T.C. Mathai* v. *District & Sessions Judge, Thiruvananthapuram

(1999) 3 SCC 614

K.T. THOMAS, J. - 2. The appellant claims to be the power-of-attorney holder of a couple (husband and wife) now living in Kuwait. He sought permission of the Sessions Court, Trivandrum to appear and plead on behalf of the said couple who are arrayed as respondents in a criminal revision petition filed before the said Sessions Court (they will be referred to as the respondent-couple). But the Sessions Judge declined to grant permission as the request for such permission did not emanate from the respondent-couple themselves. Thereupon the appellant moved the High Court of Kerala under Article 226 of the Constitution for issuance of a direction to the Sessions Judge concerned to grant the permission sought for. A Single Judge of the High Court dismissed the original petition against which the appellant filed a writ appeal which too was dismissed by a Division Bench of the High Court.

3. Undeterred by the successive setback in securing a right of audience on behalf of the aforesaid couple the appellant travelled a long distance from the southern end of the country right up to the national capital to personally argue before the Apex Court that he is entitled to plead for the respondent-couple in the Sessions Court. We heard the appellant-in-person though we are still now unable to appreciate why he, instead of incurring so much expenses and strain, did not advise the respondent-couple to engage a counsel for pleading their cause before the Sessions Court.

4. The appellant, during the course of his arguments, referred to a commentary on criminal law to support his contention that a power-of-attorney holder has all powers to act on behalf of his principal. We would assume that the respondent-couple would have executed an instrument of power of attorney empowering the appellant to act on their behalf. Can he become a pleader for the respondent-couple on the strength of it?

5. Section 303 of the Code of Criminal Procedure ("the Code") entitles a person to the right of being defended by a "pleader" of his choice when proceedings are initiated against him under the Code. "Pleader" is defined in Section 2(*q*) as thus:

> "2.(*q*) 'pleader', when used with reference to any proceeding in any court, means a person authorised by or under any law for the time being in force, to practise in such court, and includes any other person appointed with the permission of the court to act in such proceeding;"

6. The definition envelopes two kinds of pleaders within its ambit. The first refers to legal practitioners who are authorised to practise law and the second refers to "any other person". If it is the latter, its essential requisite is that such person should have been appointed with the permission of the court to act in such proceedings. This is in tune with Section 32 of the Advocates Act, 1961 which empowers a court to permit any person, who is not enrolled as an

advocate to appear before it in any particular case. But if he is to plead for another person in a criminal court, such permission should be sought for by that person.

7. It is not necessary that the "pleader" so appointed should be the power-of-attorney holder of the party in the case. What seems to be a condition precedent is that his appointment should have been preceded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case.

8. The work in a court of law is a serious and responsible function. The primary duty of a criminal court is to administer criminal justice. Any lax or wayward approach, if adopted towards the issues involved in the case, can cause serious consequences for the parties concerned. It is not just somebody representing the party in the criminal court who becomes the pleader of the party. In the adversary system which is now being followed in India, both in civil and criminal litigation, it is very necessary that the court gets proper assistance from both sides.

9. Legally qualified persons who are authorised to practise in the courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the court to appoint such persons to represent him in court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practise in all the courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

10. But if the person proposed to be appointed by the party is not such a qualified person, the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause [Section 2(*q*) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned.

11. V.R. Krishna Iyer, J. had occasion to deal with a similar matter while considering a plea like this in a chamber proceeding in the Supreme Court. In that case, a party sought permission to be represented by another person in a criminal case. Learned Judge then struck a note of caution in the following terms in ***Harishankar Rastogi* v. *Girdhari Sharma*** [AIR 1978 SC 1019]:

> "If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter-productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-

informed or blackguardly or blockheadedly private representatives filing arguments at the court. Likewise, the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the court. Other situations, settings and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice."

12. The appellant submitted that he is the duly appointed attorney of the respondent-couple by virtue of an instrument of power of attorney executed by them and on its strength he contended that his right to represent the respondent-couple in the court would be governed by the said authority in the instrument.

14. Under the English law, "every person who is sui juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right". But this Court has pointed out that the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving any fiduciary obligation,

15. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party-in-person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with "the personal attendance of the accused, and permit him to appear by his pleader" if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power-of-attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.

16. In this context reference can be made to a decision rendered by a Full Bench of the Madras High Court in ***M. Krishnammal*** **v.** ***T. Balasubramania Pillai*** [AIR 1937 Mad 937], when a person, who was the power-of-attorney holder of another, claimed right of audience in the High Court on behalf of his principal. A Single Judge referred three questions to be considered by the Full Bench, of which the one which is relevant here was whether an agent with the power of attorney to appear and conduct judicial proceedings has the right of audience in court. Beasley, C.J., who delivered the judgment on behalf of the Full Bench stated the legal position thus: (AIR Headnote)

"An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of the principal, either in the appellate or original side of the High Court. ... There is no warrant whatever for putting a power of attorney given to a recognized agent to conduct

> proceedings in court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney [which] is confined only to pleaders, i.e., those who have a right to plead in courts."

17. The aforesaid observations, though stated sixty years ago, would represent the correct legal position even now. Be that as it may, an agent cannot become a "pleader" for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. The respondent-couple have not even moved for such a permission and hence no occasion has arisen so far to consider that aspect.

18. The appeal is accordingly dismissed.

R.D. Saxena* v. *Balram Prasad Sharma

(2000) 7 SCC 264

K.T. THOMAS, J. (*for himself and Sethi, J.*) The main issue posed in this appeal has sequential importance for members of the legal profession. The issue is this: has the advocate a lien for his fees on the litigation papers entrusted to him by his client? In this case the Bar Council of India, without deciding the above crucial issue, has chosen to impose punishment on a delinquent advocate debarring him from practising for a period of 18 months and a fine of Rs 1000. The advocate concerned was further directed to return all the case bundles which he got from his respondent client without any delay. This appeal is filed by the said advocate under Section 38 of the Advocates Act, 1961.

The appellant, now a septuagenarian, has been practising as an advocate mostly in the courts at Bhopal, after enrolling himself as a legal practitioner with the State Bar Council of Madhya Pradesh. According to him, he was appointed as legal advisor to Madhya Pradesh State Cooperative Bank Ltd. ("the Bank" for short) in 1990 and the Bank continued to retain him in that capacity during the succeeding years. He was also engaged by the said Bank to conduct cases in which the Bank was a party. However, the said retainership did not last long. On 17-7-1993 the Bank terminated the retainership of the appellant and requested him to return all the case files relating to the Bank. Instead of returning the files the appellant forwarded a consolidated bill to the Bank showing an amount of Rs 97,100 as the balance payable by the Bank towards the legal remuneration to which he is entitled. He informed the Bank that the files would be returned only after settling his dues.

3. Correspondence went on between the appellant and the Bank regarding the amount, if any, payable to the appellant as the balance due to him. The respondent Bank disclaimed any liability outstanding from them to the appellant. The dispute remained unresolved and the case bundles never passed from the appellant's hands. As the cases were pending the Bank was anxious to have the files for continuing the proceedings before the courts/tribunals concerned. At the same time the Bank was not disposed to capitulate to the terms dictated by the appellant which they regarded as grossly unreasonable. A complaint was hence filed by the Managing Director of the Bank, before the State Bar Council (Madhya Pradesh) on 3-2-1994. It was alleged in the complaint that the appellant is guilty of professional misconduct by not returning the files to his client.

4. In the reply which the appellant submitted before the Bar Council he admitted that the files were not returned but claimed that he has a right to retain such files by exercising his right of lien and offered to return the files as soon as payment is made to him.

5. The complaint was then forwarded to the Disciplinary Committee of the District Bar Council. The State Bar Council failed to dispose of the complaint even after the expiry of one year. So under Section 36-B of the Advocates Act the proceedings stood transferred to the Bar

Council of India. After holding inquiry the Disciplinary Committee of the Bar Council of India reached the conclusion that the appellant is guilty of professional misconduct. The Disciplinary Committee has stated the following in the impugned order:

> "On the basis of the complaint as well as the documents available on record we are of the opinion that the respondent is guilty of professional misconduct and thereby he is liable for punishment. The complainant is a public institution. It was the duty of the respondent to return the briefs to the Bank and also to appear before the Committee to revert his allegations made in application dated 8-11-1995. No such attempt was made by him."

6. In this appeal learned counsel for the appellant contended that the failure of the Bar Council of India to consider the singular defence set up by the appellant i.e. he has a lien over the files for his unpaid fees due to him, has resulted in miscarriage of justice. The Bank contended that there was no fee payable to the appellant and the amount shown by him was on account of inflating the fees. Alternatively, the respondent contended that an advocate cannot retain the files after the client terminated his engagement and that there is no lien on such files.

7. We would first examine whether an advocate has lien on the files entrusted to him by the client. Learned counsel for the appellant endeavoured to base his contention on Section 171 of the Indian Contract Act which reads thus:

> "171. Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

8. Files containing copies of the records (perhaps some original documents also) cannot be equated with the "goods" referred to in the section. The advocate keeping the files cannot amount to "goods bailed". The word "bailment" is defined in Section 148 of the Contract Act as the delivery of goods by one person to another for some purpose, upon a contract that they shall be returned or otherwise disposed of according to the directions of the person delivering them, when the purpose is accomplished. In the case of litigation papers in the hands of the advocate there is neither delivery of goods nor any contract that they shall be returned or otherwise disposed of. That apart, the word "goods" mentioned in Section 171 is to be understood in the sense in which that word is defined in the Sale of Goods Act.

