

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 3

JANUARY 1992

PART 10

HC Convicts Lawyers

In a trend setting judgment dated 19-12-91 the full bench of the Delhi High Court convicted seven lawyers for disrupting the court's work on 26-9-91 in Tis Hazari in connection with the lawyers' agitation. The court having found them guilty and convicting them did not choose to sentence them. On the other hand the court was of the opinion that the behaviour of those lawyers may be watched for one year. The convicted lawyers included the president and other office bearers of the Advocate's Association.

Transfers / Postings

□ By a notification dated 12 / 16th December 1991 the following transfers and postings of the District Judges are ordered in the interest of public service. R.G. Sejkan, District and Sessions Judge, Bidar as Presiding Officer, Labour Court, Bangalore ; K. Sreedhar Rao, Additional Judge, City Civil Court, Bangalore as District and Sessions Judge, Karwar ; V.G. Sabhahit, Additional Judge, City Civil Court, Bangalore as District and Sessions Judge, Chitradurga ; S. K. Venkata Reddy, Additional Judge, City Civil Court, Bangalore as District and Sessions Judge, Bidar ; P. Seetharamaiah, Additional District and Sessions Judge, Belgaum as Additional District and Sessions Judge, Tumkur.

□ B.K. Somasekhara, District and Sessions Judge, Chitradurga has been transferred and posted as Registrar, (Vigilance) in the High Court of Karnataka.

**Wish You a
Happy New Year**

Constitution of Taxation Court

The Union Government has accepted the suggestion of the Chief Justice of India for constituting a National Taxation Court to deal with the large number of direct tax cases pending before the various Courts. Mr. Rameswar Thakur, Union Minister of State for Finance announced this decision at Ahmedabad on December 22, 1991 at the three day All India Conference on direct tax laws. The Minister also hinted at the formulation of structural changes in direct tax laws including the procedure of assessment, tax rules exemptions, penal provisions and seizures. He further stated that a settlement commission will be established to deal with the cases relating to indirect tax cases.

New C. J. I. Appointed

Justice M.H. Kania took over as the 23rd Chief Justice of India on 13 - 12 - 91. Justice Kania is the 5th among the judges hailing from Maharashtra who have occupied this exalted post. He is also the nephew of Justice J.H. Kania who was the first Chief Justice of India after attaining its independence.

Law Lecture Series

On 7 - 12 - 91 fifteenth Law Lecture sponsored by Lahari was delivered by Sri Kanti Rao, Chairman, Karnataka official Language (Legislative) Commission, Bangalore. Sri Ravivarma Kumar, Advocate, presided.

RETIRES

On 10-1-92 Justice D. R. Vittal Rao, retires as a judge of the High Court of Karnataka.

Vacations 1992

By a notification dated December 2, 1991 the Registrar - General of the High Court of Karnataka has notified that the courts will be closed for vacations during the following periods in 1992:

Summer Vacation

27-4-92 to 31-5-92

Dasara Vacation

28-9-92 to 4-10-92

Winter Vacation

21-12-92 to 1-1-93

Vacations for Kar. Admn. Tribunal

The Karnataka Administrative Tribunal will observe the vacations for 1992 during the following periods.

Summer Vacation : May 11 to 30

Winter Vacation : Dec. 15 to 24

Justice K N. Singh to head the Law Commission

Justice K.N. Singh, retired Chief Justice of India is appointed as the new chairman of the Law Commission. The new appointment is valid up to 31st August 1994.

LITERARY UNION

The following are elected as the office bearers of Bangalore Literary Union for the year 1991-92 in the Adjourned General body meeting of the union held on 5-1-92.

President : M. Thimmaraya-Swamy, Secretary : S. Anantharama Reddy, Treasurer B. Anjaneyalu, Executive committee members: K.Gangappa, Krishna-Moorthy, H. Basavaraju, S. Nagaraj, Eshwar M. Gollalli.

Around the Courts

□ Karnataka Co-operative Societies Act, 1959 (Karnataka Act No. 11 of 1959) - Section 30 A - Normally Co-operative Society not "State" under Article 12 of Constitution of India. If special officer appointed under Section 30A, his action, State action amenable to Writ Jurisdiction. In the absence of any Rule no disciplinary action after superannuation of employee and no withholding of pensionary or other benefits.

