

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 4

JANUARY 1993

PART 10

Inquiry Panel Indicts Ramaswamy, Recommends Removal

The three member Inquiry Committee of judges which probed the allegations against the Supreme Court judge Justice V. Ramaswamy has severely indicted him for bringing disrepute to the high judicial office and dishonour to the institution of Judiciary and recommended his removal from office in public interest. Passing a harsh stricture against the judge the committee said that his acts constitutes misbehaviour within the meaning of Article - 124 (4) of the Constitution of India. Taking strong exception to Mr. Ramaswamy's decision not to appear before it the committee said that the refusal or failure of the judge to appear before it will constitute misconduct in other jurisdictions.

The Inquiry Committee consisting of the Supreme Court judge Justice P. B. Sawant, The Chief Justice of Bombay High Court Justice P. D. Desai and the former Supreme Court judge Justice O. Chinnappa Reddy was set up by the Speaker of the Ninth Lok Sabha Mr. Rabi Ray to inquire into the fourteen charges levelled against Justice V. Ramaswamy with regard to the alleged irregularities committed by him while he was functioning as the Chief Justice of Punjab and Haryana High Court. It is to be noted that this unprecedented inquiry was a result of a notice of motion from Prof. Madhu Dandavathe and the 107 members of the Ninth Lok Sabha for presenting an address to the President of India for the removal of

Justice V. Ramaswamy from office.

The two volume report of the committee which was recently tabled before both the houses of Parliament concluded the report by addressing Mr. Ramaswamy that "your conduct reflected in the aforesaid charges amounts to wilful and gross misuse of office, wilful and persistent failure of negligence in discharge of duties, habitual extravagance at the cost of the public exchequer."

It is natural that now all eyes are set on the Parliament as to the next course of action it proposes to take in the matter and now the President of India resolves the tangle in case Justice V. Ramaswamy continues to hold the office. Pressure is also mounting on the Chief Justice of India not to allot any judicial work to Justice V. Ramaswamy.

Justice P K S New Vice - Chairman

On 4-1-93 Justice P. K. Shyamasundar took over as the Vice - Chairman, Central Administrative Tribunal, Bangalore.

*wish you a
happy
new year*

BLU Office Bearers

In the Annual elections of the Bangalore Literary Union held on 12-12-92 the following office bearers were elected for the ensuing year: President: B. S. Krishna Murthy; Secretary: G. C. Channaiah; Treasurer: G. R. Shivakumar; Members of the Executive Committee: Mali Mariappa, Sampige Mahadeva Murthy, Eshwar M. Gollalli, K. Gangappa and Neelakantiah.

Humour in Courts

□ A Client charged with the offence of circulating counterfeit notes had come to the lawyer's chamber.

Client: So, will you take up my case Sir.

Lawyer: Yes.

Client: How about the fees Sir.

Lawyer: You can send the amount through Cheque or Demand Draft!

□ A burglar's wife was being cross-examined.

"Madam, you are the wife of this prisoner?"

"Yes."

"You knew he was a burglar when you married him?"

"Yes."

"May I ask how you came to marry such an individual?"

"You may," snapped the witness "I was getting old and had to choose between a burglar and a lawyer."

Karnataka the Champions

In the recently concluded All India Bar Associations Cricket Tournament at Cuttack the Karnataka Advocates cricket team under the captaincy of Mr. C. G. Sundar emerged as the Champions.

Imposition of President's Rule Condemned

A Special General Body Meeting of AAB convened on 21. 12. 92 resolved by an overwhelming majority to condemn the dismissal of three democratically elected State governments of Himachal Pradesh, Madhya Pradesh and Rajasthan by invoking Article - 356 of the Constitution.

Contempt Proceedings Stayed

By an order dated 16. 12. 92 the Supreme Court stayed further proceedings of the Contempt of Court case suo motu initiated by a Division Bench of the Karnataka High Court against the former Advocate General P. P. Muthanna.

Vacation Details

By notification bearing No. GOB (I) 601/92 (I) dated 2-12-1992 the Registrar General of the High Court of Karnataka has announced the following vacations during 1993.

Summer Vacation: 26th April to 30th May 93 (b.d.i); Dasara Vacation: 25th Oct to 30th Oct 93 (b.d.i); Winter Vacation: 23rd Dec to 31st Dec 93 (b.d.i).