9. Thus understood "goods" to fall within the purview of Section 171 of the Contract Act should have marketability and the person to whom they are bailed should be in a position to dispose of them in consideration of money. In other words the goods referred to in Section 171 of the Contract Act are saleable goods. There is no scope for converting the case files into money, nor can they be sold to any third party. Hence, the reliance placed on Section 171 of the Contract Act has no merit.

10. In England the solicitor had a right to retain any deed, paper or chattel which had come into his possession during the course of his employment. It was the position in common law and it was later recognized as the solicitor's right under the Solicitors Act, 1860.

12. After independence the position would have continued until the enactment of the Advocates Act, 1961 which has repealed a host of enactments including the Indian Bar Council Act. When the new Bar Council of India came into existence it framed rules called the Bar Council of India Rules as empowered by the Advocates Act. Such Rules contain provisions specifically prohibiting an advocate from adjusting the fees payable to him by a client against his own personal liability to the client. As a rule an advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client (vide Rule 24). In this context a reference can be made to Rules 28 and 29.

13. Thus, even after providing a right for an advocate to deduct the fees out of any money of the client remaining in his hand at the termination of the proceeding for which the advocate was engaged, it is important to notice that no lien is provided on the litigation files kept with him. In the conditions prevailing in India with lots of illiterate people among the litigant public it may not be advisable also to permit the counsel to retain the case bundle for the fees claimed by him. Any such lien if permitted would become susceptible to great abuses and exploitation.

14. There is yet another reason which dissuades us from giving approval to any such lien. We are sure that nobody would dispute the proposition that the cause in a court/tribunal is far more important for all concerned than the right of the legal practitioner for his remuneration in respect of the services rendered for espousing the cause on behalf of the litigant. If a need arises for the litigant to change his counsel pendente lite, that which is more important should have its even course flow unimpeded. Retention of records for the unpaid remuneration of the advocate would impede such course and the cause pending judicial disposal would be badly impaired. If a medical practitioner is allowed a legal right to withhold the papers relating to the treatment of his patient which he thus far administered to him for securing the unpaid bill, that would lead to dangerous consequences for the uncured patient who is wanting to change his doctor. Perhaps the said illustration may be an overstatement as a necessary corollary for approving the lien claimed by the legal practitioner. Yet the illustration is not too far-fetched. No professional can be given the right to withhold the returnable records relating to the work done by him with his client's matter on the strength of any claim for unpaid remuneration. The alternative is that the professional concerned can resort to other legal remedies for such unpaid remuneration.

15. A litigant must have the freedom to change his advocate when he feels that the advocate engaged by him is not capable of espousing his cause efficiently or that his conduct is prejudicial to the interest involved in the lis, or for any other reason. For whatever reason, if a client does not want to continue the engagement of a particular advocate it would be a professional requirement consistent with the dignity of the profession that he should return the brief to the client. It is time to hold that such obligation is not only a legal duty but a moral imperative.

16. In civil cases, the appointment of an advocate by a party would be deemed to be in force until it is determined with the leave of the court [vide Order 3 Rule 4(1) of the Code of Civil Procedure]. In criminal cases, every person accused of an offence has the right to consult and be defended by a legal practitioner of his choice which is now made a fundamental right under Article 22(1) of the Constitution. The said right is absolute in itself and it does not depend on other laws. The words "of his choice" in Article 22(1) indicate that the right of the accused to change an advocate whom he once engaged in the same case, cannot be whittled down by that advocate by withholding the case bundle on the premise that he has to get the fees for the services already rendered to the client.

17. If a party terminates the engagement of an advocate before the culmination of the proceedings that party must have the entire file with him to engage another advocate. But if the advocate who is changed midway adopts the stand that he would not return the file until the fees claimed by him are paid, the situation perhaps may turn to dangerous proportions. There may be cases when a party has no resources to pay the huge amount claimed by the advocate as his remuneration. A party in a litigation may have a version that he has already paid the legitimate fee to the advocate. At any rate if the litigation is pending the party has the right to get the papers from the advocate whom he has changed so that the new counsel can be briefed by him effectively. In either case it is impermissible for the erstwhile counsel to retain the case bundle on the premise that fees were yet to be paid.

18. Even if there is no lien on the litigation papers of his client an advocate is not without remedies to realise the fee which he is legitimately entitled to. But if he has a duty to return the files to his client on being discharged the litigant too has a right to have the files returned to him, more so when the remaining part of the lis has to be fought in the court. This right of the litigant is to be read as the corresponding counterpart of the professional duty of the advocate.

19. Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression "misconduct, professional or otherwise". The word "misconduct" is a relative term. It has to be considered with reference to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct.

20. ***Corpus Juris Secundum*** contains the following passage at p.740 (Vol. 7):

> "Professional misconduct may consist in betraying the confidence of a client, in attempting by any means to practise a fraud or impose on or deceive the court or the adverse party or his counsel, and in fact in any conduct which tends to bring reproach on the legal profession or to alienate the favourable opinion which the public should entertain concerning it."

23. We, therefore, hold that the refusal to return the files to the client when he demanded the same amounted to misconduct under Section 35 of the Act. Hence, the appellant in the present case is liable to punishment for such misconduct.

24. However, regarding the quantum of punishment we are disposed to take into account two broad aspects:

(*1*) This Court has not pronounced, so far, on the question whether the advocate has a lien on the files for his fees.

(*2*) The appellant would have bona fide believed, in the light of decisions of certain High Courts, that he did have a lien.

In such circumstances it is not necessary to inflict a harsh punishment on the appellant. A reprimand would be sufficient in the interest of justice on the special facts of this case.

25. We, therefore, alter the punishment to one of reprimanding the appellant. However, we make it clear that if any advocate commits this type of professional misconduct in future he would be liable to such quantum of punishment as the Bar Council will determine and the lesser punishment imposed now need not be counted as a precedent.

D.P. Chadha* v. *Triyugi Narain Mishra

(2001) 2 SCC 221

R.C. LAHOTI, J. - Shri D.P. Chadha, Advocate, the appellant, has been held guilty of professional misconduct by the Rajasthan State Bar Council and punished with suspension from practice for a period of five years. Shri Anil Sharma, Advocate was also proceeded against along with Shri D.P. Chadha, Advocate and he too having been found guilty was reprimanded. An appeal preferred by Shri D.P. Chadha, Advocate under Section 37 of the Advocates Act, 1961 has not only been dismissed but the Bar Council of India has chosen to vary the punishment of the appellant by enhancing the period of suspension from practice to ten years. The Bar Council of India has also directed notice to show cause against enhancement of punishment to be issued to Shri Anil Sharma, Advocate. The Bar Council of India has further directed proceedings for professional misconduct to be initiated against one Shri Rajesh Jain, Advocate. Shri D.P. Chadha, Advocate has preferred this appeal under Section 38 of the Advocates Act, 1961 ("the Act").

2. It is not disputed that Upasana Construction Pvt. Ltd. had filed a suit for ejectment based on landlord-tenant relationship against the complainant Shri Triyugi Narain Mishra, who was running a school in the tenanted premises wherein about 2000 students were studying. Shri D.P. Chadha was engaged by the complainant for defending him in the suit.

3. It is not necessary to set out in extenso the contents of the complaint made by Shri Triyugi Narain Mishra to the Bar Council. It would suffice to notice in brief the findings concurrently arrived at by the State Bar Council and the Bar Council of India constituting the gravamen of the charge against the appellant. While the proceedings in the ejectment suit were going on in the civil court at Jaipur, the complainant was contesting an election in the State of U.P. Polling was held on 18-11-1993 and again on 22-11-1993 on which dates as also on the days intervening, Shri Triyugi Narain Mishra was in Chilpur in the State of U.P. looking after the election and was

certainly not available at Jaipur. Shri D.P. Chadha was in possession of a blank vakalatnama and a blank paper, both signed by the complainant, given to him in the first week of October 1993. These documents were used for fabricating a compromise petition whereby the complainant has been made to suffer a decree for eviction. The blank vakalatnama was used for engaging Shri Anil Sharma, Advocate, on behalf of the complainant, who got the compromise verified. Though the compromise was detrimental to the interest of the complainant yet the factum of compromise and its verification was never brought to the notice of the complainant in spite of ample time and opportunity being available for the purpose. The proceedings of the court show a deliberate attempt having been made by three erring advocates to avoid the appearance of the complainant before the court, to prevent the complainant from gathering knowledge of the compromise filed in court and creating a situation whereby the court was virtually compelled to pass a decree though the court was feeling suspicious of the compromise and wanted presence of the complainant to be secured before it before the decree was passed.

4. The proceedings of the court and the several documents relating thereto, go to show that earlier the plaintiff Company was being represented by Shri Vidya Bhushan Sharma, Advocate. An application was moved on behalf of the plaintiff discharging Shri Vidya Bhushan Sharma from the case and instead engaging Shri Rajesh Jain, Advocate on behalf of the plaintiff and in place of Shri Vidya Bhushan Sharma, Advocate. On 17-11-1993 Shri D.P. Chadha was present in the court though the defendant was not present when an adjournment was taken from the court stating that there was possibility of an amicable settlement between the parties whereupon hearing was adjourned to 14-2-1994 for reporting compromise or framing of issues. On 20-11-1993, which was not a date fixed for hearing, Shri Rajesh Jain and Shri Anil Sharma, Advocates appeared in the court on behalf of the plaintiff and the defendant respectively and filed a compromise petition. Shri Anil Sharma filed Vakalatnama purportedly on behalf of the complainant.

