

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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PART 12

## Appointment of Judges to the Higher Judiciary

On 9.2.93 the Supreme Court issued notices to the Advocates-General of all the States to respond on whether the Prime Minister or the Chief Justice of India should have final say in the appointment of Judges of the Apex Court and the High Courts. They have also been asked to express their views on whether the Chief Minister or the Chief Justice of each State should decide on the number of Judges in each High Court. The next hearing of the case is scheduled on 17.3.93.

A nine judge Bench presided over by Justice M. N. Venkatachalaiah ordered issue of notices to the Advocates-General to assist the Court to review the judgment rendered in the case of S. P. Gupta Vs Union of India. In that case the Court held that the constitutional requirement of the Union Government representing the President should "consult" the Chief Justice of India or the Chief Justice of a High Court does not mean "concurrence." It was also further held that the advise of the Chief Justice of India or a High Court cannot have primacy over the satisfaction of the appointing authority and therefore even when the constitutional authorities have concurred on appointing a person as a Judge the appointing authority need not do so.

The present review petition has been an off-shoot of a

public interest litigation moved by an advocate Subhash Sharma. Interestingly Justice Venkatachalaiah, on being asked whether the notices ordered was confined only to the two issues, observed that "this being a public interest litigation we cannot circumscribe the scope and questions at this stage. We will see it as and when the arguments are heard."

### Demand to transfer Judges

The Special General Body meeting of AAB convened on 2-3-93 unanimously adopted the following resolution:

"Resolved that the concerned Judges whose relatives (as defined in Rule-6 of Professional Conduct Rules framed by Bar Council of India) practicing in this High Court should be transferred immediately to any other High Court in India in the interest of justice and in all fairness".

### Commission of Jurists

In the General Body meeting of the Karnataka State Commission of Jurists held on 14-2-93 the following office bearers were elected for the ensuing term:

Mr. Justice (Retd) P. P. Bopanna, President; Mr. S. P. Shankar & Mr. S. S. Naganda, Vice-presidents; Ms. P. G. Gowri and Ms. Hemalatha Mahishi, Secretaries & Mr. K. P. Kumar, Treasurer.

## S C to Probe the charge against Justice Bhagwati

In an unprecedented move the Supreme Court ordered on 1-3-93 to probe the Maharashtra Government's allegation that the former Chief Justice of India P. N. Bhagwati having given his opinion to M/s Oswal Agro Mills Limited, concerning purchase of land along with the plants of M/s Union Carbide set up in Bombay, later acted as a mediator in a dispute concerning the State Government and M/s Oswal Agro. The Court directed the Maharashtra Government to file an affidavit disclosing the date and source from which it has obtained a copy of the opinion said to have been tendered by Mr. Bhagwati.

The Court further directed M/s Oswal Agro to file an affidavit of Advocate Mr. Kiran Chaudhury who is said to have been asked to give the opinion and pass it on to the Maharashtra Government. The Court has also directed the Registrar General to send a letter to Mr. Bhagwati enclosing the affidavits of the State Government & M/s Oswal Agro along with a copy of the opinion with a request that he "may place before the Court any view which he may want to".

## Judges Appointed

Mr. A. J. Sadashiva, Mr. K. H. N. Kuranga, Mr. R. V. Raveendran & Mr. S. Venkataraman are appointed as the Judges of Karnataka High Court. The new judges were sworn in on 22-2-93.

## Call for Uniform Civil Code

The Union Minister of State for personnel and public grievances Ms. Margaret Alva made a strong plea for adopting a uniform Civil Code to prevent exploitation of women's rights by certain section of the country. Ms. Alva was inaugurating the first ever State level Women Lawyers' Conference of Rajasthan at Jaipur on 20-2-93. She called upon women lawyers to spread the message of legal literacy among the vulnerable sections of the society including the women.

## REVISED COURT FEE

The Karnataka Court Fee & Suits valuation (Amendment) Act, 1992 received the assent of the Governor on 28-1-93 and gazetted on 29-1-93. With effect from the same date the Amendment Act has come into force.

## Bar Council opposes

In a resolution adopted by the Karnataka State Bar Council opposition is voiced to the proposed amendment to the Advocates Act providing for restricting right of Advocates to practice. The proposed amendment would take away the right of an Advocate to practice throughout the country before any Courts and Tribunals and instead it permits a lawyer to practice within his State.

