CASE COMMENT: EX-CAPT HARISH UPPAL V. UNION OF INDIA & ANR

Jayaditya Gupta*

Court	Hon'ble Supreme Court of India.
Case No	Writ Petition No 132 of 1988.
Date of The Order	17th December 2002.
Citation	Ex–Capt Harish Uppal V. Union of India, Bar Council And Associaton of India (2003) 3 SCC 45.
Quorum	Bench comprise of CJI (Gopal Ballav Pattanaik), Doraiswamy Raju, S.N. Variava, D.M. Dharmadhikari.
Author of Judgement	Hon'ble Justice S.N. Variava.
Petitioner	Ex-Cap Harish Uppal.
RespondentS	• Respondent No 1 Union of India. • Respondent No 2 The Bar Council of India. • Respondent No 3 The Bar council of the High courts.

*BA LLB, FIFTH YEAR, HIMACHAL PRADESH UNIVERSITY.

	• Respondent No 4 The Bar Associations of high courts and supreme court.

INTRODUCTION

Over 3 crore cases are pending in the Supreme Court[1], 25 High Courts[2] and their Subordinate courts[3] collectively. These stats may seem astonishing to many but still not enough to counter the propensity of lawyers to go on strike. This conduct not only disenchants the litigant public but also affects the outlook of lex forti validation in the country. We are living in that period of time where advocates who are commonly known as law enforcers themselves defy and infringe the laws that are contrary to their beliefs.

This case comment provides us with a comprehensive analysis of Harish Uppal v. Union of India & Anr[4] a landmark judgement apropos wide issue of lawyer protest/strike, case details, arguments of both parties, judgement, comment and conclusion.

FACTS

The petitioner, Harish Uppal, had a background as a retired army officer who served during the 1971 Liberation War in Bangladesh. Following the war, he faced allegations of embezzlement and other irregularities. In 1972, he was court-martialed, arrested, and subsequently sentenced to two years of imprisonment. Additionally, he was dismissed from his position.

Seeking recourse, Harish Uppal filed a review application in the court, but unfortunately, it did not yield any positive outcome. Undeterred, he proceeded to file a post-affirmation application but received no response for a considerable period of time. It was only after 11 years that he finally received a reply. However, by then, the time period for review had expired. The delay

[1] Supreme Court Of India, 'National Judicial Data Grid' < https://njdg.ecourts.gov.in/scnjdg/ > accessed on 28 October 2023.
[2] High Courts, 'National Judicial Data Grid' < https://njdg.ecourts.gov.in/hcnjdgnew/ > accessed on 28 October 2023.
[3] District and Taluka Court, 'National Judicial Data Grid' < https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard > accessed on 28 October 2023.
[4] Harish Uppal v. Union of India & Anr (2003) 3 SCC 45

in processing his case was attributed to the misplacement of documents and review applications, which occurred during a strike undertaken by a group of advocates.

In response to these circumstances, Harish Uppal decided to file a writ petition in the Supreme Court, seeking a declaration that strikes initiated by legal advocates are unlawful.

ISSUE RAISED

1. Whether disputes between lawyers and the police authority are a valid 'rare of rarest cause' for a lawyer to extend a strike/boycott for more than a day or not.
2. Whether lawyers' strikes for the Issue involving Dignity, Integrity, and Independence of the Bar and Judiciary are legitimate or not.
3. Whether a lawyer can strike against Legislation without consultation with the Bar Councils or not.

ARGUMENTS OF PETITIONERS

The argument posits that strikes are typically recognized as a legitimate tool for collective bargaining in industrial disputes. However, it is contended that lawyers, who hold the responsibility of being officers of the court, should refrain from utilizing strikes as a means to exert undue pressure on the courts or their clients. The assertion is made that when lawyers call for a strike, it can be interpreted as a breach of the contractual obligations they have with their clients. This viewpoint suggests that lawyers should find alternative methods for addressing their concerns and grievances without resorting to strikes, considering their unique role within the legal profession and the inherent responsibilities that come with it.

He contended that as per legal norms when a lawyer accepts a vakalatnama on behalf of a client, it becomes their professional obligation to attend court. Failure to fulfill this duty would constitute professional misconduct and potentially be regarded as contempt of court. To address this issue, he proposed that the court should establish regulations governing the appearance of lawyers before the court. These regulations should explicitly state that any lawyer who engages in misconduct or commits contempt of court by participating in strikes or boycotting court proceedings should be barred from practising in that specific court. Additionally, he argued that no association or bar council holds any legal or moral authority to convene a meeting to discuss and endorse an illegal act. Thus, he urged the court to issue a mandamus to the bar

council, directing them to formulate rules in alignment with the interim directions already provided by the court.

