

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 5

March 1994

Part 12

Judges Appointed

Mr. T. J. Chouta, Mr. R. J. Babu, Mr. S. R. Nayak, Mr. B.S. Raikote & Mr. B.K. Somasekhara were appointed as Judges of the High Court of Karnataka. Mr. R. G. Vaidyanatha was appointed as the Additional Judge of the High Court of Karnataka. All the appointees were sworn on 25-2-94.

Transfer of Judges

The following Judges of the Karnataka High Court have been transferred :

Justice B.K. Somasekhara, Justice B.S. Raikote and Justice S.R. Nayak to the High Court of Andhra Pradesh ; Justice R. J. Babu and Justice T. J. Chouta to the Madras High Court & Justice R. G. Vaidyanatha to the Bombay High Court.

Saviour Becomes Victim

Smt. Annapurna (25) was tried for an offence punishable under Section 302, IPC, for allegedly murdering her own child. Mr. Hiremath, an Advocate from Belgaum, who appeared for her got acquittal to his client. Little did the lawyer realise then that she will one day cause him irreparable injury.

Subsequently, Annapurna who was working as a maid servant in the lawyer's residence has been alleged to have been kidnapped 11 months old son of the lawyer and killed the child. Having traced the body of the child in Khanapur Tank, police arrested Annapurna on 5-3-94.

CJ's Approval Needed

A Division Bench comprising Chief Justice M. N. Venkatachalaiah and Justice S.R. Pandian directed on 7-3-94 that no criminal case could be registered against a judicial officer for his judicial acts without the permission of the Chief Justice of the High Court concerned while referring the Petition to the Constitutional Bench for disposal. The Petition has been filed by U P Judicial Officers' Association contending that registering of such a case will impair the independence of judiciary. According to the Petitioner the police have filed a false F.I.R. as a reprisal against the concerned judicial officer for his pointing out certain lapses by the police in implementing his orders.

Loan Facility

The executive committee meeting of the Bangalore Legal Practitioners Co-operative Society Ltd. held on 9.2.94 has decided to distribute loans to the extent of Rs. 10,000 to each member of the Society on the basis of applications received from the members subject to certain terms and conditions.

Miscellany

□ On 28.2.94 Makam Nagaraja Gupta, Advocate, opened his chamber at No. 122, 1st Floor, Mahesh Market, Next to Udipi Krishna Bhavan, Balepet, Bangalore-560053.

□ HRC CRPs are presently classified by the High Court as HRRPs.

□ During February 94 Lahari Foundation sanctioned medical assistance to Mr. N. Murugesh, an Advocate's clerk of Bangalore.

(Continued on Page 4)

KSCJ Seminar

Karnataka State Commission of Jurists has organised a Seminar on "Judges' case- a critique" to be held on Sunday the 20th March 1994 at the Holiday Inn, Bangalore. Justice S. B. Majumdar, Chief Justice of the High Court of Karnataka has agreed to inaugurate the Seminar. Mr. K.K. Venugopal, Senior Advocate, SCI, will deliver the Keynote address of the Seminar to be presided over by Retd. Justice P. P. Bopanna. Mr. Iqbal M. Chagla, Senior Advocate, SCI, Mr. A. Jayaram, Mr. S. S. Nagananda, Advocates from Bangalore and Mr. Sriram Panchu, Advocate, Madras High Court will be presenting papers.

Humour in Courts

□ Judge : What is the IA for ?

Lawyer : For early hearing.
Judge : Post the IA at the time of Final Hearing!

□ Judge : Mr. Counsel, the case of the Respondent is that subsequent to 1988 the BDA has not issued any notification calling for applications for allotment of sites. Hence, no case is made out for contempt. What do you say ?

Counsel : No, My Lord. It is false.

Judge : Why do you say so ?

Counsel : My Lord, I looked into the file of my learned opponent and it contained several Notifications !

□ Counsel : " I suggest you are considerably straining a point in your version of what occurred. "

Witness : " Perhaps I am, but more often has to strain things to make them clear; "

Campus Watch

□ On 29th January 94 Prof. C.K.N. Raja, Dean of the Law Faculty, Mysore University, addressed the faculty members and students of S.J.R.C. Law College, Bangalore, on the topic "Freedom of Speech and Expression".

□ During February 94 Nadahabba was celebrated in B.M. S. Law College. On the occasion meritorious students of the college were felicitated. Justice A. J. Sadashiva was the chief guest of the function. Mr. H. T. Sangliana, Addl. Commissioner of Police, Bangalore, who was the guest, also addressed the gathering.