The Chairman of the Bar Council Mr. K. N. Rajashekhara announced that the Southern States' Bar Councillors meet to be held within two or three months in Ernakulam

(continued on page 4)



*Justice discard party, friendship and kindred and is therefore represented as blind - Joseph Addison*

## End this Ad-hocism

Article-216 of the Constitution provides that every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. On the otherhand Article-223 provides that when the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the Court as the President may appoint for the purpose. While Article-223 was thought to be an enabling provision by the Constitution makers perhaps it was not thought that the enabling provision would be so invoked as to throttle the spirit of Article-216. In other words the appointment of a Acting Chief Justice was envisaged only as a necessary ad hoc arrangement but not a substitution for a regular Chief Justice.

Dear Reader,

With the publication of this issue "Communique", is completing four years of its existence. You must have noticed the news letter has come a long-way in its avowed purpose of serving the legal fraternity. All these could not have been possible but for the constructive co-operation and munificent assistance rendered by you. While re-dedicating the news letter to the cause of our fraternity may I expect your continued co-operation.

*Your's Sincerely,*  
EDITOR

Needless to state that the functioning of a regular chief Justice has several advantages to the institution of High Court and all the concerned. However, the system of continueing Acting Chief Justice for longer and indefinite periods will not do good either to the institution or to the incumbent. Ultimately the system is bound to suffer on account of ad hocism.

When a number of High Courts are allowed to function with the Acting Chief Justices it is also bound to result in denial of opportunity to eligible judges from occupying the posts of regular Chief Justice. Unfortunately in the priority of the Governments of the day the appointment of Chief Justices or for that matter other judges has always found less importance. A time has come for all the concerned to impress on the Government and the Chief Justice of India to bestow attention to this vital aspect.

Incidentally our High Court is also functioning under the stewardship of the Acting Chief Justice for quite some time. A large number of vacancies of the judges have also remained for want of appointment of judges. It is another thing that though belatedly four judges have been recently appointed. Without finding the causes for such avoidable delays all those who are concerned with the effectiveness of judicial system are bound to be concerned about the lack of timely decisiveness on the part of the Government in the appointment of the Chief Justice and the other judges of the High Court. Will the Government give up its complacent attitude and be alive to the task?

## Winding up of Companies

Udaya Holla, Advocate

(from the last issue)

The company is constituted with the object of carrying on business. If it becomes impossible to carry on business or to manage the affairs of the company due to serious disputes between the groups of shareholders or owing to internal disputes the Courts direct winding up on just and equitable ground. The most obvious kind of a deadlock would be a case where in a company there are two shareholders and two directors and they do not cooperate with each other resulting in the affairs of the company coming to a standstill. In *Re: Yenidje Tobacco Company Ltd.*, 1916 (2) Chancery 426 the equity shares of the company were equally divided between two persons who were also the directors of the company. Since serious disputes arose between them, a petition for winding up was filed which was entertained and the company was directed to be wound up. Even in a case where there are more directors and shareholders than two there could be a situation where due to serious disputes a deadlock ensues in the management and affairs of the company and it becomes impossible for a company to pass resolutions to enable it to carry on its business. Even under such circumstances a company can be directed to be wound up.

Courts have also wound up companies which are really partnerships in the guise of a company when there exist serious disputes between members or grounds to dissolve a firm.

*Ebrahimi Vs. Westbourne Galleries Ltd., and Others* 1972 (2) ALL ER 492

Section 439 of the companies Act specifies that a petition for winding up can be filed by the company, its

creditors (both centingent or prospective), contributory (member), the registrar or a person appointed by the central government.

The procedure regarding filing of the winding up petitions are specified in Rules 95 to 123 of the Company Court Rules, 1959.

Normally when a petition is filed for winding up the court after its admission has to advertise it in the official gazette and one issue of the vernacular newspaper. On such advertisement, the creditors as well as the members can enter appearance in the petition either to support or to oppose the winding up. Departing from the traditional English view the Court in *Ramakrishna Textile Mills Case* (AIR 1983 SC 75) held that workers have a right to be heard at the time of winding up proceedings. The Supreme Court further held that any person who would be affected by the winding up order would be entitled to be heard before the final orders are passed. On hearing of a winding up petition the Court may dismiss it, adjourn the hearing, make interim orders or pass a winding up order or make any other order as it thinks fit (Sec 443). On a winding up order being passed the creditors shall publish an advertisement in the newspaper the winding up order and also deliver a copy of the order to the Registrar of Companies.