5. The compromise petition purports to have been signed by the parties as also by Shri Rajesh Jain, Advocate on behalf of the plaintiff and Shri Anil Sharma, Advocate on behalf of the defendant. The compromise petition is accompanied by another document purporting to be a receipt executed by the complainant acknowledging receipt of an amount of Rs. 5 lakhs by way of damages for the loss of school building standing on the premises. The receipt is typed but the date 20-11-1993 is written in hand. A revenue stamp of 20 p is fixed on the receipt in a side of the paper and at a place where ordinarily the ticket is not affixed. The factum of the defendant having received an amount of Rs 5 lakhs as consideration amount for the compromise does not find a mention in the compromise petition.

6. The Learned Additional Civil Judge before whom the compromise petition was filed directed the parties to remain personally present before the court on 17-12-1993 so as to verify the compromise. Instead of complying with the orders, Shri Rajesh Jain, Advocate filed a miscellaneous civil appeal raising a plea that the trial court was not justified in directing personal appearance of the parties and should have recorded the compromise on verification by the advocates. The complainant Shri Triyugi Narain Mishra was impleaded as respondent “through

advocate Shri Anil Sharma" - as stated in the cause title of memo of appeal. The appeal was filed on 20-12-1993. Notice of appeal was not issued to the complainant; the same was issued in the name of Shri Anil Sharma, Advocate, who accepted the same. Shri Anil Sharma, Advocate did not file any vakalatnama on behalf of the complainant in the appeal and instead made his appearance by filing a memo of appearance reciting his authority to appear in appeal on the basis of his being a counsel for the complainant in the trial court. This appeal was dismissed by the Learned Additional District Judge on 24-1-1994 holding the appeal to be not maintainable.

7. On 30-1-1994, the trial court's record was returned to it by the appellate court. On 17-12-1993 also the trial court had directed personal appearance of the parties. On 16-2-1994 the counsel appearing for the parties (the names of the counsel not mentioned in the order-sheet dated 16-2-1994) took time for submitting case-law for the perusal of the court. Similar prayer was made on 21-2-1994 and 18-3-1994. On 8-4-1994, the plaintiff was present with his counsel. The defendant/complainant was not present. Shri D.P. Chadha, Advocate appeared on behalf of the defendant and argued that personal presence of Shri Triyugi Narain Mishra was not required for verification of compromise and the presence of the advocate was enough for the court to verify the compromise and take the same on record. The court was requested to recall its earlier order directing personal appearance of the parties. A few decided cases were cited by Shri D.P. Chadha, Advocate before the court for its consideration. The trial court suspected the conduct of the counsel and passed a detailed order directing personal presence of the defendant to be secured before the court. The trial court also directed a notice to be issued to the defendant for his personal appearance on the next date of hearing before passing any order on the compromise petition.

8. Shri Rajesh Jain, Advocate again filed an appeal against the order dated 8-4-1994. Again the complainant was arrayed as a respondent in the cause title "through Shri Anil Sharma, Advocate". An application was moved before the appellate court seeking a shorter date of hearing as the defendant was likely to go out. On 21-8-1994 the appellate court directed the record of the trial court to be requisitioned. Shri Anil Sharma, Advocate appeared in the appellate court without filing any vakalatnama from the complainant. He conceded to the appeal being allowed and personal appearance of the defendant not being insisted upon for the purpose of recording the compromise. The appellate court was apparently oblivious of the legal position that such a miscellaneous appeal was not maintainable under any provision of law.

9. Certified copy of the order of the appellate court was obtained in hot haste. Unfortunately, the Presiding Officer of the trial court who was dealing with the matter, had stood transferred in the meanwhile. An application was filed before the successor trial Judge by Shri Rajesh Jain, Advocate requesting compliance with the order of the appellate court and to record the compromise and pass a decree in terms thereof, dispensing with the necessity of personal presence of the parties. On 23-7-1994, the trial Judge, left with no other option, passed a decree in terms of compromise in the presence of Shri Rajesh Jain and Shri Anil Sharma, Advocates. The decree directed the suit premises to be vacated by 30-11-1993 (the date stated in the compromise petition).

10. Shri Triyugi Narain Mishra, the complainant, moved the State Bar Council complaining of the professional misconduct of the three advocates who had colluded to bring the false compromise in existence without his knowledge and also made all efforts to prevent the complainant gathering knowledge of the alleged compromise.

11. In response of the notice issued by the State Bar Council, Shri Anil Sharma, Advocate submitted that he did not know Shri Triyugi Narain Mishra personally. The vakalatnama and the compromise petition were handed over to him by Shri D.P. Chadha, Advocate for the purpose of being filed in the court. Shri Anil Sharma was told by Shri D.P. Chadha, Advocate that he was not well and if there was any difficulty in securing the decree then he was available to assist Shri Anil Sharma. In the two miscellaneous civil appeals preferred by Shri Rajesh Jain, Advocate, Shri Anil Sharma accepted the notices of the appeals on the advice of Shri D.P. Chadha, Advocate.

12. Shri D.P. Chadha, Advocate took the plea that he was not aware of the compromise petition and the various proceedings relating thereto, leading to verification of the compromise and passing of the decree. He submitted that he never obtained blank paper or blank vakalatnama signed by anyone at any time and not even Shri Triyugi Narain Mishra, the complainant. He also submitted that on 8-4-1994 his presence had been wrongly recorded in the proceedings and he had not appeared before the court to argue that the personal presence of the parties was not required for verification of compromise petition filed in the court and that the counsel was competent to sign and verify the compromise whereon the court should act.

13. Amongst other witnesses the complainant and the three counsel have all been examined by the State Bar Council and cross-examined by the parties to the disciplinary proceedings. The defence raised by the appellant has been discarded by the State Bar Council as well as by the Bar Council of India in their orders. Both the authorities have dealt extensively with the improbabilities of the defence and assigned detailed reasons in support of the findings arrived at by them. Both the authorities have found the charge against the appellant proved to the hilt. The statement of the complainant has been believed that he had never entered into any compromise and he did not even have knowledge of it. His statement that Shri D.P. Chadha, the appellant, had obtained blank paper and blank vakalatnama signed by him and the same have been utilised for the purpose of fabricating the compromise and appointing Shri Anil Sharma, Advocate, has also been believed. Here it may be noted that Shri D.P. Chadha had denied on oath having obtained any blank paper or vakalatnama from Shri Triyugi Narain Mishra. However, while cross-examining the complainant first he was pinned down in stating that only one paper and one vakalatnama (both blank) were signed by him and then Shri D.P. Chadha produced from his possession one blank vakalatnama and one blank paper signed by the complainant.

The Bar Council has found that the blank paper, so produced by the appellant, bore the signature of the complainant almost at the same place of the blank space at which the signature appears on the disputed compromise. Production of signed blank vakalatnama and blank paper from the custody of the complainant before the Bar Council belied the appellant’s defence

emphatically raised in his written statement. On 8-4-1994 the presence of the appellant is recorded by the trial court at least at two places in the order-sheet of that date. It is specifically recorded in the context of his making submissions before the court relying on several rulings to submit that personal appearance of the party was not necessary to have the compromise verified and taken on record. The appellant had not moved the court at any time for correcting the record of the proceedings and deleting his appearance only if the order-sheet did not correctly record the proceedings of the court. On and around the filing of the compromise petition before the trial court the appellant was keeping a watch on the proceedings and noting the appointed dates of hearing though he was not actually appearing in the court on the dates other than 8-4-1994. In short, it has been found both by the State Bar Council and the Bar Council of India that the complainant had not entered into any compromise and that he was not even aware of it. Blank vakalatnama and blank paper entrusted by him in confidence to his counsel, i.e. the appellant, were used for the purpose of bringing a false compromise into existence and appointing Shri Anil Sharma, Advocate for the defendant, without his knowledge, to have compromise verified and brought on record followed by a decree. Shri Vidya Bhushan Sharma, the counsel originally appointed by the plaintiff might not have agreed to a decree being secured in favour of the plaintiff on the basis of a false compromise and that is why he was excluded from the proceedings and instead Shri Rajesh Jain was brought to replace him. The decree resulted into closure of the school, demolition of school building and about 2000 students studying in the school being thrown on the road.

14. We have heard the learned counsel for the parties at length. We have also gone through the evidence and the relevant documents available on record of the Bar Council. We are of the opinion that the State Bar Council as well as the Bar Council of India have correctly arrived at the findings of the fact and we too find ourselves entirely in agreement with the findings so arrived at.

15. In the very nature of things there was nothing like emergency, not even an urgency for securing verification of compromise and passing of a decree in terms thereof. Heavens were not going to fall if the recording of the compromise was delayed a little and the defendant was personally produced in the court who was certainly not available in Jaipur being away in the State of U.P. contesting an election. The counsel for the parties were replaced apparently for no reason. The trial court entertained doubts about the genuineness of the compromise and therefore directed personal appearance of the parties for verification of the compromise. The counsel appearing in the case made all possible efforts at avoiding compliance with the direction of the trial court and to see that the compromise was verified and taken on record culminating into a decree without the knowledge of the defendant/complainant. Instead of securing presence of the defendant before the court, the counsel preferred miscellaneous appeals twice and ultimately succeeded in securing an appellate order, which too is collusive, directing the trial court to verify and take on record the compromise without insisting on personal appearance of the defendant. Such miscellaneous appeal, as was preferred, was not maintainable under Section 104 or Order 43 Rule 1 CPC or any other provision of law. In an earlier round the appellate court had

expressed that view. The proceedings in the appellate court as also before the trial court show an effort on the part of the counsel appearing thereat to have the matter as to compromise disposed of hurriedly, obviously with a view to exclude the possibility of the defendant-complainant gathering any knowledge of what was transpiring.

