

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part II

Transfer of High Court Judges Valid

In its 21 page Judgment delivered on 7-2-94 the Supreme Court held that the primacy given to the Chief Justice of India in the matter of transfer of High Court Judges is perfectly valid. The Division Bench of the Court consisting of Justice Kuldeep Singh, Justice J. S. Verma and Justice S. P. Bhattacharya rejected all contentions raised in a Civil Appeal and a Writ Petition questioning the validity of such transfers. It was contended by the Appellant/Petitioner that the transfers by the Apex judiciary should be prohibited as they were likely to be influenced by extraneous considerations leading to arbitrariness and erosion of independence of the judiciary.

The Judges observed that the Chief Justice of India, as the pater familias of the judiciary, can be safely relied upon in his wisdom to ensure that the transfer of a judge is so effected as to cause him minimum inconvenience and to take into account such personal factors as might be involved as indicated in the Judgment of the nine judges delivered on 6-10-93. The Judges further observed that under Constitution it was clear that transfers subserved a public purpose and promoted public interest for better administration of justice throughout the country.

Transfer of Judges

Justice V. P. Mohan Kumar, a Judge of the Kerala High Court and Justice Kumar Rajarathnam, a Judge of the Madras High Court,

were transferred to the Karnataka High Court. Justice K. Shivashankar Bhat, a Judge of the Karnataka High Court was transferred to the Delhi High Court.

Judges Appointment

The President of India appointed six Judges to the Allahabad High Court and four Judges to Rajasthan High Court by a Notification dated 28-1-94.

SAARC Law Conference

Between 28th & 30th Jan. 94 SAARC Law Conference was held at New Delhi. Renowned lawyers, jurys, judges and judicial administrators participated in the conference. Sri K. R. Narayanan, the Vice-President of India, who inaugurated the conference called for setting up of arbitration forums in the SAARC region. Sri Shivaraj Patil, the speaker of Lok Sabha, was the chief guest at the valedictory function. Sri H. R. Bhadrachari, Union Minister of State for Law, also participated in the valedictory function.

Suit Instituted

It is reported that three Governing Councillors of the High Court Unit have instituted O S.No.10047/94 seeking a declaration that the nomination of two other Governing Councillors of the Unit as Vice President and Joint Secretary as void apart from declaring the election of one of the Governing Council Member of the Unit as void in view of Rule-22 of the Bangalore Advocates' Association Rules.

News Spectrum

☐ Are Hindu male Gods also liable to pay maintenance to their wives? Yes, according to the Panda of Savithriji Temple in Pushkar (Rajasthan). Vishnuji Temple in Pushkar did not have good income in older days. It appears that Vishnuji Temple was getting financial help from Savithriji Temple for its maintenance & upkeep during those days. Belief is that Savithriji is the first wife of Vishnuji. When Savithriji did not turn up on an auspicious occasion to join Vishnuji the latter in a huff seems to have taken a second wife viz. Gayathriji. Presently, the income from Vishnuji Temple is substantially high whereas the Savithriji Temple is starving for funds. Now the Panda of Savithriji Temple has taken the matter to a Court seeking maintenance from Vishnuji on the ground that being a husband of Savithriji the former is legally obliged to maintain the latter.

☐ Recently the Hongkong Authorities executed two canines on the charges of their participation in the murder of a kid.

☐ Recently the Tokyo Family Court directed the local ward office of the Municipal Corporation to register the name of the son of a 30 years old father in its birth register. Earlier the Authority had refused to register the same on the ground that the name of the boy "Akuma" (devil) is not an auspicious name and when the boy grows up it will expose him to derision.

H.C. Working Hours

With effect from 1-2-94 the High Court working hours has been re-scheduled. Now the Courts will function from 10-30 a.m. to 1-30 p.m. and 2-30 p.m. to 5-00 p.m.

Notice of Expulsion

Jan 14th witnessed an unusual boycott of the High Court work by the Delhi lawyers. The boycott was observed as a mark of protest against the practice of two Lawyers before the same courts where their fathers are functioning as Judges. Again in an unparalleled action the Delhi Courts Bar Association decided to issue show cause notices to Mr. Huzefa Ahmadi (son of the Supreme Court Judge Justice Ahmadi) and Mr. Pradeep Jain (son of the Delhi High Court judge Justice Jain) to show cause as to why they should not be expelled from the membership of the Association for their "questionable role."

Humour in Courts

☐ The divorce had been granted. Their only child had been given to the mother, but after the final orders they met and the young woman said :

"I am willing to let you have the baby half of the time."