G. K. Thirunarayana Iyengar Vs. State of Karnataka ILR 1991 Kar 4070.

□ Jammu and Kashmir Houses and Shops Rent Control Act (34 of 1966), Sections 11, 12 - Notice to terminate tenancy - validity - tenant in arrears of rent - Notice sent through registered post on Correct address - Valid - Letter returned for non - availability of addressee - No responsibility on sender or postman to arrange that notice is served - Appropriate amendment to Section 11 suggested. (Transfer of Property Act, (1882), Section 106); (Civil Procedure Code (1908), O 5 Rr. 10, 20); (General clauses Act (1897), Section 27); (Notice through Post office - Non-service-effect); (Postman - cannot be equated with process server).

M/s Madan and Co. v/s Wazir Jaivir Chand. AIR 1989 SC. 630.

□ Chartered Accountants Act (38 of 1949), Section 30 - Chartered Accountants Regulations (1964), Regulation 32 B (1) - Monthly stipend to Articled clerk - Must be paid every month.

(Continued on page 4)

If we desire respect for the law we must first make the law respectable —Louis D. Brandeis

GOVERNMENT APATHY

The Family Courts Act, 1984 was enacted with the object of providing for the establishment of separate forums for promoting conciliation and secure speedy settlement of disputes relating to marriage, family affairs and matters connected therewith. In exercise of the powers conferred on the state government under section 3 of the Act a Family Court with an additional court was established in Bangalore. Again the state government appointed two judges with the concurrence of the High Court to preside over these courts as per the provisions of Section 4 of the said Act. The Principal Judge of the Family Court retired on 3-8-91. Since then no judge is appointed (till we went to press) by the state government to fill the resultant vacancy.

Dear Reader,

One more year has gone by and the dawn of new year has provided an opportunity to evaluate the happenings during the past year in our professional field. This may be regarding the system as a whole and or the various components forming the system. The recent judgment of the Full Bench of the Delhi High Court against seven of the Delhi lawyers under the provisions of the Contempt of Courts Act might herald a warning to us particularly those who wish to adopt agitationist approach in finding solutions to our problems. I earnestly hope that the judgment in question should be a caution in determining all our future actions particularly adoption of agitationist approach.

Yours Sincerely,
EDITOR

Discrete enquiries made in this regard revealed that the High Court has expressed its concurrence regarding the fresh appointment of a suitable judge to the Family Court. For inexplicable reasons the state government has not chosen to appoint any judge so far. Needless to state that cases are languishing in the Family Court for the last five months without any progress.

The state government seem to be oblivious to this avoidable situation and has not shown any concern to the hapless litigants. If this is the way in which the state government propose to handle the situation how can the object for which the Family Courts Act, 1984 came into being be achieved?

Recently the state government decided to appoint the Presiding Officers to the District Consumer Disputes Redressal Forums. It is seen that a majority of the appointees have been the retired judicial officers. How far the decision of the state government in rehabilitating the retired judicial officers instead of attracting new talents, where unemployment is rampant, is a question to which one has to find an answer. Even this half hearted measure on the part of the government in establishing the District forums has come very late. When the Consumer Protection Act, 1986 has come into force long ago and the state government took such a long time to establish the District Forums speak volumes about its priorities. In fact the District Forums are established after a long drawn litigation by the consumer Action Groups and the initiation of Contempt of Court Proceedings against the government. This is an example as to how the state governments can be found to be unwilling to implement even the important policy decisions.

LAW AS PROTECTION FROM POWER

Justice M. N. Venkatachalaiah

(from the last issue)

in its final report on "Damages in Administrative Law", (14th report), suggested that there are many situations where damages should be available for improper administrative action and considers three broad possibilities: leaving the court to develop the law; new legislation establishing a right to damages generally for loss caused by unlawful administrative action; or specific provision for damages or compensation to be included in specific statutes in respect of particular administrative powers.

The majority recommended that the matter should be left to the judges with appropriate legislative provisions in specific cases adjusted to the character of the power involved and the recovery of damages need not necessarily be by way of an action in tort. But the minority favoured the second solution. Bernard Schwartz in his Introduction to American Administration Law (1958) says: "A system of administrative law which fails to provide the citizen with an action in damages to make him whole is actually but a skeletonised system. If individuals are to be protected adequately, an action for damages is the necessary complement of the action or review, which results only in the setting aside of improper administrative action."

E J. Haughey in his book 'The Liability of Administrative Authorities' (1975) states: "Without a remedy of this nature being also available a formal pronouncement by a court that an administrative act is illegal or otherwise invalid frequently represents no more than a mere pyrrhic victory for an aggrieved citizen."