ARGUMENTS OF RESONDENTS

He asserted that strikes organized by lawyers should not be equated with strikes carried out by other sectors of society. The fundamental distinction, he argued, stems from the fact that members of the legal profession serve as officers of the court. Due to the inherent nature of their calling, they are duty-bound to aid and facilitate the dispensation of justice. He emphasized that lawyers resorting to work abstention should only do so in rare circumstances that pose a direct threat to the fair and impartial administration of justice. Such circumstances may include a direct assault on judicial independence, the enactment of provisions that invalidate court judgments through executive orders, or the supersession of judges in violation of established policies and seniority conventions.

He suggested that in cases where the autonomy of the legal profession is undermined, the duration of work abstention should be limited to a few hours or, at most, one day. The purpose of such abstention, he contended, should be to express a protest rather than bring the entire system to a standstill. He further proposed exploring alternative forms of protest, such as issuing press statements, participating in television interviews, displaying banners or placards, wearing black armbands, or engaging in peaceful protest marches outside court premises. He stressed the importance of exhausting all available means to seek redress from the relevant authorities before resorting to strike action. In situations where such redress is not attainable or forthcoming, he recommended directing the protest towards the responsible authority, rather than targeting the courts and litigants who bear no responsibility for the alleged grievances.

He concurred that no force or coercion should be employed against lawyers who dissent from strike calls and choose to fulfill their professional duties.

JUDGEMENT

Apex court directed that it is settled law and responsibility of every advocate who has acknowledged vakalatlama to attend the trial and thus cannot deny to attend it or boycott it on call from the Bar Association. The court is under a compulsion to hear the matters and cannot adjourn it or otherwise, it would to tantamount to becoming a privy to the strike[5] Lawyers have

[5] Harish Uppal V. Union of India & Anr Para 20.

a responsibility and obligation to uphold the smooth functioning of the court system. They owe a duty to their clients to ensure their interests are safeguarded. Strikes, on the other hand, disrupt the administration of justice and can potentially jeopardize the interests of clients. Therefore, lawyers cannot engage in activities that disrupt court proceedings and compromise the well-being of their clients.

Apex court rejected the submissions made on behalf of the Bar Council of U.P as during analysis it became clear that submissions made on advocates act are not up to the mark.

The constitutional bench of this court held that it is a respectable duty of the Bar Council to uphold the dignity of the very court and to counter all types of unprofessional acts, no bar council should ever consider a call to a respectable Bar Association for strikes or boycott i.e., to create hindrance in the procedure established by law and any requisition to boycott, the strike should be consigned to the place it actually belongs the waste paper basket.[6]

The court also directed of formation of a grievance redressal committee at the Taluk/subdivision Tehsil level, at the district level, High court and supreme court.[7] Even then court held the abstention should not be more than one day. Taking further cognizance the court stated that "they are not powerless or helpless Section 38 of the Advocate Act provides that even in disciplinary matters the final appellate authority is the Apex Court".[8]

COMMENT

Harish Uppal v. Union of India and Anr is a landmark judgement that sets new precedents, concerning advocates' strikes/boycotts, Apex court critical thinking sets remarks for this increasing issue, moving forward towards the desired egalitarian society.

But it's still not enough as there are rising violations and breaches of this verdict in the name of a wider interpretation of 'rarest of rare instances' which has taken the place of the 'new normal' in the current bar council and association critical thinking aspect.

In their respectable judgement, the Apex has taken the reference of Roman Service Pvt. Ltd[9] case where the court pursuant to strike calls made by associations "directed the concerned

[6] Harish Uppal V. Union of India & Anr Para 25.
[7] Harish Uppal V. Union of India & Anr Para 29
[8] Harish Uppal V. Union of India & Anr Para 26.
[9] Roman Service Pvt. Ltd. V. Subhash Kapoor (2001) 1 SCC 118

advocate to pay half the amount of the cost imposed on his clients"[10] These inferred should be taken into considerations so as to validate this landmark judgement more practical.

It is high time, irrefutable changes be made to safeguard the fundamental rights of the litigant public.

[10] Ibid