"Good!" cried the father, with satisfaction. "That's fine!"

"Yes," resumed the fair, yet unfair, divorcee, calmly, "you may have him at nights!"

K. R. Dinaker, Advocate

Judges shall discharge their duties objectively and impartially so that they earn the trust and affection of the people

—Kautilya

Bar Room Gossip

Amongst the various subjects that are random discussed in the Bar rooms perhaps the appointment of judges to the High Court has always attracted the participants' interest and imagination. Contemporary politics, price raise, national, local or international events and the subjects like of it, no doubt, have attracted the attention of the lawyers inviting discussions though momentarily. However, the appointment of High Court judges, the timing of such appointments, merits and demerits of the possible contenders & lately their likely station of posting has remained as a constant topic of discussion in the Bar rooms.

Though it cannot be universally stated as to why the lawyers are so concerned about the appointments, sometimes bordering on anxiety, various reasons could be traced. From a close observation of such discussions it is discernible that the participants will not be contending that any likely candidate or group of candidates have the necessary merit for being considered for such appointments. The names that are brought about during the discussion appears to be based on the individual preference or non preference of such name by a participant in the discussion. Often, equations of caste, religion, region, personal status, influence of the concerned advocate is quoted as the criterion for his possible selection as a judge.

One can often notice that each of the participants in such discussion will be mentioning a set of names for being possibly appointed and his list of candidates

need not necessarily tally with the list spelt out by other participants. Similarly the names of candidates which are not likely to find a place in the select list are also suggested by different participants. Though, for a new entrant to the Bar the discussion may appear to be amazing or intriguing but the older ones know it that the whole discussion is nothing short of a gossip. If one seriously asks about the basis on which the participant suggests the name of a possible candidate or as to why the name of such candidate is not under consideration the stock reply would be that his suggestion is based on "reliable source of information" or received from a very "confidential source". These replies do indicate that actually there is no basis for the participant's assertion.

With the new practice of effecting of transfer of High Court judges one more dimension has been added and i.e., the likely destination to which any judge may be posted or from which other High Court a judge may be transferred to the local High Court. This discussion will be incomplete without the participant's mentioning of the names of the judges who are likely to be transferred and the basis for such transfer. Here again the names suggested by one participant need not tally with that of other participants.

Since, the Bar Associations are the breeding grounds for the selection and appointment of the judges one cannot say that the topic is not concerning the members

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THE SCAM

(Its Genesis and causes)

C.B. Srinivasan, LL.B., Advocate

(from last issue)

Alongside this development there came into being a horde of purely financial institutions all being the progeny of Parliamentary legislation. The Government held reigns of control of these institutions. Thus financial wizardry became the state of art. The Unit Trust of India (UTI), The Industrial Development Bank of India (IDBI), The Industrial Finance Corporation of India (IFCI), The Industrial Credit and Investment Corporation of India (ICICI), General Insurance Corporation of India (GIC), State Financial Corporations, The Export Import Bank of India (EXIM BANK), The National Housing Bank (NHB), and so on entered the field. They set afloat Units, Debentures, Bonds, Certificates and several other cousins of currency for the public investment of their money. A boom was close at hand. Other rivulets joined this flow. The country got a gusty growth of Public Sector Units which started rising bonds from 1985-86. The Nadkarni Report mentions that during 1992 the outstanding amount of PSU bonds were around Rs. 20,550 crores. Interestingly they are not guaranteed by the Government. The SLR does not haunt them.

The Operation Sesame

The established situation till the year 1987 was that there always was a dichotomy between the money market & the share market. To the banks share business was anathema. Investment in industrial shares is a gamble of sorts. But Parliament appeared to have slowly but relentlessly closed the ranks of these divisions. A comparative reading of three Acts of Parliament chosen at random, though, shows that the legislative thought ran a course of active

deliberation. Section 19 of the Unit Trust of India Act, 1963 provides that the Trust may carry on and transact any of the kinds of business such as selling and purchasing of units; investing in, acquiring, holding or disposing off securities and exercising and enforcing all powers and rights incidental there to; keeping money on deposit with Scheduled banks or with such other institutions as may be prescribed and generally doing all such matters and things as may be incidental to or consequential upon the discharge of its functions under the Act. Section 10 of the Export Import Bank of India Act, 1981 provides that the Exim Bank may grant in or outside India loans and advances by itself or in participation with any Bank or financial institution whether in or outside India for the purpose of import or export and shall also function as a principal financial institution for co-ordinating the working of institutions engaged in financing of the export and import in such manner as it may deem appropriate; carry on and transact the business of under writing the issue of stocks, Bonds or Debentures of any Company engaged in export or import. Section 14 of the National Housing Bank Act, 1987 provides that subject to the provisions of the Act the NHB may transact the business of subscribing to or purchasing Stocks, Shares, Bonds, Debentures and securities of every description; drawing, accepting, discounting or rediscounting, buying or selling and dealing in Bills of Exchange, Promissory Notes, Bonds, Debentures, Hundies Coupons and other instruments by what ever name called.

