

W.P. No.9951of 2015

(Banwari Lal Yadav v. High Court Bar Association)

6.1.2016

Shri Ajay Shukla, Advocate for the petitioner.

Shri Gaurav Tiwari, Advocate for the respondent.

Heard counsel for the parties.

This petition takes exception to the decision of the Bar Association dated 12.5.2015 taken pursuant to show-cause notice dated 30.4.2015 in the backdrop of defiance of the petitioner to abide by the resolution passed by the Bar Association to abstain from the Court. The law on this subject is no more *res integra*. The Constituion Bench of the Supreme Court in **Ex-Capt.Harish Uppal Vs. Union of India and others – 2003(2) SCC 45** has expounded that the Bar Association cannot threaten the Advocates nor take any action against them who want to appear before the Court by disregarding the protest call given by the Bar Association on the given day. Paragraph 35 of the reported decision reads thus :

“35. In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out a Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest 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 not attend Courts in pursuance of 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 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.”

(emphasis supplied)

In view of the settled legal position, the impugned action taken by the Bar Association to expel the petitioner is nonest in the eyes of law and must be treated as such for all purposes.

Petition is **allowed**.

(A.M. Khanwilkar)
Chief Justice

(K.K. Trivedi)
Judge

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