp. 724-25, paras 15-16)

“15. It has been a frequent spectacle in the recent past to witness that advocates strike work and boycott the courts at the slightest provocation overlooking the harm caused to the judicial system in general and the litigant public in particular and to themselves in the estimate of the general public. An advocate is an officer of the court and enjoys a special status in the society. The workers in furtherance of collective bargaining organise strike as per the provisions of the Industrial Disputes Act as a last resort to compel the management to concede their legitimate demands.

16. It is not necessary to go into the question whether the advocates, like workmen, have any right at all to go on strike or boycott court. In *Federal Trade Commission v. Superior Court Trial Lawyers' Assn.*¹⁴ the attorneys who regularly accepted court appointments to represent indigent defendants in minor felony and misdemeanour cases before the District of Columbia Superior Court sought an increase in the statutorily fixed fees they were paid for the work they had done. When their lobbying efforts to get increase in the fees failed, all the attorneys, as a group, agreed among themselves that they would not accept any new cases after a certain date, if the District of Columbia had not passed legislation providing for an increase in their fees. The Trial Lawyers' Association to which the attorneys belonged supported and publicised their agreement. When they are not accepting the briefs which affected the District's criminal justice system, the Federal Trade Commission

11 AIR 1954 SC 10 : 1954 Cri LJ 238 : 1953 SCR 1169

12 AIR 1923 Cal 312 : 26 CWN 580 : 35 CLJ 403

13 AIR 1924 Rang 320 : 25 Cri LJ 1352

14 493 US 411: 107 L Ed 2d 851 (1989)

a (FTC) filed a complaint against the Trial Lawyers' Association complaining that they had entered into a conspiracy to fix prices and go in for a boycott which was an unfair method of competition violating Section 5 of the Federal Trade Commission Act (15 USCS 45). The administrative law Judge rejected various defences of the Association and recommended that the complaint to browbeat the boycott be dismissed. The Court of Appeals for the District of Columbia reversed the FTC order holding that the attorneys are protected by Federal Constitution's First Amendment etc. On certiorari, majority of USA Supreme Court speaking through Stevens, J. held that the lawyers had no protection of the First Amendment (free speech) and the action of the group of attorneys to boycott the courts constituted restraint of trade within the meaning of Section 1 of Sherman Act against unfair method of competition. Though the object was enactment of a favourable legislation, the boycott was the means by which the attorneys sought to obtain favourable legislation. The Federal Constitution's First Amendment does not protect them."

b
c **28.** In *Mahabir Prasad Singh v. Jacks Aviation (P) Ltd.*¹ to which one of us (Thomas, J.) was a party observed: (SCC p. 40, para 2)

d "2. Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty-bound to insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear. But unfortunately this case reflects apathy on the part of the High Court in affording such protection to a judicial functionary who resisted, through legal means, a pressure strategy slammed on him in open court."

e It was further held: (SCC pp. 43-44, paras 16-18)

f "16. If any counsel does not want to appear in a particular court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the courts either in general or any particular court. It is the solemn duty of every court to proceed with the judicial business during court hours. No court should yield to pressure tactics or boycott calls or any kind of browbeating.

17. A three-Judge Bench of this Court has reminded members of the legal profession in *Lt. Col. S.J. Chaudhary v. State (Delhi Admn.)*¹⁵ that it is the duty of every advocate who accepts a brief to attend the trial and such duty cannot be overstressed. It was further reminded that 'having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend'.

'A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.' (*Warvelle's Legal Ethics*, at p. 182)

18. Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the Members of the Bar and to make every endeavour for maintaining and protecting the respect which Members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is the sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or a group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court."

29. In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party, and if the circumstances warrant, to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting counsel for the costs paid. In appropriate cases the court itself can pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. In the instant case the respondent has to be held entitled to the payment of costs, consequent upon the setting aside of the ex parte order passed in his favour.

30. Though a matter of regret, yet it is a fact, that the courts in the country have been contributory to the continuance of the strikes on account of their action of sympathising with the Bar and failing to discharge their legal obligations obviously under the threat of public frenzy and harassment by the striking advocates. I find myself in agreement with the submission of Shri M.N. Krishnamani, Senior Advocate that the courts were sympathising with the Bar by not agreeing to dismiss the cases for default of appearance of the striking advocates. I have my reservations with the observations of Thomas, J. that the courts had not been sympathising with the Bar during the strikes or boycotts. Some courts might have conducted the cases even during

- a the strike or boycott periods or adjourned due to helplessness for not being in a position to decide the lis in the absence of the counsel but majority of the courts in the country have been impliedly sympathisers by not rising to the occasion by taking a positive stand for the preservation of the high traditions of law and for continued restoration of the confidence of the common man in the institution of judiciary. It is not too late even now for the courts in the country to rise from the slumber and perform their duties without fear or favour particularly after the judgment of this Court in *Mahabir Singh case*¹.
- b Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting courts may also be contributory to the contempt of this Court.

(2001) 1 Supreme Court Cases 133

(BEFORE D.P. MOHAPATRA AND SHIVARAJ V. PATIL, JJ.)

BALBIR SINGH .. Petitioner;

Versus

PUNJAB ROADWAYS AND ANOTHER .. Respondents.

SLP (C) No. 14225 of 1999[†], decided on December 8, 2000

- d **A. Labour Law — Relief — Denial of, on ground of delay upheld — Orders of punishment (stoppage of increment) passed against appellant in June 1978, October 1983, April 1987, November 1990 and May 1991 — State Govt. referring dispute for adjudication to Industrial Tribunal in 1995 — Tribunal holding that orders were vitiated as no proper inquiry had been held before they were passed — However, Tribunal, on ground of delay, not**
- e **granting relief except in relation to last order — Held, High Court rightly dismissed appellant's writ petition and held that there were no good grounds to interfere with the exercise of judicial discretion by Tribunal — Industrial Disputes Act, 1947, S. 11-A — Constitution of India, Art. 136 — Interference in Labour matters — Judicial Process — Judicial discretion — Held, was to be exercised judicially**
- f **B. Labour Law — Relief — Whether should be denied on ground of delay or appropriately moulded, held, was at the discretion of Industrial Tribunal**

Dismissing the SLP, the Supreme Court

Held :

- g Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially. The High Court on consideration of the matter held that there was no ground to interfere with the discretion exercised by the Tribunal. The award of the Tribunal declining relief to the petitioner, which was confirmed by the High Court does not suffer from any serious illegality which warrants interference by the Supreme Court. (Para 6)
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[†] From the Judgment and Order dated 13-7-1999 of the Punjab and Haryana High Court in CWP No. 9210 of 1999