(to be continued)

Article 356 - Scope of Judicial Review

Justice (Retd.) **M. Rama Jois**

(continued from last issue)

valid basis to say that the electorate lost confidence in the ruling party in the State for even when elections are held simultaneously to Lok Sabha and the State Assemblies the electorate has the choice and liberty to elect all or majority members for Lok Sabha, belonging to one party and elect all or majority of members belonging to another party to the State Assembly.

The real reason for the abuse of power under Article 356 has been the desire of the ruling party at the Centre to acquire power in the States and intolerance to any other party being in power in the States, a tendency highly injurious to democratic system and spirit, federalism and unity and integrity of the Nation which are the objectives sought to be achieved by the Constitution as declared in the preamble.

Again the Government headed by Karunanidhi in Tamilnadu which had absolute majority was dismissed on 30-1-1991 (Martyrs day) by the issue of Proclamation under Article 356 even without there being any report by the Governor. As a result both the Government and the Governor had to go.

Such politics has cost the Nation heavily, in that :

(1) they have proved to be economically disastrous in view of the heavy expenses involved in holding frequent elections and the spending of the time and resources of the citizens ; (2) politically ruinous, and (3) in terms of the loss of faith of the people in democracy and Rule of Law it is incalculable.

If an inquiry commission is appointed to find out the extent of loss and damage which the Nation has suffered as a

result of the abuse of power under Article 356, it would reveal the great magnitude of such loss and damage.

Then comes the dismissal of the State Governments in 1992. On 6-12-1992 the U P. Chief Minister Kalyan Singh resigned owning moral responsibility for the incidents at Ayodhya. On the said date straight away not only the President's Rule was imposed, Assembly was also dissolved without finding out the possibility of forming an alternative Government by keeping the Assembly in suspended animation.

Thereafter, the three Governments namely Madhya Pradesh, Rajasthan and Himachal Pradesh run by opposition party at the Centre were dismissed by the Proclamation issued under Article 356 on 14th December 1992, though there was no breakdown of the Constitutional machinery and the Chief Ministers enjoyed absolute majority in the Assembly concerned.

The modus operandi, adopted was to declare Rashtriya Swayam Sevak Sangha (R.S.S) as unlawful under Section 3 of the Unlawful Activities (Prevention) Act, 1967 and immediately thereafter to dismiss the Governments on the ground that the Chief Ministers belonging to National Main Opposition Party i.e., Bharatiya Janata Party, were members of the R.S.S an unlawful organisation. Another reason given was there were communal riots in these States as a result of which several persons were killed. As far as the first reason is concerned the declaration of ban on R.S.S with immediate effect without assigning any valid reason to do so has been declared invalid by the Allahabad High Court. Thereafter, Justice Bahri Tribunal

(to be continued)

AROUND THE COURTS

□ Sec 64(1)(i) and 64(1)(ii) of the Income Tax Act, 1961 :

In a decision delivered on 14-9-93 the Supreme Court affirmed the decision of the Patna High Court in Vijay Kumar Budhia Vs CIT and ruled that in view of specific provisions of Sec. 46 (2) of the Income Tax Act, 1961 the capital gains were to be determined and the assessee is liable to income tax with regard to the immovable property acquired by him in liquidation of a company in lieu of his shares on the distribution of the company's assets at a certain value. Following the view taken by the Supreme Court in CIT Vs R. M. Amin (106 ITR 368) the Court held that but for Sec. 46 (2) it could not have been possible to charge tax under the head capital gains on the monies or other assets received by the shareholder of a company on its liquidation. The Court was of the view that Sec. 46 (2) was enacted with a view to make shareholders liable for tax on capital gains as well as to prescribe a mode of computation of the capital gains arising to a shareholder.

