

SYNOPSIS AND LIST OF DATES

This illegal and contemptuous call of advocate strike, (happened on 11th & 12th July 2012), is likely to perpetuate in view of the Bar Council of India Notice dated 2.7.2012, which not only called for “All India strike on 11.07.2012 & 12.07.2012” but also called for “march to Parliament in first week of August, 2012 by Lawyers from all over India”. That further, press release dated 12.7.2012 issued on the letter head of Bar Council of India, by the pen of Mr. Manan Kumar Mishra, Chairman, Bar Council of India, has a threatening tone of further strike saying:

“It is made clear that if the government does not accept demands of the Lawyers Bodies, lakhs of the lawyers from all over the Country will assemble at Jantar Mantar, sit on Dharana, and take out peaceful agitation in coming Mansoon Session.”

Hence, Bar Council of India and other bodies, if not restrained from proposed “March to Parliament” in August as evident from notice dated 2.7.2012, or ‘lakhs of advocates assembling at Jantar Mantar’ as evident from press release dated 12.7.2012, (such assembly necessarily means lawyers abstaining from work for several days), shall not only paralyse administration of justice across India but shall also put great threat to law and order in National Capital Territory of Delhi as well as several other parts of India, and may result in breakdown of legal machinery and lead to unprecedented legal controversies.

The quest of Bar Council of India in opposing various bills regarding Higher Education pending before Parliament is nothing but a power struggle emanating from personal ego of some dignitaries of statutory bodies. It has no nexus with upholding advocate's interest or strengthening Indian legal system. Thanksgiving note (press release dated. 12.7.2012) of Chairman, Bar Council of India, while justifying two day illegal strike and calling lakhs of advocates to assemble for Dharna and agitation during Mansoon Session of Parliament, is full of baseless accusations and undermines dignity of Parliament and sovereignty of Indian State by saying:

"...the foreign countries like U.S.A. & U.K. are trying to enter into our country and these bills are aimed at making their entries easier."

".. H.R.D Ministry is in hurry due to heavy pressure of U.S.A."

As such the earlier illegal call of two day lawyer's strike and perpetuating threat of assembly of lakhs of advocates in Delhi to pressurise parliament during Mansoon Session seems to have been made by Bar Council of India with ulterior motives and is not in the interest of legal system or legal fraternity.

That the call of strike and perpetual threat of assembly of lakhs of advocates and Dharna at Jantar Mantar during Mansoon session of Parliament, is continuing despite personal letters sent by the Minister Human Resource Development, Government of India, Mr. Kapil Sibal to the respected members of Bar, explaining governments position regarding Higher Education and Research Bill, 2011, stating amongst others "the Higher Education and Research Bill 2011, does not, in

anyway adversely affect present powers of Bar Council of India or the State Bar Councils with Respect to legal education leading to professional practice” and calling them for open dialogue.

That Hon'ble Apex Court in Ex. Capt. Harish Uppal vs. Union of India & Anr. WP (C) 132 of 1988 while dealing with the issue of Lawyer's strike, categorically held:

- (1) Lawyers have no right to go on strike, or give a call for boycott, not even a token strike.
- (2) The protest, if any required, can only be by giving press statement, TV Interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful march outside and away from court premises, going on dharnas or relay fasts etc.
- (3) Only in rarest of rare cases where the dignity, integrity and independence of the Bar and/or Bench are at stake, court may ignore (turn a blind eye) to a protest abstention from work for not more than one day.
- (4) 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.
- (5) It is the duty of all courts to go on with matters on their hands even in absence of lawyers. In other words, Court must not be Privy to strike or call for boycott, strike or call for boycotts.

Thus the exception cited by the Hon'ble Court was 'only one day' strike in 'rarest of rare' occasion where dignity, integrity or independence of the bar and bench at stake. No other exception available to advocates who are officers of court and share equal responsibility vis a vis bench in dispensing justice to litigant public.

That further Hon'ble Court after referring series of classic judgments briefed the settle law in respect of lawyers strike in following terms:

- (i) A lawyer who has accepted a brief cannot refuse to attend Court because a boycott call is given by the Bar Association.
- (ii) It is unprofessional as well as unbecoming for a lawyer, who has accepted a brief to refuse to attend Court even in pursuance of a call for strike or boycott by the Bar Association or the Bar Council.
- (iii) The courts are under an obligation to hear and decide cases brought before it and cannot adjourn matters merely because lawyers are on strike.
- (iv) It is the duty and obligation of the Court to go on with matters or otherwise it would tantamount to becoming a privy to the strike.
- (v) Lawyers if participate in a boycott or strike, their action is ex facie bad in view of declaration of law by this court.
- (vi) A lawyer's duty is to badly ignore a call for strike.