Corrigendum

In the column "Around the Courts" reported during December - 92 the names of the parties, CRP No. and the date of disposal have been wrongly printed. The correct details are as follows:

Mansukhlal Khicha Vs M/s Chandra Soap Works CRP No. 2514/1991 DD; 22-10-92

Extreme justice is often extreme injustice.

— a Proverb

Winding up of Companies

Udaya Holla, Advocate

Judicial Accountability

The framers of the Constitution thought that the independence of judiciary and allegiance to constitution by the members of the higher judiciary are sufficient safeguards to preserve the high stature of judiciary and the people to repose confidence in the system. From what has transpired over the years one cannot but conclude that they were too naive in their expectations and possibly they could not have foreseen the pit falls built into the system which can be exploited by the members of the higher judiciary to suit their convenience.

Mass media is full of information about the happenings of the judiciary and the ways of functioning of judges which cannot be considered as complementary to the judicial system. The recent indictment of Justice V. Ramaswamy by the Inquiry Committee setup by the former speaker of the Lok Sabha, scathing indictment of Justices Mittal and Satpal of Delhi High Court, mysteries surrounding the functioning of a few judges of Bombay High Court are a few instances which will high light the state of affairs prevailing in judiciary. Perhaps the members of the legal profession can no longer hold their heads erect to the scrutiny of judicial system by external agencies. All these situation leads to the need for self introspection amongst ourselves about the need for pressing for judicial accountability.

Though by and large the judges are functioning well the instances of receiving allegations against the judges are frightfully increasing. Cases involving the allegations of bias, prejudice, nepotism, corruption, abuse

of status, malafide exercise of judicial discretion, acting against the accepted norms of judicial conscience and unusual delay in delivering judgments are some of the charges levelled against the judges. The quality of the judges being appointed these days doesnot infuse confidence in them. A time has come when serious thinking is to be done regarding evolving mechanisms which can supervise for the functioning of the members of the higher judiciary and making them accountable to some authority.

In the recent days a most dangerous trend has developed wherein the judges who were sworn to in the name of the constitution have wilfully permitted abuse of judicial process by unscrupulous litigants. Further the judges have stultified the judicial system in such a way by passing patently untenable judgments and orders solely with a view of subserving the vested interests. Perhaps the judges are under the impression that they are accountable to none and they are omnipotent. This impression requires to be erased at the earliest in the interest of judiciary itself.

Perhaps the only safeguard provided by the constitution against the judges viz "impeachment" is too severe a remedy and at the same time too cumbersome. The rigours of legislative exercise involved in adoption of an impeachment motion against any judge has made it practically impossible to exercise this action. Moreover all irregularities committed by the judges may not lead to the necessity of exercising the option to impeach judges. Therefore an altogether new

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(from the last issue)

under the said subsections. They are 433 (c), (e) and (f).

Section 433 (c) specifies that a company may be wound up by the court if it does not commence business within a year of its incorporation or suspend its business for a whole year.

Courts of Law have interpreted this provision with a great latitude. Courts have held that mere fact that the company has not commenced business within a year or the business has been suspended for a whole year or more may not by itself be a ground to wind up a company although the said facts give jurisdiction to the courts to do so. Courts have held that if noncommencement or suspension of business was for some good reason and there is evidence which indicates that the company has intention or capacity to carry on business and is likely to carry on business and non-commencement or suspension of business is a temporary phase which will get sorted out due to passage of time no winding up order would be passed. This is on the basis that the company court has a discretion either to wind up or not a company and such discretion has to be exercised judicially. 1963 (33) Comp Cas. 886 (Ker) - Malbar Iron and Steel Works Ltd., Vs. Registrar of Companies and 1978 (48) Comp Cas 611 Cal, Kumbapuram Gopala Krishnan Ananthakrishnan Vs. Burdwan Cutwa Railway Co. Ltd. are the two case laws on this aspect.

Section 433 (e) of the Companies Act specifies that a company may be wound up if it is unable to pay its debts. At least 90% of the winding up petitions that are filed in our courts is under this provision.

This provision relates to commercial insolvency of a company and the courts have been vested with the power to wind up a company if a company is unable to pay its debts. This provision is of great public importance having regard to the fact that it would be against commercial morality as well as public interest to permit insolvent companies to carry on business. This provision is akin to insolvency proceedings against an individual.