17. ***Byram Pestonji Gariwala* v. *Union of India*** [AIR 1991 SC 2234] is an authority for the proposition that in spite of the 1976 Amendment in Order 23 Rule 3 CPC which requires agreement or compromise between the parties to be in writing and signed by the parties, the implied authority of counsel engaged in the thick of the proceedings in court, to compromise or agree on matters relating to the parties, was not taken away. Neither the decision in ***Byram Pestonji Gariwala*** nor any other authority cited on 8-4-1994 before the trial court dispenses with the need of the agreement or compromise being proved to the satisfaction of the court. In order to be satisfied whether the compromise was genuine and voluntarily entered into by the defendant, the trial court had felt the need of parties appearing in person before the court and verifying the compromise. In the facts and circumstances of the case the move of the counsel resisting compliance with the direction of the court was nothing short of being sinister. The learned Additional District Judge who allowed the appeal preferred by Shri Rajesh Jain unwittingly fell into trap. It was expected of the learned Additional District Judge, who must have been a senior judicial officer, to have seen that he was allowing an appeal which was not even maintainable. But for his order the learned Judge of the trial court would not have taken on record the compromise and passed decree in terms thereof unless the parties had personally appeared before him.

In our opinion the appellant Shri D.P. Chadha was not right in resisting the order of the trial court requiring personal appearance of the defendant for verifying the compromise. The resistance speaks volumes of sinister design working in the minds of the guilty advocates. Even during the course of these proceedings and also during the course of hearing of the appeal before us there is not the slightest indication of any justification behind resistance offered by the counsel to the appearance of the defendant in the trial court. The correctness of the proceedings dated 8-4-1994 as recorded by the court cannot be doubted. The order-sheet of the trial court dated 8-4-1994 records as under:

"*8-4-1994*

(Cutting). Plaintiff with counsel present. *Defendant's counsel Shri D.P. Chadha present.* Arguments heard. Judicial precedents ***Tashi Dorji* v. *Birendra Kumar Roy*** [AIR 1980 Cal 51], ***Vishnu Kumar* v. *State Bank of Bikaner and Jaipur*** [AIR 1976 Raj 195], ***Byram Pestonji*** *cited by Shri D.P. Chadha* perused. In the matter under consideration, compromise was filed on 20-11-1993 and the same day the counsel were directed to keep the parties present in court but parties were not produced. On behalf of the plaintiff-appellant, an appeal was also preferred against the order dated 20-11-1993 before the Hon'ble District and Sessions Judge but the order of trial court being not appealable, appeal has been dismissed.

Para 40 of the decision ***Byram Pestonji*** is as under:

'Accordingly, we are of the view that the words 'in writing and signed by the parties' inserted by the CPC (Amendment) Act, 1976, must necessarily mean, to borrow the language of Order III Rule 1 CPC:

"any appearance, …or by a pleader, appearing, applying or acting as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person."'

Thus in my view the court can direct any party to be present in court under Order III Rule 1 in compliance with the said decision of the Hon'ble Supreme Court. The counsel for the defendant has not produced the defendant in court. Therefore, notice be issued to the defendant to appear personally in court. For service of notice, the case be put up on 5-5-1994. Before (cutting) preparing the decree on the basis of compromise, I deem it proper in the interest of justice to direct the opposite party to personally appear in the court.

Sd/- Illegible Seal of Additional Civil Judge and Additional

Chief Judicial Magistrate No. 6, Jaipur City."

18. The record of the proceedings made by the court is sacrosanct. The correctness thereof cannot be doubted merely for asking. In ***State of Maharashtra*** **v.** ***Ramdas Shrinivas Nayak*** [AIR 1982 SC 1249], this Court has held:

"(T)he Judges' record was conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else. The court could not launch into inquiry as to what transpired in the High Court.

The Court is bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. It cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of facts as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there."

20. The explanation given by the appellant for not moving the trial court for rectification in the record of proceedings is that the presiding Judge of the court had stood transferred and

therefore it would have been futile to move for rectification. Such an explanation is a ruse merely. The application for rectification should have been moved as the only course permissible and, if necessary, the record could have been sent to that very Judge for dealing with the prayer of rectification wherever he was posted. In the absence of steps for rectification having been taken a challenge to the correctness of the facts recorded in the order-sheet of the court cannot be entertained, much less upheld. We agree with the finding recorded in the order under appeal that the proceedings dated 8-4-1994 correctly state the appellant having appeared in the court and argued the matter in the manner recited therein.

21. The term "misconduct" has not been defined in the Act. However, it is an expression with a sufficiently wide meaning. In view of the prime position which the advocates occupy in the process of administration of justice and justice delivery system, the courts justifiably expect from the lawyers a high standard of professional and moral obligation in the discharge of their duties. Any act or omission on the part of a lawyer which interrupts or misdirects the sacred flow of justice or which renders a professional unworthy of right to exercise the privilege of the profession would amount to misconduct attracting the wrath of disciplinary jurisdiction.

22. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject-matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called - and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.

25. An advocate while discharging duty to his client, has a right to do everything fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.

26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.

28. We are aware that a charge of misconduct is a serious matter for a practising advocate. A verdict of guilt of professional or other misconduct may result in reprimanding the advocate, suspending the advocate from practice for such period as may be deemed fit or even removing the name of the advocate from the roll of advocates which would cost the counsel his career. Therefore, an allegation of misconduct has to be proved to the hilt. The evidence adduced should enable a finding being recorded without any element of reasonable doubt. In the present case, both the State Bar Council and the Bar Council of India have arrived at, on proper appreciation of evidence, a finding of professional misconduct having been committed by the appellant. No misreading or non-reading of the evidence has been pointed out. The involvement of the appellant in creating a situation resulting into recording of a false and fabricated compromise, apparently detrimental to the interest of his client, is clearly spelled out by the findings concurrently arrived at with which we have found no reason to interfere. The appellant canvassed a proposition of law before the court by pressing into service such rulings which did not support the interpretation which he was frantically persuading the court to accept. The provisions of Rule 3 of Order 23 are clear. The crucial issue in the case was not the authority of a counsel to enter into a compromise, settlement or adjustment on behalf of the client. The real

issue was of the satisfaction of the court whether the defendant had really, and as a matter of fact, entered into settlement. The trial Judge entertained a doubt about it and therefore insisted on the personal appearance of the party to satisfy himself as to the correctness of the factum of compromise and genuineness of the statement that the defendant had in fact compromised the suit in the manner set out in the petition of compromise.

29. The power of the court to direct personal presence of any party is inherent and implicit in jurisdiction vesting in the court to take decision. This power is a necessary concomitant of court's obligation to arrive at a satisfaction and record the same as spelt out from the phraseology of Order 23 Rule 3 CPC. It is explicit in Order 3 Rule 1. This position of law admits of no doubt. Strong resistance was offered to an innocuous and cautious order of the court by canvassing an utterly misconceived proposition, even by invoking a wrong appellate forum and with an ulterior motive. The counsel appearing for the defendant, including the appellant, did their best to see that their own client did not appear in the court and thereby, gather knowledge of such proceedings. At no stage, including the hearing before this Court, the appellant has been able to explain how and in what manner he was serving the interest of his client, i.e. the defendant in the suit by raising the plea which he did. What was the urgency of having the compromise recorded without producing the defendant in person before the court when the court was insisting on such appearance? The compromise was filed in the court. The defendant was away electioneering in his constituency. At best or at the worst, the recording of the compromise would have been delayed by a few days. In the facts and circumstances of the case we find no reason to dislodge the finding of professional misconduct as arrived at by the State Bar Council and the Bar Council of India.

30. It has been lastly contended by the learned counsel for the appellant that the Bar Council of India was not justified in enhancing the punishment by increasing the period of suspension from practice from 5 years to 10 years. It is submitted that the order enhancing the punishment to the prejudice of the appellant is vitiated by non-compliance with principles of natural justice and also for having been passed without affording the appellant a reasonable opportunity of being heard.

32. Very wide jurisdiction has been conferred on the Bar Council of India by sub-section (2) of Section 37. The Bar Council of India may confirm, vary or reverse the order of the State Bar Council and may remit or remand the matter for further hearing or rehearing subject to such terms and directions as it deems fit. The Bar Council of India may set aside an order dismissing the complaint passed by the State Bar Council and convert it into an order holding the advocate proceeded against guilty of professional or other misconduct. In such a case, obviously, the Bar Council of India may pass an order of punishment which the State Bar Council could have passed. While confirming the finding of guilt the Bar Council of India may vary the punishment awarded by the Disciplinary Committee of the State Bar Council which power to vary would include the power to enhance the punishment. An order enhancing the punishment, being an order prejudicially affecting the advocate, the proviso mandates the exercise of such power to be performed only after giving the advocate reasonable opportunity of being heard. The proviso

embodies the rule of fair hearing. Accordingly, and consistently with the well-settled principles of natural justice, if the Bar Council of India proposes to enhance the punishment it must put the guilty advocate specifically on notice that the punishment imposed on him is proposed to be enhanced. The advocate should be given a reasonable opportunity of showing cause against such proposed enhancement and then he should be heard.