(vii) They (advocates) owe a duty to their client. Strikes interfere with the administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy.

That legal position settled by Hon'ble Supreme Court of India in Uppals case (Supra) is law of land by virtue of Article 141 of Indian Constitution: which reads as under:

“141. Law declared by Supreme Court to be binding on all courts: The law declared by the Supreme Court shall be binding on all courts within the territory of India.”

And unless law settled by Hon'ble Apex Court regarding lawyers strike is set aside by a larger bench of the same, all courts within the territory of India are bound by the same, as well has a duty to take cognizance of any violation thereof either suo motu or on a reference or Petition brought before them.

That petitioner being a comparatively new entrants in the legal profession, and given his limited theoretical understanding and practical experience in law, had been watching the gross illegality and contempt of court happening by call of nationwide strike on 11th and 12th July, 2012, jointly given by Bar Council of India and Bar Council of Delhi and waiting for:

a) Hon'ble Courts to take suo-motu action on the gross illegality and contempt of court happening in front of judicial system.

- b) Some senior colleague from profession to take-up issue and file appropriate petition.
- c) Office bearers of Bar Council of India and Bar Council of Delhi since being eminent lawyers and distinguished jurists, to realize illegality and contempt involved in their strike call, and to themselves call off the strike.

Since none of the a), b), c) above, happened, till afternoon of 10th July 2012, petitioner herein, compelled by call of conscience, duty-bound as an officer of the court to strive to uphold sanctity of law of land on as settled by Hon'ble Apex Court on lawyers strike, worried about potential inconvenience to litigant public and terrified to foresee wastage of precious court hours, filed a writ petition in person on 10th July before this Hon'ble Court and mentioned the same in afternoon session, before Division Bench 2, bench responsible to entertain mentioning but Hon'ble Court declined to entertain mentioning in afternoon session and suggested that mentioning may be done at 10.30 AM on next day i.e. 11th July, 2012, the first day of strike. Petitioner herein mentioned petition again on 11th July, at 10.30 AM but Hon'ble Court in its wisdom declined to entertain mentioning on two counts (i) Petition was filed too late (ii) Same may create sensation. Since next working day being Thursday, was 'old matter day' and petition was becoming infructuous thereafter, petitioner took a conscious decision to withdraw said petition from registry.

That contempt of court has already taken place and illegal lawyers strike has already impeded administration of justice for two days and unless prevented, there is every likelihood that illegal and

contemptuous strike shall perpetuate even in August, 2012, hence petitioner is constrained to knock doors of this Hon'ble Court to prevent any further illegality and initiate appropriate action against those who are guilty of wilfully defying the law of land by resorting to two day strike on 11th & 12th July 2012.

02.07.2012: Notice issued by Bar Council of India on its official letter head, for all India Strike on 11.7.2012 & 12.7.2012 and thereafter march to parliament in first week of August, 2012 by lawyers from all over India.

6.7.2012: Mr. Kapil Sibal, Minister, Human Resource Development, Government of India, taking cognizance of strike call, written personal letters, to bar leaders including, Mr. Manan Kumar Mishra, Chairman, Bar Council of India clarifying government position and calling them for dialogue.

10.7.2012: Pamphlets in bold black letters containing signatures of officer bearers of Bar Council of Delhi namely (i) Rana Parween Siddiqui, Chairman (ii) Vijay K. Sondhi, Vice Chairman, (iii) Murari Tiwari, Hony. Secretary, (iv) Rajinder Singh Rana, Member Bar Council of India, were distributed among lawyers at various court complexes.

10.7.2012: Petitioner herein filed a Writ Petition against proposed strike on 11th & 12th July 2012, vide diary no. 111006, before this Hon'ble Court and

mentioned the same in afternoon session, however petition was not permitted to be taken on board.

11.7.2012: Petitioner herein mentioned said writ again, but same was not permitted to be taken on record. Petition since becoming infructuous, was withdrawn from registry.

11.7.2012: First day of illegal and contemptuous strike.

12.7.2012: Second day of illegal and contemptuous strike.

12.7.2012: Press release issued by the pen of Mr. Manan Kumar Mishra, Chairman Bar Council of India, stated that lakhs of the lawyers from all over the country to assemble at Jantar Mantar (Delhi), sit on Dharana and do agitation during coming Mansoon Session of Parliament beginning from July 26th 2012 onwards.

16.7.2012: Hence this Petition.

IN THE HIGH COURT OF DELHI AT NEW DELHI
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2012

IN THE MATTER OF A PUBLIC INTEREST LITIGATION:

ANOOP PRAKASH AWASTHI

PETITIONER

VERSUS

BAR COUNCIL OF INDIA & ORS.