Section 434 of the Companies Act is a deeming provision which stipulates that a company may be deemed to be unable to pay its debts under certain circumstance specified therein. A company is deemed to be unable to pay its debts if a company fails to pay or to compound to the reasonable satisfaction of the creditor for a period of three weeks after the notice of demand sent by the creditor to the company to whom the company is indebted in a sum exceeding Rs. 500/-.

Similarly if a decree or order of any court in favour of a creditor is returned unsatisfied either in part or in whole company is deemed to be unable to pay its debts.

The courts normally refuse to wind up a company when the debt is bonafide disputed. As to what would constitute a bonafide dispute has been succinctly set down by the Supreme Court in Madhusudan Gordhandas & Co., Vs. Madhu Woolen Industries Pvt. Ltd., AIR 1971 SC 2600. They are (a) the defence of the company is in good faith and is one of substance; (b) the defence is likely to succeed in point of Law; and (c) the company adduces prima facie proof of facts on which the defence depends.

(to be continued)

Bofors Case : FIR Upheld

By a judgment dated 17-12-92 Justices S.R. Pandian and K. J. Reddy of the Supreme Court delivered their 151 page judgment in the Bofors case quashing the judgment & order dated 2. 9. 92 of Chief Justice Mittal and Justice Satpal of the Delhi High Court by which they had struck down the FIR against Mr. Win Chadha and also the letters rogatory issued by the Delhi District Court to the Swiss authorities seeking their co-operation in getting to the secret Bank Accounts into which the flush money involved in the Howitzar gun deal was stowed away.

In this judgment the judges of the Supreme Court severely indicted the two judges of the Delhi High Court for "stone walling the CBI probe" on the basis of self contradictory findings and also on the selective use of the JPC report (obtained from the CBI in confidence) to justify their gratuitous finding that the Bofors contract was perfect and bonafide. They also further held that the High Court had "made up its mind as to the expediency of quashing the letters rogatory and there after conveniently made use of those documents for the end product."

□ On 21. 12. 92 a Division Bench of the Supreme Court (2:1) held that educationally unqualified applicants for government jobs are eligible to be considered if they acquire the required qualification before the interview. Further the court held that if such applicant scores higher marks in the interview he is entitled to be senior in the service to those who were educationally qualified on the date of applying for the job but got lesser marks in the interview.

In the case Ashok kumar

Sharma vs Chandershekhar the majority view was taken by Justices P. K. Thommen and V. Ramaswamy and the minority view was held by Justice R. M. Sahai.

□ The Supreme Court will rehear on 16. 3. 93 the Appeal of M/S Jain Exports against the Rs.5 Crore fine imposed on them by the Collector of Customs along with the plea of the Union of India for review of the controversial order of the then Chief Justice K. N. Singh and Justice N. M. Kasliwal passed during Nov. 91 in which the firm was permitted to pay only 35% of the fine imposed by the Collector of Customs. A special bench consisting of Justice A. M. Ahmadi and Justice J. S. Verma has been constituted to hear these cases.

□ In a suomotu proceedings of the Delhi High Court Justice B. P. Wadhwa recently set aside the order of the Addl. Sessions Judge, New Delhi, Mr. Chaudhary granting bail to the accused Vishnu Pandit. In a significant move High Court judge also ordered that all work concerning granting of bail should be withdrawn from Mr. B. S. Chaudhary. The accused was allegedly involved in raping twice a trans-jamuna house wife - once in the presence of her 15 year old son. On enquiry it was found that Mr. Chaudhary was in the habit of exercising his "judicial discretion" frequently in favour of those who stood accused of heinous crimes including rape and murder. It was also found that the Sessions judge was used to frequently grant bails in the cases involving patently non-bailable offences. Justice Wadhwa in his order divesting Chaudhary of bail work passed severe strictures against him.

□ In a decision rendered during the first week of Dec-92 the Supreme Court held that no temple could be constructed by a religious trust on a site earmarked for civic amenities. The division bench comprising Justices T.K. Thommen, V. Ramaswami and R. M. Sahai ruled that a site meant for civic amenities could not be given to a religious trust even for "public utility purpose" like construction of kalyana mandapam since under the Bangalore Development Authority Act a public convenience is different than that of a civic amenity. It is to be noted that a division bench of the Karnataka High Court had held in this case (Sengunthar Trust Vs BDA) that "an area reserved for a specific purpose could not be transferred to a trust as the benefit which could have been derived by the public by the plot reserved for a civic amenity could not be transferred for a different use than for which it was reserved".