33. In the case at hand we have perused the proceedings of the Bar Council of India. The complainant did not file any appeal or application before the Bar Council of India praying for enhancement of punishment. The appeal filed by the appellant was being heard and during the course of such hearing it appears that the Disciplinary Committee of the Bar Council of India indicated to the appellant's counsel that it was inclined to enhance the punishment. This is reflected by the following passage occurring in the order under appeal:

> "While hearing the matter finally parties were also heard as to the enhancement of sentence."

34. The appellant himself was not present on the date of hearing. He had prayed for an adjournment on the ground of his sickness which was refused. The counsel for the appellant was heard in appeal. It would have been better if the Bar Council of India having heard the appeal would have first placed its opinion on record that the findings arrived at by the State Bar Council against the appellant were being upheld by it. Then the appellant should have been issued a reasonable notice calling upon him to show cause why the punishment imposed by the State Bar Council be not enhanced. After giving him an opportunity of filing a reply and then hearing him the Bar Council could have for reasons to be placed on record, enhanced the punishment. No such thing was done. The exercise by the Bar Council of India of power to vary the sentence to the prejudice of the appellant is vitiated in the present case for not giving the appellant reasonable opportunity of being heard. The appellant is about 60 years of age. The misconduct alleged relates to the year 1993. The order of the State Bar Council was passed in December 1995. In the facts and circumstances of the case we are not inclined to remit the matter now to the Bar Council of India for compliance with the requirements of proviso to sub-section (2) of Section 37 of the Act as it would entail further delay and as we are also of the opinion that the punishment awarded by the State Bar Council meets the ends of justice.

35. For the foregoing reasons the appeal is partly allowed. The finding that the appellant is guilty of professional misconduct is upheld but the sentence awarded by the Rajasthan State Bar Council suspending the appellant from practice for a period of five years is upheld and restored. Accordingly, the order of the Bar Council of India, only to the extent of enhancing the punishment, is set aside.

Shambhu Ram Yadav* v. *Hanuman Das Khatry

(2001) 6 SCC 1

Y.K. SABHARWAL, J. - Legal profession is not a trade or business. It is a noble profession. Members belonging to this profession have not to encourage dishonesty and corruption but have to strive to secure justice to their clients, if it is legally possible. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. There is a heavy responsibility on those on whom duty has been vested under the Advocates Act, 1961 to take disciplinary action when the credibility and reputation of the profession comes under a clout (*sic* cloud) on account of acts of omission and commission by any member of the profession.

A complaint filed by the appellant against the respondent Advocate before the Bar Council of Rajasthan was referred to the Disciplinary Committee constituted by the State Bar Council. In substance, the complaint was that the respondent while appearing as a counsel in a suit pending in a civil court wrote a letter to Mahant Rajgiri, his client inter alia stating that another client of his has told him that the Judge concerned accepts bribe and he has obtained several favourable orders from him in his favour; if he can influence the Judge through some other gentleman, then it is a different thing, otherwise he should send to him a sum of Rs 10,000 so that through the said client the suit is got decided in his (Mahant Rajgiri's) favour. The letter further stated that if Mahant can personally win over the Judge on his side then there is no need to spend money. This letter is not disputed. In reply to the complaint, the respondent pleaded that the services of the Presiding Judge were terminated on account of illegal gratification and he had followed the norms of professional ethics and brought these facts to the knowledge of his client to protect his interest and the money was not sent by his client to him. Under these circumstances it was urged that the respondent had not committed any professional misconduct.

3. The State Bar Council noticing that the respondent had admitted the contents of the letter came to the conclusion that it constitutes misconduct. In the order the State Bar Council stated that keeping in view the interest of the litigating public and the legal profession such a practice whenever found has to be dealt with in an appropriate manner. Holding the respondent guilty of misconduct under Section 35 of the Advocates Act, the State Bar Council suspended him from practice for a period of two years with effect from 15-6-1997.

4. The respondent challenged the aforesaid order before the Disciplinary Committee of the Bar Council of India. By order dated 31-7-1999 the Disciplinary Committee of the Bar Council of India comprising of three members enhanced the punishment and directed that the name of the respondent be struck off from the roll of advocates, thus debarring him permanently from the practice. The concluding paragraph of the order dated 31-7-1999 reads thus:

> In the facts and circumstances of the case, we also heard the appellant as to the punishment since the advocate has considerable standing in the profession. He has served

as an advocate for 50 years and it was not expected of him to indulge in such a practice of corrupting the judiciary or offering bribe to the Judge and he admittedly demanded Rs 10,000 from his client and he orally stated that subsequently order was passed in his client's favour. This is enough to make him totally unfit to be a lawyer by writing the letter in question. We cannot impose any lesser punishment than debarring him permanently from the practice. His name should be struck off from the roll of advocates maintained by the Bar Council of Rajasthan. Hereafter the appellant will not have any right to appear in any court of law, tribunal or before any authority. We also impose a cost of Rs 5000 on the appellant which should be paid by the appellant to the Bar Council of India which has to be paid within two months.

5. The respondent filed a review petition under Section 44 of the Advocates Act against the order dated 31-7-1999. The review petition was allowed and the earlier order modified by substituting the punishment already awarded permanently debarring him with one of reprimanding him. The impugned order was passed by the Disciplinary Committee comprising of three members of which two were not members of the earlier Committee which had passed the order dated 31-7-1999.

6. The review petition was allowed by the Disciplinary Committee for the reasons, which, in the words of the Committee, are these:

"(*1*) The Committee was under the impression as if it was the petitioner who had written a letter to his client calling him to bribe the Judge. But a perusal of the letter shows that the petitioner has simply given a reply to the query put by his client regarding the conduct of the Judge and as such it remained a fact that it was not an offer on the side of the delinquent advocate to bribe a Judge. This vital point which touches the root of the controversy seems to have been ignored at the time of the passing of the impugned order.

(*2*) The petitioner is an old man of 80 years. He had joined the profession in the year 1951 and during such a long innings of his profession, it was for the first time that he conducted himself in such an irresponsible manner although he had no intention to bribe.

(*3*) The Committee does not approve the writing of such a letter on the part of the lawyer to his client but keeping in view the age and the past clean record of the petitioner in the legal profession the Committee is of the view that it would not be appropriate to remove the advocate permanently from the roll of advocates…. The Committee is of the considered view that ends of justice would be met in case the petitioner is reprimanded for the omission he had committed. He is warned by the Committee that he should not encourage such activities in life and he should be careful while corresponding with his client.

In view of the aforesaid observations, the review petition is accepted and the earlier judgment of the Committee dated 31-7-1999 is modified to the extent and his suspension for life is revoked and he is only reprimanded."

7. We have perused the record. The original order has been reviewed on non-existent grounds. All the factors taken into consideration in the impugned order were already on record and were considered by the Committee when it passed the order dated 31-7-1999. The power of review has not been exercised by applying well-settled principles governing the exercise of such power. It is evident that the reasons and facts on the basis whereof the order was reviewed had all been taken into consideration by the earlier Committee. The relevant portion of the letter written by the advocate had been reproduced in the earlier order. From that quotation it was evident that the said Committee noticed that the advocate was replying to a letter received from his client. It is not in dispute that the respondent had not produced the letter received by him from his client to which the admitted letter was sent requiring his client to send Rs 10,000 for payment as bribe to the Judge concerned. We are unable to understand as to how the Committee came to the conclusion that any vital point in regard to the letter had been ignored at the time of the passing of the order dated 31-7-1999. The age and the number of years the advocate had put in had also been noticed in the order dated 31-7-1999. We do not know how the Committee has come to the conclusion that the respondent "had no intention to bribe the Judge". There is nothing on the record to suggest it. The earlier order had taken into consideration all relevant factors for coming to the conclusion that the advocate was totally unfit to be a lawyer having written such a letter and punishment lesser than debarring him permanently cannot be imposed. The exercise of power of review does not empower a Disciplinary Committee to modify the earlier order passed by another Disciplinary Committee taking a different view of the same set of facts.

8. The respondent was indeed guilty of a serious misconduct by writing to his client the letter as aforesaid. Members of the legal profession are officers of the court. Besides courts, they also owe a duty to the society which has a vital public interest in the due administration of justice. The said public interest is required to be protected by those on whom the power has been entrusted to take disciplinary action. The disciplinary bodies are guardians of the due administration of justice. They have requisite power and rather a duty while supervising the conduct of the members of the legal profession, to inflict appropriate penalty when members are found to be guilty of misconduct. Considering the nature of the misconduct, the penalty of permanent debarment had been imposed on the respondent which without any valid ground has been modified in exercise of power of review. It is the duty of the Bar Councils to ensure that lawyers adhere to the required standards and on failure, to take appropriate action against them. The credibility of a Council including its disciplinary body in respect of any profession whether it is law, medicine, accountancy or any other vocation depends upon how they deal with cases of delinquency involving serious misconduct which has a tendency to erode the credibility and reputation of the said profession. The punishment, of course, has to be commensurate with the gravity of the misconduct.