RESPONDENTS

PETITION UNDER ARTICLE 226 OF INDIAN CONSTITUTION AGAINST BAR COUNCIL OF INDIA & OTHER'S CALL FOR ASSEMBLY, DHARNA AND AGITATION OF LAKHS OF ADVOCATES AT JANTAR MANTAR DURING COMING MANSOON SESSION OF PARLIAMENT BEGINNING FROM 26TH JULY 2012, READWITH ARTICLE 215 OF INDIAN CONSTITUTION FURTHER READWITH SPRIT OF THE CONTEMPT OF COURT ACT, 1971 AND RULES INCIDENTAL THERETO FOR INITIATING APPROPRIATE ACTION OF CONTEMPT OF COURT AGAINST OFFICE BEARERS OF BAR COUNCIL OF INDIA AND BAR COUNCIL OF DELHI.

TO:

**THE HON'BLE CHIEF JUSTICE AND HIS COMPANION JUSTICES
OF HIGH COURT OF DELHI**

The humble petition of the petitioner
above named:

MOST RESPECTFULLY SHEWETH:

1. That humble petitioner abovenamed, who is an advocate himself has no personal interest in the present litigation and the writ petition is not guided by self gain or for the gain of any other

person/institution/body and there is no motive other than of public interest in filing this writ petition.

2. Humble petitioner respectfully states that he has come to know about the facts of case through documents circulated among advocates by office bearers of Bar Council of India, and Delhi Bar Council Bar leaders and through media reports and press release and other documents and information available in common parlance.
3. Humble petitioner respectfully states that he is filing present petition for the benefit of such advocates including himself who wish to attend courts and participate in the administration of justice and uphold sanctity of the law on lawyers strike as settled by Hon'ble Apex Court, and also for such litigant public who may be put to inconvenience and irreparable loss if bar leaders and statutory bodies are not restrained from calling for the assembly of lakhs of advocates from all over country in Delhi at Jantar Mantar and do Dharna and agitation during coming monsoon session of Parliament. Since all such beneficiaries practically can't file individual petitions before this Hon'ble Court, humble petitioner is constrained to file instant petition.
4. Humble petitioner respectfully state that order emanating from this writ petition are likely to affect Bar Council of India, Bar Council of Delhi and other State Bar Councils and some of the office bearers thereof. All such institutions and individuals are impleaded as respondents in this Petition. It is further respectfully submitted that no other person/body/institution is likely to be affected by the order sought in writ petition.

5. Petitioner is an Advocate practising in Delhi Courts enrolled with Bar Council of Delhi and a member of Delhi High Court Bar Association. That Petitioner being public spirited, law abiding citizen of India and aggrieved by the illegal call of strike of Bar Council of India on 11th & 12th July 2012 and terrified to foresee obstruction in the administration of justice, by call of bar leaders to lawyers from all over India, (to abstain from court work), assemble at Jantar Matar and resort to Dharana and Agitation, is constrained to invoke writ jurisdiction of this Hon'ble Court. Humble Petitioner further respectfully state that he has come before this Hon'ble Court with pious intentions of upholding sanctity of Indian Legal System and as such hopeful and begs that no cost be imposed upon him. But in case, costs, if any, imposed by the Hon'ble court upon him, he will strive to pay the same with his limited means and as such gives an undertaking to that effect.
6. Humble Petitioner respectfully states that since he came to know about the issue under challenge in this petition through media and through documents/pamphlets circulated among advocates, he had no venue to make representation and as such has made no representation to respondents.
7. Humble Petitioner respectfully states that he filed a writ petition before this Hon'ble Court on 10th July 2012, against the lawyers strike dated 11th & 12th July 2012 and mentioned the same on 10th July at 2.15 PM and on 11th July at 10.30 AM before Hon'ble Division Bench II, but the same was not taken on board. As such the petition becoming infructuous, petitioner had withdrawn the same from registry.

8. That by this petition, the humble petitioner above named prays for:

I) Issuing a writ of mandamus to the respondent Bar Council of India and State Bar Councils restraining them from organizing assembly of lakhs of the lawyers from all over the country at Jantar Mantar (Delhi), sit on Dharana and do agitation during coming Mansoon Session of Parliament and any further strike or call to advocates for abstaining from work.

II). Initiating appropriate proceeding in the nature of Civil Contempt of Court under Article 215 of Indian Constitution read with spirit of Contempt of Courts Act, 1971 and other legal provisions and rules incidental thereto against the office bearers of Bar Council of India and Bar Council of Delhi namely (i) Mr. Manan Kumar Mishra, Chairman Bar Council of India (ii) Rajinder Singh Rana, Member Bar Council of India (iii) Mrs. Rana Parween Siddiqui, Chairman Bar Council of Delhi, (iv) Vijay K. Sondhi, Vice Chairman, Bar Council of Delhi, (v) Murari Tiwari, Hony. Secretary, Bar Council of Delhi. who had given a call for nationwide strike of advocates 11.7.2012 and 12.7.2012 and are party to continuing call of assembly, dharna and agitation during coming mansoon session of parliament (July 26th - August 27th 2012).