Promotions/Postings

The following judicial officers are promoted to the rank of District judges and posted against the existing vacancies: Ashok Kumar J. Dhole as Addl. Secretary and Legal Adviser, Legal Cell, Karnataka Bhawan, New Delhi; A. C. Kabbin as XXII Addl. City Civil and Sessions Judge, Bangalore; A. A. Hulageri, as Presiding Officer, Labour Court, Raichur; P. V. Hogade as III Addl. D. J. & S. J., Belgaum; Syed Ghayasuddin Sha Khadri as Addl. D. J. & S. J., Mandya; Basanna Manure as Addl. D. J. & S. J. Raichur.

Transfers/Postings

The following District Judges have been transferred and posted against the existing vacancies:

B. K. Sangalada as D. J. & S. J., Raichur; Mohd. Anwar (continued on page 4)

Views & Vignettes

□ If the proposed two child norm for MPs and MLAs is enforced prime minister P. V. Narasimha Rao will be the first to lose face.... E. S. Venkataramaiah

While reacting to the decision of the Union Cabinet clearing a proposal to amend the Constitution providing for disqualification of MPs and MLAs who had a third child.

□ Hindu society should apologise to muslims not only in India but also the world over for the foolish act of some persons in demolishing the mosque at Ayodhya.... L. G. Havanur

Those who called Hindus fools were themselves foolish.... Pramila Nesargi

While participating in the debate organised by the AAB on 16-12-92.

□ I think we have to provide for security for ourselves within the court room.... M. N. Venkatachalaiah.

While reacting to the commotion created by the jam packed court room fully occupied by the lawyers in connection with the hearing of contempt case concerning Ayodhya case.

Arrest of Lawyers

A number of cases of arrests of Advocates, in the State, under the provisions of the Unlawful Activities (Prevention) Act, 1967 have been reported in the wake of banning of several organisations by the Union Government. Many Advocates had to obtain anticipatory bails also. Needless to state that the continued harassment of lawyers is bound to affect their professional commitment.

Judicial Accountability (continued from page 2)

mechanism for making judges accountable should be evolved urgently. The experience of other democratic countries, if any, should also be looked into before any new mechanism is evolved in our country.

Miscellany

□ On 1.1.93 Mr. Aravind Kumar, Advocate, opened his new chamber at No. 76, 13th Main, 27th Cross, 4th Block East, Jayanagar, Bangalore-560 011.

□ With effect from 17.1.93 P. Krishnappa, Advocate, will be shifting his chamber from No. 1, Poornaiah Chatram Road, Balepet, Bangalore-53 to No. 400, II Floor, Prabhat Complex, Kempegowda Road, Bangalore - 9.

Lady Lawyers' March

On 6.1.93 a delegation of Indian Federation of Women Lawyers, Karnataka Branch, went in a procession and submitted a memorandum to the Chief Minister seeking a CBI probe into the mysterious death of the lady Advocate Ms. Nirmala Jain on 28.12.92. The Chief Minister is reported to have assured the delegation that a COD probe will be ordered.

Revision In Court Fee

As per the amendment to Schedule I of the KCF&SV Act, 1958 proposed by the KCF&SV (Amendment) Act, 1992 the court fee payable on the suits are as follows:

Not exceeding Rs 15,000 - 2½%; Rs 15,000 to 75,000 - Rs 375 + 7½%; Rs 75,000 to 2,50,000 - Rs 4,875 + 7%; Rs 2,50,000 to 5,00,000 - Rs 17,125 + 6½%; Rs 5,00,000 to 7,50,000 - Rs 33,375 + 6%; Rs 7,50,000 to 10,00,000 - Rs 48,375 + 5½%; Rs 10,00,000 to 15,00,000 - Rs 62,125 + 5%; Rs 15,00,000 to 20,00,000 - Rs 87,125 + 4½%; Rs 20,00,000 to 25,00,000 - Rs 1,29,625 + 4%; Rs 25,00,000 to 30,00,000 - Rs 1,29,625 + 3½%; Rs 30,00,000 to 40,00,000 - Rs 1,47,125 + 3%; Rs 40,00,000 to 50,00,000 - Rs 1,77,125 + 2½%; Rs 50,00,000 to 60,00,000 - Rs 2,02,125 + 2%; Rs 60,00,000 to 70,00,000 - Rs 2,22,125 + 1½%; Rs 70,00,000 to 80,00,000 - Rs 2,37,125 + 1%; Rs 80,00,000 and above - 2,47,125 + ½%.