9. In the present case, the earlier order considering all relevant aspects directed expulsion of the respondent from the profession which order could not be lightly modified while deciding a review petition. It is evident that the earlier Committee, on consideration of all relevant facts,

came to the conclusion that the advocate was not worthy of remaining in the profession. The age factor and the factor of number of years put in by the respondent were taken into consideration by the Committee when removal from the roll of the State Council was directed. It is evident that the Bar Council considered that a high standard of morality is required from lawyers, more so from a person who has put in 50 years in the profession. One expects from such a person a very high standard of morality and unimpeachable sense of legal and ethical propriety. Since the Bar Councils under the Advocates Act have been entrusted with the duty of guarding the professional ethics, they have to be more sensitive to the potential disrepute on account of action of a few black sheep which may shake the credibility of the profession and thereby put at stake other members of the Bar. Considering these factors, the Bar Council had inflicted in its earlier order the condign penalty. Under these circumstances, we have no hesitation in setting aside the impugned order dated 4-6-2000 and restoring the original order of the Bar Council of India dated 31-7-1999.

10. The appeal is thus allowed in the above terms with costs quantified at Rs 10,000.

* * * * *

Bhupinder Kumar Sharma* v. *Bar Assn., Pathankot

(2002) 1 SCC 470

SHIVARAJ V. PATIL, J. - The appellant has filed this appeal, under Section 38 of the Advocates Act, 1961 (hereinafter referred to as "the Act") against the judgment and order dated 4-11-1998 passed by the Disciplinary Committee of the Bar Council of India, confirming the

order passed by the Disciplinary Committee of the Bar Council of Punjab and Haryana removing the name of the appellant from the State's Roll of Advocates under Section 35(3)(*d*) of the Act.

2. The appellant was enrolled with the State Bar Council as an advocate on 16-9-1994 vide Enrolment No. P/771/94. On 9-9-1995, the respondent-Association made a written complaint to the State Bar Council making allegations of misconduct against the appellant. The State Bar Council took cognizance of the complaint and referred the complaint to its Disciplinary Committee. After the completion of the proceedings in DCE No. 1 of 1996, order was passed by the Disciplinary Committee of the State Bar Council to remove the name of the appellant from the State's Roll of Advocates and the same was confirmed by the Disciplinary Committee of the Bar Council of India, in appeal. Hence, this appeal.

3. The learned Senior Counsel for the appellant strongly contended that the allegations made in the complaint were not established or proved, judged by the standard of proof required in a case like this; the appellant was not actually carrying on business and the evidence on this point was not properly appreciated; at any rate, the punishment imposed on the appellant is grossly disproportionate even assuming that the misconduct was proved.

4. Per contra, the learned Senior Counsel for the respondent made submissions supporting the impugned order. He drew our attention to the evidence brought on record to show how the findings recorded against the appellant are justified. He also strongly contended that the misconduct of the appellant before and even after filing of the appeals before the Bar Council of India and this Court in continuing the business cannot be condoned; further in spite of giving undertaking before this Court, he is still continuing his business as is supported by the report of the Sub-Judge made to this Court. According to him, the punishment imposed on the appellant is proper in the absence of any good ground to take any lenient view.

6. The complaint contained allegations of misconduct against the appellant for the period prior to the date of enrolment as an advocate and also subsequent to his enrolment. Since the Disciplinary Committee of the State Bar Council did not go into the allegations of misconduct pertaining to the period prior to the date of enrolment, it is unnecessary to refer to them.

7. According to the complainant, the appellant was guilty of professional misconduct as he was carrying on and continued his business and business activities even after his enrolment as an advocate, stating thus:

> "(*i*) he was running a photocopier documentation centre in the court compound, Pathankot, and the space for the same was allotted to the appellant in his personal capacity on account of his being handicapped;
>
> (*ii*) he was running a PCO/STD booth which was allotted in his name from the P&T Department under handicap quota;
>
> (*iii*) he was the Proprietor/General Manager of the Punjab Coal Briquettes, Pathankot, a private concern and he was pursuing the business/his interest in the said business even

on the date when his statement was recorded by the Disciplinary Committee on 12-5-1996."

8. The defence of the appellant was that although he was running business prior to his enrolment, he did not continue the same after his enrolment as an advocate and he ceased to have any business interest, and that it is his father and brother who were carrying on the business after he became an advocate under some oral arrangement. The Disciplinary Committee of the State Bar Council, after considering the evidence placed on record, both oral and documentary, recorded a finding that the appellant was guilty of professional misconduct in carrying on business in the aforementioned concerns even after his enrolment as an advocate and passed order to remove his name from the State's Roll of Advocates under Section 35(3)(*d*) of the Act and debarred him from practising as an advocate. The Disciplinary Committee of the Bar Council of India, in the appeal filed by the appellant on reappreciation of the material on record, concurred with the finding recorded by the Disciplinary Committee of the State Bar Council and held that the appellant was guilty of professional misconduct and that the punishment imposed on him debarring the appellant from practising for all time was just. Hence, dismissed the appeal.

9. In the impugned order, it is also noticed that the appellant submitted his application form for enrolment. Column 12 of the application form reads:

"*12*. Whether or not applicant was engaged or has ever been engaged in any trade, business or profession, if so the nature of such trade, business/profession and the place where it is or was carried on. The answer submitted by the appellant Advocate is as under:

'No, not applicable.' "

10. According to the Disciplinary Committee of the Bar Council of India, the appellant had not only procured enrolment by submitting the false declaration but also suppressed the material fact; otherwise the appellant would not have been enrolled at all. In the said order, it is further stated that as a matter of fact, besides it being a case of misconduct, it is also a case where the name of the appellant could be removed for suppressing the material fact; anyhow, since the reference had not been made for the same, it is left open to the State Bar Council to take such action under Section 26 of the Act.

11. CW 1 Shri Manohar Lal, Senior Telecommunication Office Assistant, has deposed that STD/PCO has been allotted to the appellant on 6-4-1992 in the handicap quota and the same is continuing in the name of the appellant as per the record even after his enrolment as an advocate; no intimation was given by the appellant to the Department to transfer STD/PCO in the name of his brother Satish Mohan. CW 3 Shri Vipin Tripathi, a clerk in the office of SDO in his evidence has stated that space for kiosk for installation of photocopy machine on payment of Rs 120 per month, was allotted on lease basis on 6-5-1991 by the Deputy Commissioner, Gurdaspur, to the appellant in the handicap quota; there was no intimation to change lease in favour of anybody and there is no transfer of lease in favour of any other person; the lease amount is paid even after the appellant's enrolment as an advocate in his name. CW 3 H.S. Pathania, in his evidence has

supported the allegations made in the complaint. The appellant in his evidence has stated that he has no concern with the business of STD/PCO and photostat machine. RW 2 Satish Mohan, the brother of the appellant has stated that he has no arrangement with the appellant regarding PCO. In his cross-examination he has admitted that he is still in the service of Sugar Mills, Dasuya. Hence, it was rightly concluded that STD/PCO business is being run by the appellant himself even after becoming an advocate. RW 3 Shri Puran Chand Sharma, the father of the appellant in his evidence has admitted that the appellant is having his office in the same cabin where the photocopier machine is installed. In the evidence led on behalf of the complainant, it is stated that the site of kiosk for running the photostat business is still in the name of the appellant and lease money is also being paid by the appellant and in the absence of the appellant giving intimation to the Department/authorities concerned regarding handing over of business to Shri Puran Chand Sharma or Satish Mohan, the assertion regarding the oral agreement was not believed by the Disciplinary Committee of the State Bar Council and rightly so in our opinion. The Disciplinary Committee of the State Bar Council in its order has objectively considered the evidence brought on record. As already stated above, the Disciplinary Committee of the Bar Council of India on reappreciation of the evidence has concurred with the findings recorded by the Disciplinary Committee of the State Bar Council based on oral and documentary evidence.

12. Having perused both the orders and the evidence placed on record, we are of the view that the finding recorded holding the appellant guilty of professional misconduct is supported by and based on cogent and convincing evidence even judged by the standard required to establish misconduct as required to prove a charge in a quasi-criminal case beyond reasonable doubt. We do not find any merit in the argument that the misconduct alleged against the appellant was not properly proved by the standard required to prove such a misconduct. There is also no merit in the contention that the evidence was not properly appreciated by both the Disciplinary Committees; nothing was brought on record to discredit the evidence led on behalf of the complainant and no material was placed to support the allegation of the appellant that the members of the respondent-Association had any grudge or ill will against the appellant.

13. It is to be further noticed that this Court on 26-2-1999 passed the following order:

> "Learned counsel for the appellant wants to file an affidavit in the form of an undertaking that the petitioner is not personally engaging himself in any of the family businesses. Adjourned for two weeks."

14. Pursuant to the said order, the appellant has filed affidavit/ undertaking. Para 3 of the affidavit/undertaking reads:

> "I state on oath before this Hon'ble Court that since the day of my enrolment as an advocate, I have not engaged myself in any business except my practice of law as an advocate and I undertake before this Hon'ble Court that I shall not ever engage either actively or otherwise, in any other business or profession while I continue my enrolment as an advocate."

15. The order made by this Court on 2-9-1999 reads:

"Mr Sudhir Walia, learned counsel appearing for the Bar Association, Pathankot placed before us the photographs of the cabin where the photocopying machine is installed. The photograph discloses the name board of the petitioner and also an inscription in Punjabi language 'Bhupindra Photostat Centre'. The learned counsel appearing for the Bar Association, Pathankot says that these photographs placed before us have been taken yesterday only. It is contended that, therefore, the undertaking filed in this Court that the petitioner was not conducting any business in his name, could not be accepted. This fact is disputed by learned Senior Counsel appearing for the petitioner.