The effect of a winding up order shall operate in favour of all creditors and all contributors as if it has been made on a joint petition of creditors and of contributors (Sec. 447). Upon a winding up order being passed, the official liquidator shall become the liquidator of the company and the winding up

(to be continued)



## Around the Courts

□ Civil Procedure Code, 1908, Order 23, Rule 3 - Compromise petition filed by both the parties before the Lok Adalat - Award passed on the basis of the compromise - Vakalath signed by appellant authorising the advocate to appear on behalf of the appellant - whether compromise in writing signed by the counsel representing the parties but not signed by the parties in person is valid and binding?

Yes. It is seen from para two of the Vakalathnama that the advocate has also been authorised to enter into a compromise in the above matter and to act in furtherance therein to safeguard the interest of the signatory. Accordingly, the advocate who was authorised to appear and act on behalf of the appellant herein, rightly consented to the compromise petition filed before the Lok Adalat. Acting on such a compromise petition filed on behalf of both parties the court passed an award which cannot be found fault with by the appellant on the above grounds.

DGM & Dvl. Controller, KSRTC, Raichur Vs Kamappa & others. 1993(1) Kar. L. J. 80 (DB)

□ Karnataka Sales Tax Act, 1957, Section 6 (ii) & 5 (3) Proviso - Under Proviso sale of silk fabrics by weaver not deemed to be sale: if no sale, consideration paid therefor not sale price: main part of Section - 6 not attracted - Section 6: ingredients - "sale in the course of inter-state trade or commerce &" sale in the course of export": Connotation as per Sections 3 & 5 of Central Act - object & intent of exclusion of inter-state sales from Section 6(ii).

The Proviso clearly states that sale by a handloom or a powerloom weaver of silk fabrics manufactured by him

shall not be deemed to be a sale for the purpose of the Act. the Proviso is not confined in its application to Section 5 (3) (c) but to the entire Act. Under the circumstances the transaction is not treated as a sale. There is no definition of the word "purchase" under the Act. Notwithstanding the ordinary parlance under the general law the transaction does not involve purchase. The consideration paid by the purchaser cannot be treated as sale price. Hence the main part of Section 6 will not be attracted to the transaction. Madhur Trading Co. Vs State of Karnataka ILR. 1993 KAR 594 (DB)

### News Spectrum

□ Two attempts of a Mr. Bill Clinton, the US President, to appoint a Lady as Attorney-General became abortive. While Ms. Zoe Baird had to withdraw her candidature on account of her past record of appointing an illegal migrant as a domestic employee Ms. Kimba Wood declined the nomination for the same reason. Unfazed with the developments Mr. Clinton has again nominated the California Attorney Ms. Janet Reno as the new candidate.

□ What has animation film to do with a murder trial? It has got everything to do with if you go by what is popularly known as Mitchel brothers' case in the US. A trial Court in California has permitted the prosecution to adduce evidence in the form of animation film reconstructing the scene of offence which will probabalise the involvement of the accused in committing murder. It may be interesting to note that the animation film is prepared on the basis of all available evidence including the testimony of the witnesses. Articles seized etc.

### Institute Of International Affairs

In a colourful programme held on 17.2.93 Sri Gopinath R. Sandra inaugurated the activities of Dr. Ambedkar Institute of International Affairs. Mr. Justice N. Y. Hanumanthappa delivered the keynote address. The function was presided over by Mr. Justice M. Ramakrishna.

The function commenced with the melodious invocation by Ms. S. L. Sarlakumari. Mr. S. N. Hatti, Chairman of the Board of Trustees of the Institute, welcomed the guests. Prof. S. Gurulingappa, the Director of the Institute, introduced the guests while the other Director Mr. M. T. Nanaiah read the Objectives of the Institute. Mr. J. D. Elangovan, Secretary of the Institute, proposed vote of thanks.

### Humour in Courts

□ A CRP was argued for "admission"

Judge : Heard. Dismissed.

Lawyer : My Lord, I have argued the case at length and your Lordship have not given any reasons for dismissing the CRP.

Judge : Heard Mr....., learned Counsel for the Petitioner at length. Civil Revision Petition is dismissed!

□ A Writ Petition challenging the selection of Notaries was being argued for "preliminary hearing."

Judge : I have issued rule nisi.

Lawyer : There is an interim prayer, my Lord.

Judge : What interim prayer?