There is need for judicial formulation of appropriate legal principles which will provide a balance of non-counter-productive remedies. This calls for some degree of judicial activism and creativity. There was at one time, of course, a sharp debate about the role of the Judge as the law-maker and about the

limits of judicial creativity. Lord Devlin was a known detractor of judicial law making while Lord Denning was one of its principle protagonists. Forty years ago Lord Denning declared in *Candler v. Crane, Christmas and Co.* thus: "this argument about the novelty of the action doesn't appeal to me. It has been put forward in all the great cases which have been milestones of progress in our law, and it has always or nearly always, been rejected, if we read the great cases." Of dissent of judicial creativity he said: "you will find that in each of them the judges were divided in opinion. On the one side there were the timorous souls who were fearful of allowing a new cause of action, on the other side there were the bold spirits who were ready to allow it if justice so required." In *Candler vs. Crane Christmas & Co.* Lord Denning was in a minority. But in a later case the House of Lords preferred his views to those of the majority.

Lord Ackner recounts the interview of Lord Devlin with B.B.C.'s Robin Day on the topic of judicial law making. The interview, says Lord Ackner, went on somewhat on these lines.

"Robin Day You don't take the view that judges should make the law, that's for the legislator?"

Lord Devlin (emphatically) Yes

Robin Day But Lord Denning takes the opposite view. He thinks judges should, from time to time, make the law.

Lord Devlin So I understand Robin Day Yes, Lord Devlin. But you must have more to say than that since this is clearly a difference on a major point.

Lord Devlin well Lord Denning is a very great judge.

Robin Day Yes, Lord Devlin but surely there is more you would wish to add?

Lord Devlin (pause) Lord Denning is a specimen tree, you mustn't have a whole avenue of them."

(to be continued)

NEED FOR UNIFORM TREATMENT

G. S. Rao, Advocate.

(from the last issue)

injustice or to deprive a person of his statutory right as long as the statute itself is held to be constitutional. Sec. 17-B was introduced to cause social justice to the weaker party viz., the employee and it is held to be constitutional by the Apex court.

The Supreme Court has held in Bharat Singh's case that prior to insertion of Sec. 17-B the High Court/Supreme Court were having discretion to grant or not to grant subsistence allowance but after its insertion they are bound to grant the relief since it is a mandate to the courts. This is binding on all the High Courts. Further, Article 226 does not confer power to ignore the law as long as the said law has been held to be constitutional. All the three organs of the State, viz., Legislature, Executive and Judiciary, derive their power from the Fundamental law viz., the Constitution of India. Though Judiciary is conferred with the power of judicial control to check abuse of power by the other two organs it cannot ignore their powers as long as those powers are exercised by them in accordance with the provisions of the Constitution and do not destroy the essential features or basic structure of the Constitution. Thus, looked from any angle the view that Article 226 empowers the High Court to ignore Sec. 17-B is without any substance and unjustified and is fraught with dangerous consequences of imposing judicial despotism. It would lead to frustration and dismay among the law abiding citizens which would endanger the very judicial system. When the judiciary deprives the citizens of their hard earned rights what respect the judiciary can command? The judicial thinking also must change with the change of times. The historical background of the beneficial legislation in a Welfare Socialist State cannot be ignored by the judiciary. To attempt to

reverse the trend would amount to abuse of power. It is retrograde and lead to unpleasant consequences.

When a Division Bench held that the relief under Sec. 17-B shall be given automatically another Division Bench does not agree with it may refer it to a larger Bench but it cannot deny the right either by an act of commission or omission. There are many instances where the I.A.'s for grant of the relief under Sec. 17-B or enhancement of the amount granted are ordered to be put up at the time of final disposal of the W.P./W.A. forgetting that the relief is required to be given during the pendency of those proceedings. This clearly shows that there is total lack of application of mind and weaker sections of litigants get a feeling that they are getting a raw deal from a section of the judiciary.

(concluded)

HUMOUR IN COURTS

□ The convention was that the Judges of the Supreme Court of the U. S. had the privilege of consuming drinks even when they were presiding over the court. Since there was criticism of this practice later this privilege was restricted to a period when the weather was extremely cold and or raining.

On an occasion when the weather was dry and the judges who were earlier used to the unrestricted practice of having drinks were unhappy about the new restrictions. This situation was lucidly explained by an American scholar Mr. Robert Peck who recently visited Bangalore. The narration goes on these lines.

First Judge : Mr.... why are you gazing at the window ?

Second Judge : To report to you that it is not raining.

First Judge : So what ? As Supreme Court judges we have got jurisdiction over the entire country. Somewhere it must be raining !

□ Lahari law lecture was being delivered by the learned speaker. This suggestion was made by the speaker to the audience.