We are, therefore, constrained to call for a report from the learned Sub-Judge at Pathankot as to whether the cabin in which the photocopying machine is installed contains, apart from the name board of the petitioner an inscription 'Bhupindra Photostat Centre' and whether such inscription was there till yesterday and is continuing as of today. The learned Sub-Judge shall also furnish the details regarding the allotment of the place within the court compound wherein this cabin has been put up. The report will be submitted within four weeks from today. A copy of this order will be sent to the learned Sub-Judge at Pathankot today itself.

List the matter after the report from the learned Sub-Judge at Pathankot is received."

17. We are unable to say that the concurrent finding recorded by both the Disciplinary Committees against the appellant as to his professional misconduct, is a finding based on no evidence or is based on mere conjecture and unwarranted inference. Hence, the same cannot be disturbed.

18. What remains to be seen is whether the punishment imposed on the appellant is grossly disproportionate. Having regard to the nature of misconduct and taking note of the handicap of the appellant, in our opinion, debarring him from practising for all time is too harsh. We consider it just and appropriate to modify the punishment to debar the appellant from practising up to the end of December 2006. Except the modification of punishment as stated above, the impugned order remains undisturbed in all other respects. The appeal is disposed of in the above terms.

* * * * *

Ex-Capt. Harish Uppal* v. *Union of India

(2003) 2 SCC 45

S.N. VARIAVA, J - All these petitions raise the question whether lawyers have a right to strike and/or give a call for boycott of court/s. In all these petitions a declaration is sought that such strikes and/or calls for boycott are illegal. As the questions vitally concerned the legal profession, public notices were issued to Bar Associations and Bar Councils all over the country. Pursuant to those notices some Bar Associations and Bar Councils have filed their responses and have appeared and made submissions before us.

2. In Writ Petition (C) No. 821 of 1990, an interim order came to be passed. This order is reported in ***Common Cause, A Regd. Society* v. *Union of India*** [(1995) 1 SCALE 6]. The circumstances under which it is passed and the nature of the interim order are set out in the order. The relevant portion reads as under:

> "2. The Officiating Secretary, Bar Council of India, Mr C.R. Balaram 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 10-9-1994 and 11-9-1994 and a working paper was circulated on behalf of the Bar Council of India by 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 the Bar Associations had proceeded on strike on several occasions 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 the profession, the circumstances in which such a step should be resorted to 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*) the Bar Council of India is against resorting to strike excepting in *rarest of rare* cases involving the dignity and independence of the judiciary as well as of the Bar; and (*b*) whenever strikes become inevitable, efforts shall be made to keep it short and *peaceful* to avoid causing hardship to the litigant public.'
>
> 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 30-

11-1994, 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 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 steps.

(*2*) No such member who appears in court or otherwise practises 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 court such as, for instance, wearing of armbands 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 and Disciplinary) Rules, so that it can have statutory support should there be any violation or contravention of the aforementioned 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 court notwithstanding strike calls given by the Bar Council or Bar Association. Besides, members of the legal profession should be alive to the possibility of Judges of different

courts refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with cases."

The above interim order was passed in the hope that better sense could prevail and lawyers would exercise self-restraint. In spite of the above interim directions and the statement of Mr P.N. Duda, the Bar Council of India has not incorporated clauses (*1*) to (*4*) in the Bar Council of India (Conduct and Disciplinary) Rules. The phenomenon of going on strike at the slightest provocation is on the increase. Strikes and calls for boycott have paralysed the functioning of courts for a number of days. It is now necessary to decide whether lawyers have a right to strike and/or give a call for boycott of court/s.

4. Mr Dipankar Gupta referred to various authorities of this Court and submitted that the reasons why strikes have been called by the Bar Associations and/or Bar Councils are:

(*a*) confrontation with the police and/or the legal administration;

(*b*) grievances against the Presiding Officer;

(*c*) grievances against judgments of courts;

(*d*) clash of interest between groups of lawyers; and

(*e*) grievances against the legislature or a legislation.

Mr Gupta submitted that the law was well established. He pointed out that this Court has declared that strikes are illegal. He submitted that even a call for strike is bad. He submitted that it is time that the Bar Council of India as well as various State Bar Councils monitor strikes within their jurisdiction and ensure that there are no call for strikes and/or boycotts. He submitted that in all cases where redressal can be obtained by going to a court of law there should be no strike.

9. The learned Attorney-General submitted that strike by lawyers cannot be equated with strikes resorted to by other sections of the society. He submitted that the basic difference is that members of the legal profession are officers of the court. He submitted that they are obliged by the very nature of their calling to aid and assist in the dispensation of justice. He submitted that strike or abstention from work impaired the administration of justice and that the same was thus inconsistent with the calling and position of lawyers. He submitted that abstention from work, by lawyers, may be resorted to in the rarest of rare cases, namely, where the action protested against is detrimental to free and fair administration of justice such as there being a direct assault on the independence of the judiciary or a provision is enacted nullifying a judgment of a court by an executive order or in case of supersession of judges by departure from the settled policy and convention of seniority. He submitted that even in cases where the action eroded the autonomy of the legal profession e.g. dissolution of Bar Councils and recognized Bar Associations or packing them with government nominees, a token strike of one day may be resorted to. He submitted, even in the above situations the duration of abstention from work should be limited to

a couple of hours or at the maximum one day. He submitted that the purpose should be to register a protest and not to paralyse the system. He suggested that alternative forms of protest can be explored e.g. giving press statements, TV interviews, carrying banners and/or placards, wearing black armbands, peaceful protest marches outside court premises etc. He submitted that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. He submitted that all attempts should be made to seek redressal from the authorities concerned. He submitted that where such redressal is not available or not forthcoming, the direction of the protest can be against that authority and should not be misdirected e.g. in cases of alleged police brutalities, courts and litigants should not be targeted in respect of actions for which they are in no way responsible. He agreed that no force or coercion should be employed against lawyers who are not in agreement with the "strike call" and want to discharge their professional duties.

11. Before considering the question raised it is necessary to keep in mind the role of lawyers in the administration of justice and also their duties and obligations as officers of this Court. In the case of ***Lt. Col. S.J. Chaudhary*** **v.** ***State (Delhi Admn.)*** [(1984) 1 SCC 722], the High Court had directed that a criminal trial goes on from day to day. Before this Court it was urged that the advocates were not willing to attend day to day as the trial was likely to be prolonged. It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend.

12. In the case of ***K. John Koshy*** **v.** ***Dr Tarakeshwar Prasad Shaw*** [(1998) 8 SCC 624], one of the questions was whether the court should refuse to hear a matter and pass an order when counsel for both the sides were absent because of a strike call by the Bar Association. This Court held that the court could not refuse to hear the matter as otherwise it would tantamount to the court becoming a privy to the strike.

20. Thus the law is already well settled. It is the duty of every advocate who has accepted a brief to attend trial, even though it may go on day to day and for a prolonged period. It is also settled law that a lawyer who has accepted a brief cannot refuse to attend court because a boycott call is given by the Bar Association. It is settled law that 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. It is settled law that courts are under an obligation to hear and decide cases brought before them and cannot adjourn matters merely because lawyers are on strike. The law is that it is the duty and obligation of courts to go on with matters or otherwise it would tantamount to becoming a privy to the strike. It is also settled law that if a resolution is passed by Bar Associations expressing want of confidence in judicial officers, it would amount to scandalising the courts to undermine its authority and thereby the advocates will have committed contempt of court. Lawyers have known, at least since ***Mahabir Singh*** case that if they participate in a boycott or a strike, their action is ex facie bad in view of the declaration of law by this Court. A lawyer's duty is to boldly ignore a call for strike or boycott of court/s. Lawyers have also known, at least since ***Ramon Services*** case

[(2001) 1 SCC 118], that the advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

21. It must also be remembered that an advocate is an officer of the court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the court. They owe a duty to their clients. Strikes interfere with administration of justice. They cannot thus disrupt court proceedings and put interest of their clients in jeopardy. In the words of Mr H.M. Seervai, a distinguished jurist:

> "Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For, once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts. '*In my submission*', he said that 'it is high time that the Supreme Court and the High Courts make it clear beyond doubt that they will not tolerate any interference from any body or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Courts maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill will."

22. It was expected that having known the well-settled law and having seen that repeated strikes and boycotts have shaken the confidence of the public in the legal profession and affected administration of justice, there would be self-regulation. The abovementioned interim order was passed in the hope that with self-restraint and self-regulation the lawyers would retrieve their profession from lost social respect. The hope has not fructified. Unfortunately strikes and boycott calls are becoming a frequent spectacle. Strikes, boycott calls and even unruly and unbecoming conduct are becoming a frequent spectacle. On the slightest pretence strikes and/or boycott calls are resorted to. The judicial system is being held to ransom. Administration of law and justice is threatened. The rule of law is undermined.

23. It is held that submissions made on behalf of the Bar Council of U.P. merely need to be stated to be rejected. The submissions based on the Advocates Act are also without merit. Section 7 of the Advocates Act provides for the functions of the Bar Council of India. None of the functions mentioned therein authorise paralysing of the working of courts in any manner. On the contrary, the Bar Council of India is enjoined with the duty of laying down standards of professional conduct and etiquette for advocates. This would mean that the Bar Council of India ensures that advocates do not behave in an unprofessional and unbecoming manner. Section 48-A gives a right to the Bar Council of India to give directions to the State Bar Councils. The Bar Associations may be separate bodies but all advocates who are members of such Associations are

under disciplinary jurisdiction of the Bar Councils and thus the Bar Councils can always control their conduct. Further, even in respect of disciplinary jurisdiction the final appellate authority is, by virtue of Section 38, the Supreme Court.