Lawyer : I have sought for stay of the Government notification appointing the Notaries.

Judge : The Notaries covered under the present GO are already started functioning. However, I will stay the future appointment of Notaries by the Government!

### STATE BUDGET

The Karnataka Tax Consultants' Association has welcomed the simplification in the taxation structure in the State Budget for 1993-94. In a statement of the Association, its President Mr. S. K. Nahar states that the idea of subjecting all goods to a single point levy was a welcome move. He has lauded the abolition of the last sales point tax on Electrical, Paper and Plastic articles. The Association has demanded that such exemption should be extended to student Note Books without any precondition.

### APPOINTED to CAT

With effect from 1-1-1993 Sri A. N. Ujjanaradhya took over as the judicial member of the Central Administrative Tribunal, Bangalore.

### Lok Adalath Held

On 21-2-93 Justice A. M. Ahmadi, Judge, Supreme Court of India inaugurated a Lok Adalath in Mangalore. Mr. Veerappa Moily, the Chief Minister of Karnataka was the chief guest. The function was presided over by Justice K. A. Swami, the Acting Chief Justice. Ministers Harnahalli Ramaswamy, Blasius D'souza and Justice K.B. Navadgi also participated in the function.

### ಪ್ರಶಸ್ತಿ ವಿತರಣೆ

ಫೆಬ್ರವರಿ 27 ಹಾಗೂ 28 ರಂದು ಬೆಂಗಳೂರಿನಲ್ಲಿ ಜರುಗಿದ ಕರ್ನಾಟಕ ಕಾರ್ಯನಿರತ ಪತ್ರಕರ್ತರ ಸಂಘದ ವಜ್ರಮಹೋತ್ಸವ ಹಾಗೂ ಕಾರ್ಯನಿರತ ಪತ್ರಕರ್ತರ ರಾಜ್ಯ ಸಮ್ಮೇಳನದಲ್ಲಿ ಬೆಂಗಳೂರಿನ ವಕೀಲರಾದ ಬಿ. ಕೆ. ಮೂರ್ತಿಶ್ವರಯ್ಯನವರಿಗೆ 1991ನೇ ಸಾಲಿನ 'ಖಾದಿ ಶಾಮಣ್ಣ' ಸ್ಮಾರಕ ಪ್ರಶಸ್ತಿಯನ್ನು ನೀಡಲಾಯಿತು. ಈ ಪ್ರಶಸ್ತಿ ಮೂರ್ತಿಶ್ವರಯ್ಯನವರಿಗೆ 'ಪ್ರಜಾಮತ' ಪತ್ರಿಕೆಯಲ್ಲಿ ಪ್ರಕಟವಾದ ಅವರ ಲೇಖನ "ಮುಂದುವರಿಯಲೇ - ಬೇಕಾದ ಕನ್ನಡ ಉಳಿಸಿ ವರ್ಷ"ಕ್ಕಾಗಿ ಲಭಿಸಿತು.



## Miscellany

□ On 26-9-93 Mr. K.B. Mari Reddy, Advocate, opened his law chamber at No. 20, 1st floor, Hospital Road, Bangalore-560 053.

□ On 27-2-93 the employees of subordinate judiciary in Bangalore had organised a farewell function in honour of P. S. Ramamurthy, Bailiff, who retired from service.

□ Recently Mr. K. S. Narayan, Advocate, shifted his Law Chamber from No. 88/1, Yamuna Bai Road, Madhavanagar, Bangalore-1 to No. 115, 70th Cross, 5th Block, Rajajinagar, Bangalore - 10. Phone. 359359.

## News Focus

□ On 10-2-93 Mr. Peter L. Sinai, permanent representative of India to the United Nations delivered a lecture "The Challenges Before UN" in the BMS Law College.

□ On 24-2-93 Sri H. Vishwanath, State Minister for Kannada & Culture, addressed the members of the AAB on the subject 'Usage of Kannada in Subordinate Courts'.

## Union Budget

In a press note the Karnataka Tax Consultants' Association has welcomed the Union Budget as pragmatic. However, the press note states that the Finance Minister should have implemented the recommendations of the Chelliah Committee besides enhancing the personal exemption limit for individuals under the Income Tax Act to Rs. 50,000.

## Kapil Visits Association

Cricket all-rounder Kapil Dev was the chief guest of the function of the AAB held at City Unit on 26-2-93 to felicitate the team members of the Advocates' Cricket team which recently won The All India Invitation Cricket Tournament for Lawyers held at Cuttack.