Vijay Kumar Budhia Vs CIT (1993) 204 ITR 355

□ Sec. 64(1)(i) and 64(1)(ii) of the Income Tax Act, 1961 :

The Supreme Court in its short decision dated 13-9-93, without referring to the large number of conflicting decisions of different High Courts, held that the provisions of Sec. 64(1)(i) and 64(1)(ii) of the Income Tax Act were not applicable to the case of a person acting as the Kartha of an HUF in a partnership. In other words, the Supreme Court held that the income of the minor children admitted to the benefits of the partnership could not be included in the income of an assessee who is a member of a Hindu Undivided Family. The Court also noti-

ced that this law had been altered with effect from 1-4-1976.

Note : It now provides that after 1.4.76 in the assessment of an individual the income of minor children admitted to the benefits of partnership in any Firm is includible. As the law stands now the individual assessee need not be a partner for attracting Sec. 64 of the Income Tax Act.

CIT Vs Herbhajan Lal (1993) 204 ITR 368.

□ Order XLIII Rule 14 r/w Section 104(h) of the CPC : The trial court while exercising power under Section 151 CPC is within its jurisdiction in issuing NBW against the erring party to the suit for non compliance of its order.

NOTE : The High Court in its inherent power passed the following order i.e (a) directing the Commissioner of Police to depute a responsible officer to execute the NBW order (b) the Commissioner of Police to cause search of the plaintiff's house and produce all the belongings of the Defendant (c) if the belongings of the Defendant are not traced the moveable and immovable properties of the plaintiff to be attached and sold in public auction to realise the value of the articles taken from the Defendant (d) the Registrar of the City Civil Court to conduct an enquiry against the concerned bailiffs who have failed to carry out the trial court order [e] to initiate appropriate criminal proceedings against the plaintiff (f) to initiate criminal proceeding against the alleged PA holder of the plaintiff for swearing to false affidavit (g) leaving it to the Bar Council to take appropriate action against the Advocates of the plaintiff in the trial court for having failed in their legal duty to tender necessary advice to the plaintiff (h) the Registrar

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Miscellany

□ Recently Sri. M. Lokesh has been unanimously elected as the executive Vice Chairman of the Bar Council of India.

□ With effect from 1-1-94 Sri. H. S. Srinivasa Murthy, Advocate, shifted his chamber from No. 31, Sampige Rd, to No. 538/1, 1st Floor, Sampige Road, Malleswaram, Bangalore-560 003.

□ During December 93 Mir Ziaulla and H. B. Abdul Azeem, Advocates, opened their new chamber at No. 60, Nazeer Complex, Lubbay Masjid Street, Bangalore-560 001.

□ Between 1973 and Nov 93 the Karnataka Legal Aid Board has extended legal aid services to 7,01,997 persons in the state and helped them to secure Rs 64 90 crores as compensation according to Mr. K. V Vasudeva Murthy, Secretary of the Board

□ Mr. L. S. Venkatakrishna, Advocate and Mridanga player, accompanied by N. S. Krishnan, B. K. Sridhar and S. Srinivasa Murthy, Advocates, participated in the Pancharathna Gana Goshti held at Thiruviyaru on 31-1-94 as a part of Sri Thyagaraja Aradhana.

□ Recently Mr. S. K. Kulkarni, Advocate, shifted his chambers from C-165, Greater Kailash Part-1, New Delhi-48 to E-335, 1 Floor, East of Kailash, New Delhi-65. His Telephone No. continues to be 6453549.

ಅಟರನಿ ಯೂನಿಯನ್

□ ತಾ. 21.1.94 ರಂದು ತೀರ್ಪು ಸಂಜುಳಾ ಮೋಹನ್ ರವರು ಸಂಗಮ ಸಂಗೀತ ಕಾರ್ಯಕ್ರಮ ನಡೆಸಿಕೊಟ್ಟರು.

□ ತಾ. 28.1.94 ರಂದು ಸೇಂಟ್ ಜೋಸೆಫ್ ಕಾಲೇಜಿನ ಟ್ಯಾಕ್ಸಿನೊಮಿಕ್ ಅಧ್ಯಯನ ವಿಭಾಗದ ನಿರ್ದೇಶಕರಾದ ಸಿಸಿಲ್ ಜೆ. ಸಲ್ವಾನಾ ರವರು "ಬೆಂಗಳೂರಿನ ಉಳಿವು" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

□ ತಾ. 4.2.94 ರಂದು ಶ್ರೀ ಚಿಂಚೋಳಿ ಪ್ರಹ್ಲಾದಾಚಾರ್ಯ ರವರು "ಕನ್ನಡ ಸಾಹಿತ್ಯಕ್ಕೆ ಪರಿವಾಸರ ಕೊಡುಗೆ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

Around the Courts

(continued from page 3)

(judicial) of the High Court to call for explanation of the officials who have registered the MFA in the absence of the alleged Power of Attorney (i) directing the plaintiff to pay the costs of Rs. 5000 to the Defendant within 15 days failing which the Defendant is empowered to recover the said amount with interest 18% p.a. It is learnt that the Special Leave Petition was also dismissed by the Supreme Court. M. D. Umer Vs Kiran Bhatia MFA No. 1850/93 DD 20-12-93.