To learn the rudiments of advocacy start arguing with your wives or the husbands as the case may be. If you fail to convince her/him you can try your luck before the High Court

DO YOU KNOW ?

□ that O.S. No. 4967/91 was filed on 29-7-91 now stands posted to 30-3-92 for issue of suit summons to the defendants. Bangalore City Civil Court has its own way of giving expeditious disposal of cases ?

□ that in O. S. No 108/90 pending before the Principal Civil Judge, Bangalore Rural District, the plaintiff obtained an ex parte order of temporary injunction against the Defendants. Some Defendants filed IA under order XXXIX Rule 4 C.P.C. This IA was heard on 20-9-91 and the case was posted for orders to 24-9-91. Since the orders was not ready the case was adjourned on 5 occasions. On 24-10-91 the plaintiff seems to have filed a IA under section 151 C.P.C. The Court Seems to have adjourned the case to 9-12-91 for the Defendants to file their objections. On 9-12-91 Defendants complained that the copy of the IA filed on 24-10-91 was not furnished to them. Later the court adjourned the case to 3-2-92 for objections to the IA (copy of which remains unserved). Needless to state that the IA filed under order XXXIX Rule 4 C.P.C. filed on 18-2-90 remains undisposed even after the lapse of almost one year therefrom.

NEWS SPECTRUM

The latest survey conducted by the Amnesty International on the reported Human Rights violation in the U.S. has revealed that a large number of juvenile offenders are sentenced to capital punishment including the death sentence. Convicts between the age of sixteen and eighteen years are done to death through electrocution. Before the execution of the sentence the juvenile offenders are incarcerated in jails as under-trials. Surprisingly the public Opinion is in favour of the continuation of awarding Capital punishment in respect of certain heinous crimes.

Readers Write

The Editor, Communique,
Sir,

Science and Technology has made tremendous advancement, Electronic media has made it possible to communicate with each other an easy task. The fax machine is an unique gift of science to the mankind through which any document can be transmitted to different stations within seconds.

Hither to the problem of updating the various pronouncements of the Supreme Court and various High Courts on different branches of law has been a difficult task. Moreover there will be time lag before one can lay his hands on the judgments.

It is high time that the Supreme Court, High Courts and tribunals should acquire the fax machines so as to inter act with each other. This would help the courts and tribunals to take an uniform decision throughout the country and to reduce the time lag in the adjudication of cases.

yours faithfully,

S.S. Padmaraj, Advocate.

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A. K. FADNIS

Representative AIR Ltd., The Bangalore Legal Practitioners Co-op. Society Ltd., City Civil Court, Bangalore-560 009

Around the Courts

(Continued from page 1)

The Contention that Regn. 32B (1) provides for accrual of liability for payment of stipend on the basis of monthly calculation but it does not require payment of stipend every month cannot be accepted. If such a construction of the provision is accepted, it would mean that the stipend could be paid on a quarterly basis, half yearly basis or annual basis or at any time when the principal chooses to make the payment may be even after the completion of the articleship. Regn. 32B (1) does not contemplate such uncertainties as regards the due date of payment. The only reasonable and proper construction of the provision is that the monthly stipend must be paid every month.

Institute of chartered Accountants of India Vs. B. Mohanty AIR 1985 Orissa 46. DB.

□ Karnataka Rent Control Act, 1961 (Karnataka Act No. 22 of 1961) - Section 18 (2) - Intent and purport - Refund or return of 'sum' or 'consideration' by landlord at the option of person by whom paid - Adjustment of advance by landlord on his own without reference to tenant, being impermissible - In the absence of option of lessee to adjust, remedy to recover rent arrears only by filing suit, no escape to refund advance as per mandate of Section 18(2).

Narayana Reddy Vs. Kashinath Rao Patil, ILR 1991 KAR 3901.

□ Karnataka Stamp Act, 1957 (Karnataka Act No. 22 of 1957) - Entry 41(e) of Schedule - Irrevocable Power of Attorney executed for consideration - Liable to duty under said Entry.

In the instant case also it is clear that an interest in the property is created in favour of the Bank in terms of clause(e) and other clauses. Therefore, the Petitioner has no power to revoke the deed

unilaterally. Besides as noticed earlier, both at the beginning of the deed as well as at clause(e) set out above, the consideration for its execution has been the loan sought and granted to the petitioner in the sum of Rs. 1,50,000. Thus it clearly falls under Entry 41(e) of the Schedule to the Act.

