

[MANU/SC/1607/1994](#)

Equivalent Citation: 1995GLH(1)235, 1995-1-LW(Crl)1, 1995(1)SCALE6, (2006)9SCC304

IN THE SUPREME COURT OF INDIA

Civil Writ Petition No. 821 of 1990 and I.A. No. 5/94 in W.P. (C) No. 320 of 1993

Decided On: 07.12.1994

Appellants: **Common Cause, A Registered Society**

Vs.

Respondent: **Union of India (UOI) and Ors.**

Hon'ble

Judges/Coram:

[A.M. Ahmadi](#), C.J., [R.M. Sahai](#) and [N.G. Venkatachala](#), JJ.

Subject: Law of Medicine

Catch Words

Mentioned IN

Acts/Rules/Orders:

Code of Civil Procedure (CPC) - Order 1 Rule 8; Bar Council of India (Conduct and Disciplinary) Rules

ORDER

1. Pursuant to this Court's order of 11th January, 1994, directing public notice to issue to the Bar Association and State Bar Councils all over the country in the nature of a notice under Order 1, Rule 8, Code of Civil Procedure, certain bodies of the Bar filed their responses. Thereafter, the matter came up before this Court on different dates, lastly, on October 27, 1994 when this Court suggested that a meeting be called to consider the various suggestions made by the Bar Associations/State Bar Councils in their responses to this Court. Accordingly Shri Shankar Das, acting as Convenor, called a meeting on 20th November, 1994 at which besides the learned Attorney General, Mr. F.S. Nariman, President, Bar Association of India, Mr. K.K. Venugopal, President, Supreme Court Bar Association, Mr. V.C. Misra Chairman, Bar Council of India and Mr. H.D. Shourie, the Petitioner herein, were invited to attend. Mr. V.C. Misra and Mr. K.K. Venugopal were not able to attend for personal reasons. As per the discussions that took place at the meeting a consensus emerged to the effect that instead of the Court going into the wider question whether members of the legal profession can resort to the extreme step of abstaining from appearing in cases in which they are engaged and which are listed before the Court as a consequence of any strike call given by any body of members belonging to the legal profession, it would be desirable to work out an interim arrangement and see if the same operates satisfactorily.

2. The Officiating Secretary, Bar Council of India, Mr. C.R. Balaraman filed an affidavit on behalf of the Bar Council of India wherein he states that a "National Conference" of members of the Bar Council of India and State Bar Councils was held on 10th and 11th September, 1994 and a working paper was circulated on behalf of Bar Council of India. Mr. V.C. Misra, Chairman, Bar Council of India, *inter alia* on the question of strike by lawyers. In that working paper a note was taken that Bar Associations had proceeded on strike on several occasion in the past, at times, State-wide or Nationwide, and "while the profession does not like it as members of the profession are themselves the losers in the process" and while it is not necessary to sit in judgment over the wider question whether members of the profession can at all go on strike or boycott of Courts, it was felt that even if it is assumed that such a right enures to the members of profession, the circumstances in which such a step should be resorted should be clearly indicated. Referring to an earlier case before the Delhi High Court it was stated that the bar Council of India had made its position clear to the effect "(a) Bar Council of India is against resorting to strike excepting in rarest of

rare case involving the dignity and independence of the judiciary as well as of the Bar; and (b) whenever strike become inevitable, efforts shall be made to keep it short and peaceful to avoid causing hardship to the litigant public", (emphasis supplied). It was in response to the above that a consensus emerged at the Bar at the hearing of the matter that instead of the Court going into the wider question whether or not the members of the legal profession can resort to strike or abstain from appearing in cases in Court in which they are engaged, the Court may see the working of the interim arrangement and if that is found to be satisfactory it may perhaps not be required to go into the wider question at this stage. Pursuant to the discussion that took place at the last hearing on 30th November, 1994, the following suggestions have emerged as an interim measure consistent with the Bar Council of India's thinking that except in the rarest of rare cases strike should not be resorted to and instead peaceful demonstration may be resorted to to avoid causing hardship to the litigant public. The Learned Counsel suggested that to begin with the following interim measures may be sufficient for the present:

(1) In the rare instance where any association of lawyers (including statutory Bar Councils) considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive step.

(2) No such member who appears in court or otherwise practices his legal profession, shall be visited with any adverse or penal consequences, whatever by any association of lawyers, and shall not suffer any expulsion or threat of expulsion therefrom.

(3) The above will not preclude other forms of protest by practising lawyers in courts such as, for instance, wearing of arm bands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.

(4) Office bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in Clause (1) above shall ensure that such decisions are implemented in the spirit of what is stated in Clauses (1), (2) and (3) above.

3. Mr. P.N. Duda, Senior Advocate representing the, Bar Council of India was good enough to state that he will suggest to the Bar Council of India to incorporate Clauses (1), (2), (3) and (4) in the Bar Council of India (Conduct & Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the afore-mentioned four clauses. The suggestion that we defer the hearing and decision on the larger question whether or not members of the profession can abstain from work commends to us. We also agree with the suggestion that we see the working of the suggestions in Clauses (1) to (4) above for a period of at least six months by making the said clauses the rule of the Court. Accordingly, we make Clauses (1) to (4) mentioned above the order of this Court and direct further course of action in terms thereof. The same will operate prospectively. We also suggest to the Bar Councils and Bar Associations that in order to clear the pitch and to uphold the high traditions of the profession as well as to maintain the unity and integrity of the Bar they consider dropping action already initiated against their members who had appeared in courts notwithstanding strike calls given by the Bar Council or Bar Association. Besides,

member of the legal profession should be alive to the possibility of judge of different Courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with case.

4. The matter will stand adjourned by six months to oversee the working of this interim order. It is hoped that it will work out satisfactorily. Liberty to mention in the event of any difficulty.

5. We are grateful to Mr. Shourie for highlighting the issue. We are grateful to the learned Attorney General and all the other learned .counsel appearing before us for then positive contribution and broad out-look to solving the vexed problem of strikes. We do hope that we will not have an occasion to recall this matter on the ground that there has been any contravention of any of the above clauses. On this optimistic note we adjourn the matter for six months.