

IN THE SUPREME COURT OF INDIA

CONTEMPT PETITION NO. _____ OF 2015

IN

WRIT PETITION (CIVIL) NO. 821 OF 1990

IN THE MATTER OF:

Common Cause (A registered society)
Through its Director
5, Institutional Area
Nelson Mandela Road
Vasant Kunj, New Delhi-110070
Email: commoncauseindia@gmail.com
Ph: 9818399055

...APPLICANT

VERSUS

1. SHRI. ABHIJAT
HONY. SECTERARY
DELHI HIGH COURT BAR ASSOCIATION
DELHI HIGH COURT
NEW DELHI-110001
2. SHRI R.K WADHWA
CHAIRMAN
DELHI COORDINATION COMMITTEE
OF DISTRICT BAR ASSOCIATION,
No 186, Patiala House Court,
Patiala House Court, New Delhi,
Delhi 110001.
3. BAR COUNCIL OF INDIA
THROUGH ITS CHAIRMAN
21, ROUSE AVENUE INSTITUTIONAL AREA,
NEAR BAL BHAWAN,
NEW DELHI – 110002

...RESPONDENTS

IN THE MATTER OF:

COMMON CAUSE
(A REGISTERED SOCIETY)
A-31, WEST END,
NEW DELHI-110021

THROUGH ITS DIRECTOR
H. D. SHOURIE

..... Petitioner.

Versus

1) UNION OF INDIA,
MINISTRY OF LAW & JUSTICE,
SHASTRI BHAWAN,
DR. RAJENDRA PRASAD ROAD
THROUGH ITS SECRETARY.

2) BAR COUNCIL OF INDIA,
THROUGH ITS PRESIDENT,
AB/2, LAL BAHADUR SHASTRI MARG,
(FACING SUPREME COURT BUILDING),
NEW DELHI-110001

...RESPONDENTS

**APPLICATION ON BEHALF OF THE APPLICANTS U/S 12
OF THE CONTEMPT OF COURTS ACT, 1971 READ WITH
RULE 3 (c) OF THE RULES TO REGULATE PROCEEDINGS
FOR CONTEMPT OF THE SUPREME COURT, 1975 FOR
INITIATING CONTEMPT PROCEEDINGS AGAINST THE
ABOVE-NAMED ALLEGED CONTEMNOR FOR NON-
COMPLIANCE OF THE JUDGMENT DATED 17.12.2002 OF
THIS HON'BLE COURT IN THE AFORE-MENTIONED WRIT
PETITION (CIVIL) 821 OF 1990 REPORTED AS (2003) 2
SCC 45.**

To,

The Hon'ble Chief Justice of India

And his companion justices of the Supreme Court of India

Most respectfully showeth:

1. That the applicant above-named is filing the instant application seeking initiation of contempt proceedings against the above-named alleged Contemnor for willfully and deliberately disobeying the explicit direction of this Hon'ble Court issued vide judgment dated 17.12.2002 in the above mentioned Writ Petitions (Civil). This Hon'ble Court was pleased to observe lawyers have no right to go on strike nor can they give any call for boycott. This Hon'ble Court has further stated that lawyers refusing to respond to such a call cannot be visited with any adverse consequences by the Bar Association or the Bar Council. The concluding para of the judgment dated 17.12.2002 reported as (2003)2 SCC 45 has been reproduced as follows:

“.....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 arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot attend Courts in pursuance to 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 Advocate decide to absent themselves from Court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be addition to damages which he might have to pay his client for loss suffered by him.....”

A Copy of the aforesaid judgment dated 17.12.2002 reported as (2003) 2 SCC 45 is being annexed hereto as **Annexure A** (from page nos. _____ to _____).

FACTS LEADING TO CONTEMPT CASE:

2. That the move to amend the Delhi High Court Act came in the wake of a recommendation made by a former Chief Justice of the Delhi High Court which was accepted by the then Delhi Chief Minister Sheila Dikshit who had forwarded it to the Centre for further action. The Bill for enhancement of pecuniary jurisdiction was introduced in Rajya Sabha on February 11, 2014. The Committee headed by Rajya Sabha MP E.M. Sudarsana Natchiappan tabled its report in both the Houses of Parliament on November 28, 2014. The Amendment Bill, 2014 which proposes that the civil suits up-to INR 2 crores will be heard by the District Courts instead of the Delhi High Court. Currently all suits above INR 20 lakh are heard by the High Court.
3. That after the union government listed the Delhi High Court (Amendment) Bill, 2015 in Lok Sabha for its monsoon session starting from 21.07.2015. Lawyer's body of Delhi High Court called for abstinence of work and sought that the Commercial Courts Bill 2015, which calls for the creation of dedicated courts for commercial cases at the trial court and High Court levels, and fixes the pecuniary jurisdiction of all High Courts in commercial cases, should be tabled along with the Delhi High Court Amendment Bill.

4. That Delhi High Court Bar Association (DHCBA) on 22.07.2015 called for abstinence of work with regard Commercial Court Bill for two days. Then on 23.07.2015 DHCBA issued a notice/circular on its website www.dhcba.com declaring total abstinence from working on 24.07.2015 and also issued to list of proxy counsels for each court. No other person other than the proxy counsel would be allowed to appear before the Hon'ble Courts. Such proxy counsels manage to adjourn the cases without any objection from the bench as well. Similarly, on 25.07.2015 notice with regard to abstinence on 27.07.2015 was uploaded on the website. Copy of the notification of DHCBA dated 23.07.2015, 25.07.2015 has annexed as **Annexure B (from page nos. _____ to _____)**).