Smt Nagar Susheela Nayak Vs. The State of Karnataka, ILR 1980 KAR 1024 FB.

□ Karnataka Sales Tax Act (25 of 1957) Section 28-A. Scope and powers of the Check-post Officer.

Check-post Officer has no jurisdiction to make assessment on the ground of evasion of tax. He has no power to levy penalty. As long as the documents required under section 28-A of the Karnataka Sales Tax Act were carried in the vehicle which was intercepted and found to be in order the Check-post Officer has no jurisdiction to make an assessment and or to levy penalty.

Automobile Products of India Ltd. Vs State of Karnataka, STRP No.46/1987 D D 13-9-90 (D B)

WEDDINGS

□ On 15-12-91 N.S. Sangolli, Additional District & Sessions Judge, Bangalore celebrated the marriage of his advocate son Gangadhar with Bharathi at Belgaum. He also hosted a reception dinner at Bangalore on 22-12-91.

□ On 20-12-91 T.S. Ramachandra, Advocate, celebrated the marriage of his Advocate son Amar with Sandhya (Madhavi) at Bangalore.

□ On 23-12-91 S.L. Simha, Advocate, celebrated the marriage of his son Vikram Simha with Jyothi at Bangalore.

□ On 23-12-91 N.S. Venu-Gopal, Advocate, celebrated the marriage of his daughter Usha with K. L. Muralidhara at Bangalore.

NEWS FOCUS

□ On 19-11-91 Justice V.R. Krishna Iyer, retired Supreme Court Judge, addressed the members of AAB at the City Unit on the topic "Judicial Accountability".

□ On 26-11-91 A. K. Subbaiah, Advocate, addressed the fellow members of AAB on the topic "Political corruption and Remedial measures".

□ On 29-11-91 Hon'ble E.S. Venkataramaiah, former Chief Justice of India, addressed the members of AAB on the "Cauvery water dispute".

□ On 30-11-91 Karnataka Tax Consultants Association, Bangalore, had organised a function in connection with opening of its branch at Mysore. Hon'ble H.G. Balakrishna, former judge, High Court of Karnataka, was the chief guest. Sri V.G. Gujran and T.N. Kesha-vamurthy, Additional commissioners of Commercial Tax, graced the occasion as the guests of Honour. Sri N. R. Kadam, President, K.T.C.A., presided.

□ Bangalore District Legal Aid Committee held its 22nd Lok Adalath Camp on 21-12-91 at Bangalore. 176 cases concerning the motor vehicles Act were settled in the camp amounting to an aggregate sum of Rs. 51,95,000/-.

□ During December 1991 Parliament adopted a Bill providing for amendment of the Family Courts Act, 1984.

□ On 17-12-91 Lawyers of Mayo Hall Unit had organised a send-off function to one of the District & Sessions judges (Voluntary retirement) and three other judges transferred out of the Unit.

KTCA Mourns

The Special meeting of the Karnataka Tax Consultants Association which met on 21-12-1991 unanimously adopted a resolution condoling the sad and sudden demise of its president N.R. Kadam on 18-12-91. The resolution also appreciated the yeoman service rendered by late N.R. Kadam to the development of the association.

LAW MADE EASY

□ Q: Who can ask for fixation of Fair rent?

A: Either a Land Lord or a tenant can apply to the Rent controller for fixation of fair rent.

□ Q: What is the remedy available to a person who has got Independent claim over a Immovable property which has been attached in an execution case?

A: Such person can prefer a claim or objections to such attachment of any Immovable property attached in the execution proceedings to the effect that the property is not liable to such attachment or he has an Independent claim over such property (Order XXI Rule 58 CPC)

□ Q: Whether more than one person may sue or defend on behalf of all with regard to their common interest?

A: Yes. A representative suit can be filed by any one or more persons, with the permission of the court, or defend such suit on behalf of or for the benefit of all persons having common interest. (Order I Rule 8 CPC.)

□ Q: Which is the provision governing the levy of costs by the courts?

A: Section 35 of the CPC.

OBITUARY

□ On 18-12-91 N.R. Kadam, Advocate, Tax Consultant and President of Karnataka State Tax Consultants Association passed away at Bangalore.

□ On 20-12-91 K. Prahlad Rao, Advocate, passed away at Bangalore.

□ On 25-12-91 A.B. Mariyappa, Advocate, and Former President of AAB, passed away at Bangalore.

□ On 27-12-91 M.B. Chikkarayana Reddy, Advocate, passed away at Bangalore.

□ On 28-12-91 R.S. Chakrabhavi, Advocate, passed away at Bangalore.