25. In the case of ***Supreme Court Bar Assn.* v. *Union of India*** [(1998) 4 SCC 409], it has been held that professional misconduct may also amount to contempt of court (para 21). It has further been held as follows:

> "*79*. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor-General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for 'professional misconduct', on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution 'all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court'. The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act 'in aid of the Supreme Court'. It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court

of the privileges of the Bar. In case the Bar Council, even after receiving 'reference' from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals."

Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of the Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct. This being their duty no Bar Council can even consider giving a call for strike or a call for boycott. It follows that the Bar Councils and even Bar Associations can never consider or take seriously any requisition calling for a meeting to consider a call for a strike or a call for boycott. Such requisitions should be consigned to the place where they belong viz. the waste-paper basket. In case any Association calls for a strike or a call for boycott the State Bar Council concerned and on their failure the Bar Council of India must immediately take disciplinary action against the advocates who give a call for strike and if the Committee members permit calling of a meeting for such purpose, against the Committee members. Further, it is the duty of every advocate to boldly ignore a call for strike or boycott.

26. It must also be noted that courts are not powerless or helpless. Section 38 of the Advocates Act provides that even in disciplinary matters the final appellate authority is the Supreme Court. Thus even if the Bar Councils do not rise to the occasion and perform their duties by taking disciplinary action on a complaint from a client against an advocate for non-appearance by reason of a call for strike or boycott, on an appeal the Supreme Court can and will. Apart from this, as set out in ***Ramon Services*** case every court now should and must mulct advocates who hold *vakalats* but still refrain from attending courts in pursuance of a strike call with costs. Such costs would be in addition to the damages which the advocate may have to pay for the loss suffered by his client by reason of his non-appearance.

28. The Bar Council of India has since filed an affidavit wherein extracts of a joint meeting of the Chairmen of various State Bar Councils and members of the Bar Council of India, held on 28-9-2002 and 29-9-2002, have been annexed. The minutes set out that some of the causes which result in lawyers abstaining from work are:

(I) Local issues

1. Disputes between lawyer/lawyers and the police and other authorities.

2. Issues regarding corruption/misbehaviour of judicial officers and other authorities.

3. Non-filling of vacancies arising in courts or non-appointment of judicial officers for a long period.

4. Absence of infrastructure in courts.

(*II*) *Issues relating to one section of the Bar and another section*

1. Withdrawal of jurisdiction and conferring it to other courts (both pecuniary and territorial).

2. Constitution of Benches of High Courts. Disputes between the competing District and other Bar Associations.

(*III*) *Issues involving dignity, integrity, independence of the Bar and judiciary*

(*IV*) *Legislation without consultation with the Bar Councils*

(*V*) *National issues and regional issues affecting the public at large/the insensitivity of all concerned.*

29. At the meeting, it is then resolved as follows:

"RESOLVED to constitute Grievance Redressal Committees at the taluk/sub-division or tehsil level, at the district level, High Court and Supreme Court levels as follows:

(*I*)(*a*) A committee consisting of the Hon'ble Chief Justice of India or his nominee, Chairman, Bar Council of India, President, Supreme Court Bar Association, Attorney-General of India.

(*b*) At the High Court level a committee consisting of the Hon'ble Chief Justice of the State High Court or his nominee, Chairman, Bar Council of the State, President or Presidents of the High Court Bar Association, Advocate-General, Member, Bar Council of India from the State.

(*c*) At the district level, District Judge, President or Presidents of the District Bar Association, District Government Pleader, member of the Bar Council from the district, if any, and if there are more than one, then senior out of the two.

(*d*) At taluk/tehsil/sub-division, seniormost Judge, President or Presidents of the Bar Association, Government Pleader, representative of the State Bar Council, if any.

(*II*) Another reason for abstention at the district and taluk level is arrest of an advocate or advocates by the police in matters in which the arrest is not justified. Practice may be adopted that before arrest of an advocate or advocates, President, Bar Association, the District Judge or the seniormost Judge at the place be consulted. This will avoid many instances or abstentions from court.

(*III*) IT IS FURTHER RESOLVED that in the past abstention of work by advocates for more than a day was due to inaction of the authorities to solve the problems that the advocates placed.

(*IV*) IT IS FURTHER RESOLVED that in all cases of legislation affecting the legal profession which includes enactment of new laws or amendments of existing laws, matters relating to jurisdiction and creation of tribunal, the Government both Central and State should initiate the consultative process with the representatives of the profession and take into consideration the views of the Bar and give utmost weight to the same and the State Government should instruct their officers to react positively to the issues involving the profession when they are raised and take all steps to avoid confrontation and inaction and in such an event of indifference, confrontation etc. to initiate appropriate disciplinary action against the erring officials and including but not limited to transfer.

(*V*) The Councils are of the view that abstentions of work in courts should not be resorted to except in exceptional circumstances. Even in exceptional circumstances, the abstention should not be resorted to normally for more than one day in the first instance. The decision for going on abstention will be taken by the General Body of the Bar Association by a majority of two-third members present.

(*VI*) It is further resolved that in all issues as far as possible legal and constitutional methods should be pursued such as representation to authorities, holding demonstrations and mobilising public opinion etc.

(*VII*) It is resolved further that in case the Bar Associations deviate from the above resolutions and proceed on cessation of work in spite or without the decision of the Grievance Redressal Committee concerned except in the case of emergency the Bar Council of the State will take such action as it may deem fit and proper, the discretion being left to the Bar Council of the State concerned as to enforcement of

such decisions and in the case of an emergency the Bar Association concerned will inform the State Bar Council.

The Bar Council of India resolves that this resolution will be implemented strictly and the Bar Associations and the individual members of the Bar Associations should take all steps to comply with the same and avoid cessation of the work except in the manner and to the extent indicated above."

30. Whilst we appreciate the efforts made, in view of the endemic situation prevailing in the country, in our view, the above resolutions are not enough. It was expected that the Bar Council of India would have incorporated clauses as those suggested in the interim order of this Court in their disciplinary rules. This they have failed to do even now. What is at stake is the administration of justice and the reputation of the legal profession. It is the duty and obligation of the Bar Council of India to now incorporate clauses as suggested in the interim order. No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. It must be remembered that if such omission continues, particularly when there is an apparent threat to the administration of justice and fundamental rights of citizens i.e. the litigating public, courts will always have authority to compel or enforce the exercise of the power by the statutory authority. The courts would then be compelled to issue directions as are necessary to compel the authority to do what it should have done on its own.

31. It must immediately be mentioned that one understands and sympathises with the Bar wanting to vent their grievances. But as has been pointed out there are other methods e.g. giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. More importantly in many instances legal remedies are always available. A lawyer being part and parcel of the legal system is instrumental in upholding the rule of law. A person cast with the legal and moral obligation of upholding law can hardly be heard to say that he will take the law in his own hands. It is therefore time that self-restraint be exercised.

34. One last thing which must be mentioned is that the right of appearance in courts is still within the control and jurisdiction of courts. Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such

a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also

shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.

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 of court premises banners and/or placards, wearing black or white or any colour armbands, 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 refuse to 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 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.

36. It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self-restraint will be exercised. The petitions stand disposed of accordingly.

37. Hence, it is directed that (*a*) all the Bar Associations in the country shall implement the resolution dated 29-9-2002 passed by the Bar Council of India, and (*b*) under Section 34 of the Advocates Act, the High Courts would frame necessary rules so that appropriate action can be taken against defaulting advocate/advocates.

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ADVOCATES RIGHT TO TAKE UP LAW TEACHING

The Advocates Right to take up Law Teaching Rules, 1979

[Rules made by the Bar Council of India under Section 49A of the Advocates Act, 1961]

"3. *Right of practicing advocates to take up law teaching.-* (1) Notwithstanding anything to the contrary contained in any rule under this Act, an advocate may, while practising, take up teaching of law in any educational institution which is affiliated to a University within the meaning of the University Grants Comission Act, 1956 (3 of 1956), so long as the hours during which he is so engaged in the teaching of law do not exceed three hours a day."

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Anees Ahmed* v. *University of Delhi

AIR 2002 Del 440

CW. 3412/97 : This writ petition was filed by the petitioners by way of public interest litigation for a direction to respondent No. 1/Delhi University to take disciplinary action against all Full Time Law Teachers of the Delhi University, who were practicing in the courts and also praying for a direction to prohibit all Full Time Law Teachers of the Faculty of Law of the University of Delhi from carrying on legal practice/profession and also from appearing in the courts of law any manner. The petitioner had also sought for a direction to the Delhi State Bar Council, respondent No. 3 to cancel the enrolment/licence to practice given to Full Time Law Teachers. The petitioner No. 1 was an Advocate practicing in the High Court of Delhi and had filed the writ petition as he was interested in the advancement of legal education in India. The petitioner No. 2, at the time of filing of the writ petition, was a Law Graduate, who passed out and obtained Degree of law at the relevant time when the writ petition was being filed.

C.W. 3519/97 : This writ petition was filed by the petitioner, who was a Professor of Law the Faculty of Law, of the University of Delhi. The petitioner was initially appointed as a Lecturer in Law and posted at Law Centre-II of the Faculty of Law of the University of Delhi in August, 1971. Thereafter the petitioner got his promotion and in due course of time, became a Professor in Law in the Faculty of Law of the University of Delhi. The petitioner filed the present petition challenging the order passed by the Bar Council of India on 9-8-1997 cancelling and removing the name of the petitioner from the roll of Advocates of the Bar Council with a further direction