Bar Room Gossip

(continued from page 2)

of the Bar. Perhaps, what is most intriguing is the possible reason as to why the members of the Bar spend so much of time and energy on such a topic over which they have no control. Unlike in the United States the Bar Associations in this country have no say in the selection of judges. Even then, surprisingly, this particular topic has always attracted the attention of the lawyers in the Bar rooms. Is it due to any concern, anxiety or as an easily available subject for gossip can only be inferred by way of conjecture. However, the fact remains that in the past, present and in future this will be a hot topic for lawyers to discuss in the Bar rooms.

Lawyers Agitate

□ On 7.2.94 hundreds of Delhi lawyers staged a massive demonstration and courted arrest demanding division of Delhi into five judicial districts for speedy disposal of the huge backlog of civil cases. The agitating lawyers formed a human chain at the India Gate and round about and raised slogans demanding an end to the centralisation of courts at Tis Hazari.

NEWS FOCUS

□ On 4-1-94 Sri S. Bangarappa addressed the members of AAB, High Court Unit, on the topic the Development of Karnataka under his leadership vis-a-vis that of Sri M. Veerappa Moily.

□ On 6.1.94 Sri P. Kodandaramaiah, Commissioner of Police, Bangalore, addressed the members of AAB, Magistrates' Court Unit on the topic "Criminal Justice System".

□ On 11.1.94 Swami Vivekananda's Birthday was observed by AAB (High Court Unit). Swami Jagadatmanandji of Belur Mutt addressed the members about the importance of Swami Vivekananda's teachings.

□ On 12.1.94 Sri Sudhanva, Mayor, Bangalore City Corporation addressed the members of AAB (City Unit) on the topic "Environs of Bangalore City and Hygiene".

□ On 17.1.94 Justice Abdulla, the former Chief Justice of Mauritius, addressed the members of AAB, High Court Unit.

□ On 17.1.94 Justice V. P. Mohan Kumar was sworn in as a Judge of the Karnataka High Court. On the subsequent day he addressed the members of AAB, High Court Unit.

□ On 22.1.94 a delegation of the AAB consisting of 25 Advocates visited Bhatkal on a fact finding mission about the complaint of the local Bar of harassment of two local lawyers in connection with the communal flare ups.

□ On 24.1.94 Justice Kumar Rajarathnam was sworn in as a Judge of the High Court of Karnataka.

□ On 26.1.94 Justice S. B. Majumdar, the Chief Justice of the High Court of Karnataka was the Chief guest in the Republic Day celebrations held under the auspices of AAB. He unfurled the National Flag in front of the High Court as a part of the celebrations.

□ On 28.1.94 farewell function was organised in Court Hall No. 1 of the High Court to bid farewell to Justice K. Shivashankar Bhat, who has been transferred as a Judge of the Delhi High Court. Farewell function was also organised by the AAB in the High Court Unit.

□ On 31.1.94 Dr. Vedavyasa, IAS, Former Chief Secretary of Andhra Pradesh, addressed the members of AAB, City Unit, on the subject "Kala Gnana".

□ On 2.2.94 Ms. Afshin addressed the members of AAB, High Court Unit on the topic "Universal Peace".

□ On 7.2.94 AAB had organised a programme of light Music in the City Unit in co-ordination with Vijaya Film Institute, Bangalore. In the programme presided over by Mr. K. N. Subba Reddy, Sri Y. K. Muddukrishna, Deputy Commissioner, Excise Department, Sri Muniswamy, Deputy Commissioner of Police, Sri M. Narayanappa, Superintendent Engineer, B.D.A & Sri M.M. Sindhoor, Munsiff & JMFC, Hoskote, were specially invited singers.

Obituary

□ On 31-1-94 K. N. Vijaya Raghavan, Advocate, passed away at Bangalore.

□ On 3-2-94 S. A. Khayum, Advocate & Notary, passed away at Bangalore.

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