5. That all district court bar associations have called for a complete abstinence of work through coordination committee till Delhi High Court (Amendment) Bill, 2015 is not passed by Lok Sabha. These Bar Associations both in High Court and District Courts have been repeated seeking abstinence/boycotts from all the lawyers from last two years over the said issue. Advocate being an officer of the Court enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the Court. They owe a duty to their client. 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 Court make it clear beyond doubt that they will not tolerate any interference from anybody or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Court 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."

Copy of the various news reports dated 21.07.2015 & 22.07.2015 have been annexed as **Annexure C (from page nos. _____ to _____)**.

6. That every Court has a solemn duty to proceed with the judicial business during Court hours and the Court is not obliged to adjourn a case because of a strike call. The Court is under an obligation to hear and decide cases brought before it and it cannot shirk that obligation on the ground that the advocates are on strike. If the counsel or/and the party does not appear, the necessary consequences contemplated in law should follow. The Court should not become privy to the strike by adjourning the case on the ground that lawyers are on strike. Strike infringes the litigant's fundamental right for speedy trial and the Court cannot remain a mute spectator or throw up its hands in helplessness on the face of such continued violation of the fundamental right. Copy of some of the order passed by the Hon'ble Courts of Delhi High Court for the dates 22.07.2015, 23.07.2015 and 24.07.2015. **Annexure D (from page nos. _____ to _____)**.

7. That during the time when the DHCBA had sought abstinence from working several conscious lawyers, who tried to cast their appearances and wanted to fulfil their professional duty, were ill-treated and manhandled by some members of the association both in and outside the court complex. Also, some DHCBA members assembled on the entrance doors of the High

Court premises and did not allow the lawyers interested in performing their professional duties to enter the premises till all the cases in the courts were adjourned. These kinds of indecent acts by the DHCBA and other such associations are bringing bad name and ill repute to the noble legal profession. It is below the dignity, honour and status of the members of the noble profession of law to organize and participate in strikes. It is unprofessional and unethical to do so. In view of the nobility and tradition of the legal profession, the status of the lawyer as an officer of the court and the fiduciary character of the relationship between a lawyer and his client and since strike interferes with the administration of justice and infringes the fundamental right of litigants for speedy trial of their cases, strike by lawyers cannot be approved as an acceptable mode of protest, irrespective of the gravity of the provocation and the genuineness of the cause. Lawyers must adopt other modes of protest which will not interrupt or disrupt court proceedings or adversely affect the interest of the litigant.

- 8.** That it has also been learned that President of Delhi High Court Bar Association who has criticised the on-going strike of the Bar Association and termed it as a “Futile Exercise” has himself faced the consequence of suspension for such comment from the Executive Committee of Delhi High Court Bar Association. Copy of the media reports dated 24.07.2015

have been annexed as **Annexure E (from page nos. _____ to _____)**).

9. That despite there being a complete prohibition on calling of strikes and boycotts especially on such trivial issues of Pecuniary Jurisdiction, contemnors have been repeatedly indulging in such activities and forcing their will on other Advocates. Also, refusing to respond to such a call cannot be visited with any adverse consequences by the Bar Association. In view of the abovementioned facts it is respectfully submitted that this Hon'ble Court may be pleased to:

PRAYERS

- a)** Initiate contempt proceeding against the alleged Contemnor/Respondents NO. 1 & 2 for willfully and deliberately disobeying the direction of this Hon'ble Court vide judgment dated 17.12.2002 passed in the aforementioned Writ Petition;
- b)** Issue a writ of mandamus or appropriate writ directing Respondent no. 3 (Bar Council of India) to incorporate appropriate rule prohibiting the use of strike by advocates in the "Standards for Professional Conduct and Etiquette" framed under Section 49(1)(c) of the Advocates Act, 1961.
- c)** Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(PrashantBhushan)
Counsel for the Applicant

Drawn by: Syed Musaib, Advocate
New Delhi
Dated:

**IN THE SUPREME COURT OF INDIA
CONTEMPT PETITION NO. _____ OF 2015
IN
WRIT PETITION NO. 821 OF 1990**

IN THE MATTER OF:

COMMON CAUSE ...APPLICANT

Versus

SHRI. ABHIJAT &Ors ...RESPONDENTS

A F F I D A V I T

I, VipulMudgal ,S/o: Shri. Jai Kumar Mudgal, Director, Common Cause (Registered Society), 5, Institutional Area, Nelson Mandela Road, VasantKunj, New Delhi-110070, do hereby solemnly affirm as under:

1. That I am the Director of Applicant Society in the aforementioned Contempt Petition and being familiar with the facts and circumstances of the case, I am competent and authorized to swear this Affidavit.
2. That all the averments have been read over to be in vernacular language and have understood the contents of the Contempt

Petition (Page No._____ to _____). I state that the facts therein are true and correct to the best of my knowledge and based on information received by me from various reliable sources which I believe to be true and nothing material has been concealed therefrom.

3.I further state that all the Annexures to the Contempt Petition are true copies of their respective originals. I further state and submit that the names of the main parties are same as that of writ Petition.