News Focus

□ On 11/12-12-92 a group of Advocates from Bangalore took out peace marches in the recent riot affected areas of Bangalore.

□ On 16-12-92 AAB had organised a Seminar on "Ayodhya and Babri Masjid dispute" in the High Court unit. Mr. L. G. Havanur, former Law Minister and Advocate and Dr. M. C. Bijawat, Dean, Law School, Benares Hindu University addressed the members.

□ On 1-1-93 Prayoga Ranga, an amateur drama troupe, from Bangalore presented a Kannada drama titled "Huccha Munsifa".

□ On 1-1-93 Mr. Ramjethmalani addressed the members of AAB on the topic "the Ayodhya dispute".

□ On 4-1-93 Mr. Arun Shourie, the eminent journalist addressed the members of AAB on the topic "Ayodhya dispute and dismissal of BJP governments".

Transfers/Postings

(form page No. 3)

as D, J & S. J., Belgaum; N.S. Sangolli as D. J & S. J., Chickmagalur; S. M. Bagali as I Addl. D. J & S. J., Belgaum; Iqbal Ahmed as Presiding Officer, Labour Court, Mangalore; H. G. Ghaliavar as VII Addl. City Civil & Sessions Judge, Bangalore; K. H. Rajashekar as II Addl. D. J. & S. J., Belgaum.

Obituary

□ On 24.12.92 Lakshminarasimha, Advocate, passed away at Bangalore.

□ On 26.12.92 L. A. Khan, Advocate, expired at Bangalore.

□ On 27.12.92 B. Basavalingappa former state Minister expired at Bangalore. Before entering politics he was an Advocate.

□ On 28.12.92 Nirmala Jain, a lady Advocate of Bangalore died.

□ On 8-1-93 M. S. Shankaranarayana Gowda, Advocate, passed away at Bangalore.

Periscope

□ **New way of using Religion** : In the wake of recent banning of certain "communal" organisations it occurred to one typist functioning in the AAB premises that he should mention about his religion in the complaint to impress on the Police to take action against the person whom he was lodging complaint. The provocation was that an employee of AAB while cleaning the typing pool had allegedly damaged the complainants' typewriter. The complainant stated in his complaint that he belongs to a particular religion and the employee of the AAB who belongs to the other religion had damaged his typewriter on account of his belonging to a different religion. The ground urged in the complaint was sufficient for the Police to act with alacrity and maintain the employee of the AAB in the Police Station for about two hours.

□ **Urgency to Whom?** : Several suits containing prayers for ex-parte interim order filed on the last working day before the commencement of recent winter vacation were posted before an Addl. judge of the Bangalore City Civil Court. The learned judge posted all those cases beyond vacation on the ground that the papers were sent to Court around 3.45 p.m. (not withstanding the fact that the judge came to Court Hall at that hour eventhough the papers were received at 3.00 p.m.). The fact that urgent orders were required to be passed in those cases was not sufficient to convince the learned judge to write orders. After all the urgency was for the client.

□ **Strange But True** : Considering the continued agitation of Supreme Court lawyers against entrusting judicial work to Justice V. Ramaswamy, in the light of serious charges of irregularities against him, the former Chief Justice of India M. H. Kania gave option to the lawyers/litigants to appear or not to appear before Justice Ramaswamy as and when their cases are posted before him. However, a large number of lawyers have chosen to appear before Justice Ramaswamy.

□ **Caught napping** : The state government was caught napping when on 4-1-92 Janata Dal MLA D.B. Chandre Gowda raised the issue of expiry of the application of the Karnataka Rent Control Act, 1961 on 31.12.92 and the failure of the government to extend its application for further period leading to a vacuum in jittery the Revenue Minister M. Rajashekar Murthy replied that government had already extended the term of the Act by 3 years. Mr. Chandre Gowda retorted by stating that in that case it will be a serious matter since the government could not have extended the term when the house was in session. However, in the later part of the day the Minister clarified that the government had only taken an administrative decision to extend the period. After all in the light of the change of Ministries and the changed political situation after Dec. 6 it is too much to expect that the state government could have found time to attend to this trifle problem.

-Insider