- a. Being in gross contempt of Hon'ble Supreme Court.
- b. Being unethical, unwarranted and uncalled for.
- c. Being against the interest of litigant public.

d. Being an impediment in the administration of Justice.

9. That Respondent Bar Council of India has called for assembly of lakhs of the lawyers from all over the country at Jantar Mantar (Delhi), to sit on Dharana and do agitation during coming Mansoon Session of Parliament.

Copy of the Notice dated 2.7.2012 and copy of press release dated 12.7.2012 issued by Bar Council of India, are enclosed as **Annexure P-1, Colly.**

10. That there was no occasion for Bar Council of India and Bar Council of Delhi to call other state bar councils and to continue with their call of strike in gross contempt of Hon'ble Supreme Court, and not go for negotiation despite personal letters written by Minister of Human Resource Development to leaders of Bar across India clarifying governments position in that respect and answering apprehensions of Bar Leaders and inviting them for a meeting for an open dialogue.

Copy of letters dated 6.7.2012, written by Minister of Human Resource Development, Government of India, to Bar Leaders is enclosed as **Annexure P-2, Colly.**

Copy of pamphlets, dated nil, circulated with signatures of office bearers of Bar Council of Delhi on 10.7.2012 is enclosed as **Annexure P-3.**

11. That petitioner herein filed a writ petition on 10.7.2012 against the call of strike dated 11.7.2012 & 12.7.2012, which could not come on board and since becoming infructuous was withdrawn from registry.

Copy of the said writ petition (without annexures) is enclosed and as **Annexure P-4**.

12. That the present Petitioner has not filed any other petition in this Hon'ble court or in any other High Court or the Supreme Court of India on the subject matter of the present petition.

GROUND

A. Because call for assembly of lakhs of the lawyers from all over the country at Jantar Mantar (Delhi), to sit on Dharana and do agitation during coming Mansoon Session of Parliament necessarily means:

- a) Lawyers abstaining from court work across India for several days.
- b) Law and order problem at Delhi in general and in and around Jantar Mantar in particular.
- c) Unrest and tension in and around court complexes across India.
- d) Inconvenience and harassment to litigant public.
- e) Under trial not getting bail.
- f) Execution of decree becoming late.
- g) Wastage of precious court time.
- h) Tussle and confrontation between state bodies.

B. Because the call for assembly at Jantar Mantar, which is necessarily in nature of strike is in gross contempt of court.

C. Because contempt of court has already taken place by two day strike and any continuation of the same by way of assembly, dharana and agitation may lead to crisis.

- D. Perpetuation of proposed strike will paralyse the administration of justice.
- E. Because proposed assembly, dharna and agitation shall cause immense miseries to litigants and to general public.
- F. Because proposed assembly, dharna and agitation is called despite alternative venues are open.
- G. Because assembly, dharna and agitation is not method to settle grievance of advocates.
- H. Because this Hon'ble Court has power to issue notice and initiate contempt of court proceeding against bar leaders guilty of contempt.
- I. Because Indian Judicial system being independent and integrated, contempt of Hon'ble Supreme Court includes, contempt of Hon'ble High Court.
- J. Because as per Article 215 of Indian Constitution, This Hon'ble Court is a court of record and have all the powers of such a court including the power to punish for contempt of itself.

PRAYER

In view of the above submissions it is most respectfully prayed that this Hon'ble Court may graciously be please to: -

- a) Issue a writ of mandamus to restrain Respondents Bar Council of India and others from their call of assembly, and sitting on dharna and do agitation during the coming mansoon session (commencing on 26th July 2012) of parliament at Jantar Mantar (Delhi).
- b) Restrain practising advocates in general from abstaining from court work for more than one day, that too without

permission from Hon'ble Chief Justice or Chairperson/Presiding Officer of a Court/Tribunal as the case may be.

- c) Issue notice and initiate contempt proceedings against
- (i) Respondent No. 22, Mr. Manan Kumar Mishra, Chairman Bar Council of India
 - (ii) Respondent No. 23, Rajinder Singh Rana, Member Bar Council of India
 - (iii) Respondent No. 24, Mrs. Rana Parween Siddiqui, Chairman Bar Council of Delhi,
 - (iv) Respondent No. 25, Mr. Vijay K. Sondhi, Vice Chairman, Bar Council of Delhi,
 - (v) Respondent No. 26, Mr. Murari Tiwari, Hony. Secretary, Bar Council of Delhi.
- d) Pass such other order or orders this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

NEW DELHI:
16.07.2012.

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