## All India Conference

The All India Law Conference is scheduled to be held in Bangalore from 12-14, March 1993. The Conference is jointly hosted by the Bar Association of India, National Law School and the Advocates Association, Bangalore. Review of the provisions of the Advocates Act and the recent trends in the Judgments of the Supreme Court are the topics likely to come up for discussion during the Conference.

## Delhi Bar Protests

Advocates in New Delhi boycotted the Courts On 3-3-93 protesting against the appointment of Mr. Arun Madan as a Judge of the Delhi High Court. The Executive Committee of the Delhi Bar Association also adopted the resolution expressing its protest against the new appointment since there is a disciplinary case pending against Mr. Madan before the Vigilance Committee of the Supreme Court Bar Association for his alleged indulgence in unethical professional conduct & acting in a manner unbecoming of an Advocate.

## MOUNTAINEERING

S. Mahesh, K. B. Adhyapak, D. Gangadhar, S. Z. A. Kureshi, T. S. Mahantesh, Laxmana Murthy, G. Venkatachala & Jagadeesh Mundaragi, Advocates from Bangalore under the leadership of S. B. Pavin, Advocate are undertaking high altitude Trekking Expedition in Central Nepal-Pokhara- Muktinath- Thorung Pass-Manang- Hongde between 24th April to 21st May, 1993. The highest peak the group touching will be 5380 metres height while passing through Thorung Pass. Lahari wishes them happy time and success.

## Periscope

□ **Confusion Confounded** : If one goes by the cause-list in a couple of Court Halls in the High Court to find out the latest position he may be disappointed. This is more so with the new Advocates. Causelist of the day cannot be a guiding factor in this regard since the case that may be in progress may pertain to the cause-list of the previous day or the day previous to it.

□ **Beware of Court Officials** : Next time you enter the court office be cautious before you deal with the official. Or else what transpired on 16-2-93 in the Board Branch of the High Court to an advocate may happen to you next time.

□ **Assignment of Licence** : Whether the maxim "delegatus non protest delegare" applies to the case of licence? It may not be so if you consider the case of the Magistrate's Court Unit in Bangalore. One Mr. Gupta obtained licence to run a xerox centre but it is common knowledge that someone else is carrying on the business by paying the licence fee in the name of the licensee.

-Insider

## Pecuniary Jurisdiction

Government Notification No. LAW LCE 92 dated 16-2-93 notifies that in modification of the previous notification and in accordance with the Proviso to sub section 2 of Section 8 of the Karnataka Small Causes Courts Act, 1964 the Pecuniary jurisdiction of the Small Causes Courts has been fixed at Rs. 25,000.

## Bar Council Opposes

(from the page 1)

would press for a Supreme Court Bench in South India apart from discussing common problems faced by Advocates. He further informed that the State Law Minister has promised to amend the Advocates Welfare Act making it compulsory to all Advocates so that Rs 50,000 can be given as compensation to the family of a deceased Advocate irrespective of his length of service as an Advocate.

## MOOT COURT

Ms. S. Shanthala and Ms. Babita C. Rohra, students of the University Law College, Bangalore, won the All India Moot Court Competition recently concluded at Jodhpur (Rajasthan). The Competition was sponsored by the Bar Council of India Trust.

## ಸನ್ಮಾನ ಸಮಾರಂಭ

ತಾರೀಖು 10-3-93 ರಂದು ಬೆಂಗಳೂರು ಲಿಟರರಿ ಯೂನಿಯನ್ ಕೇಂದ್ರ ಸಾಹಿತ್ಯ ಅಕಾಡೆಮಿ ಅಧ್ಯಕ್ಷರಾದ ಡಾ|| ಯು. ಆರ್. ಅನಂತಮೂರ್ತಿಯವರಿಗೆ ಸನ್ಮಾನ ಸಮಾರಂಭವನ್ನು ಏರ್ಪಡಿಸಿತ್ತು. ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ನಿವೃತ್ತ ಮುಖ್ಯ ನ್ಯಾಯಾಧೀಶ ಶ್ರೀ ನಿಟ್ಟೂರು ಶ್ರೀನಿವಾಸರಾಯರು ಸಮಾರಂಭದ ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು.

## Obituary

□ On 12-2-93 Justice S. Govindaswamy (58), a sitting Judge of Madras High Court, died after a prolonged illness

wish you happy

UGADI