□ On 27-2-94 Mr. S. M. Yahya, Minister for Higher Education, Govt. of Karnataka, inaugurated Legal Literacy Programme-1994 and Symposium on Electoral Laws and Reforms in the College Auditorium of V.V. Puram Law College, Bangalore. Justice M. Ramakrishna, Judge, High Court of Karnataka, presided over the function in which Justice P. K. Shyam-sunder was the chief guest. The Programme was sponsored jointly by V.V. Puram Law College-Legal Aid Clinic and the Karnataka State Legal Aid Board. Mr. H. Subramanya Jois, Senior Advocate, Mr. C. B. Srinivasan, Prof. Chandrashekaraiah, Mr. Ravivarma Kumar, Prof. M.S. Padmarajaiah and Mrs. Pramila Nesargi, Advocates. Mr. P.S. Nagarajan, State Election Commissioner and Mr. Amar Kumar Pande, DCP, Bangalore, were the speakers in the symposium.

Quake dispensation of justice ought not to be allowed to hold sway in the name of quick justice.
— Madras High Court

Urgent Action Needed

□ Multistoreyed buildings have come to stay as a part of the modern civilisation. However, the high rise buildings should not be allowed to be a source of hardship to the users of such buildings. Whenever high rise buildings are permitted to be constructed in the developed countries lot of care is taken by the concerned to provide all facilities to the users. Law also requires compliance of certain mandatory requirements with regard to provision of the minimum facilities.

However, not much of foresight is adopted while constructing the high rise buildings in developing countries with regard to the facilities to be provided. For instance, take the case of the City Civil Court Complex and or the Magistrates' Court Complex in Bangalore. There are no adequate lifts, commensurate with the number of users of these buildings. Even the lifts which are there will be out of order on substantial number of days. Many a times the operators are not there or the Lifts will be under repair. Lifts will also be non functional on account of low voltage in power supply. Perhaps, one of the major solutions to the problem would be provision of captive Generators.

It is learnt that with much hesitation Government has allocated funds for installation of a Generator in the City Civil Court Complex. However, there is unusual delay in releasing the allocated sum. As a result, no firm order could be placed for the proposed Generator. Needless to state that the absence of Generator is causing undue hardship to the users of the building. Being frustrated by the callous

attitude of the Administration a token protest was recently observed by the lawyers in the City Civil Court Complex. Instead of compelling the lawyers to resort to other modes of protest the Administration must forthwith take steps to remedy the problem.

□ Maintenance of toilets in a hygienic way seems to be not the concern of the authorities both in the City Civil Court Complex as well as the Magistrates' Court Complex. The utilities like toilets meant for public use cannot be allowed to be stinking all the time and the problem need to be attended urgently.

□ The purpose of supply of cause list is not a mere ritual. It is meant to notify the lawyers/litigants and the judges the details of cases which have been listed to be taken

(continued on page 4)

Dear Reader,

With the release of this part Communique has completed 5 years of continuous service to all its readers. A commemorative function is scheduled to be held on 7-4-94 at Bangalore to mark the occasion. I am sure you will participate in it.

From the inception Communique has received co-operation from its vast array of readers apart from receiving munificent support from all its patrons, donors, advertisers and admirers. This unstinted support from all quarters is the best source of inspiration for the news letter to serve its readers in the coming years.

Yours Sincerely
Editor

THE SCAM

(Its Genesis and causes)
C.B. Srinivasan. LL B, Advocate

(from last issue)

This shows a marked change in the tendency from share market conservatism to a cautious ingress, finally permitting a liberalised free play in the share market pitch, outfield and pavilion.

The Market Adventurists

Observing that the Public Sector Units are all chaired by the top buerocrats an easy inference could be drawn that the trimuvirate of the bankmen, broker and the buerocrat put their heads to evolve practices devised for the moment and planned for the occasion. The bankmen were intent on the sale of low yield securities and high yield bonds. The broker had at his desk the statistics of the needs and pressures of all the banks. The "Friday Returns" all found their way neatly typewritten or photo copied to the broker's den. Between bankmen he had ready proposals.

"You need", he tells a bankman, "fifteen crores of rupees of securities to buy! I have a proposal of Bank 'A' to sell securities worth ten crore and Bank 'B' securities worth five crore. Together they satisfy your need."

This becomes a Bank to Bank deal. In the field of contracts there are forward contracts. Goods not yet available are promised to be sold for money received. If this promise fails the price is repaid with interest. Thus it is virtually a moneylending deal. This modus is imported into the market of sale of securities.

The ready forward transactions, the double ready forward transactions (of the pattern of one step forward two steps backward), the switch transaction facility and such other contrivances are invented

One deal is struck. After a beaten path a practice develops. Thus the contractual terms of law and legal forms are made current in financial matters.

The bankman-broker-buerocrat link is based on quick delivery system. Each one is a busyman. Time pays Sale of securities is not that easy. In respect of Government securities the procedure of the SGL is mandatory. In respect of non-Governmental securities the procedure for physical delivery of securities is impossible. So, a banker's Receipt is devised. It is a substitute for physical delivery of the bonds, securities and or certificates atleast for the time being. This is looked up as an innocent device that the Indian Bank's Association ingenuously prepares under the nomenclature of a Banker's Receipt. As the practice catches up the Banker's Receipts are so fully in the market that brokers have a ready stock. Piles and piles of these "instruments", in reality a useless pieces of paper, masquerading as a potential document. A broker who is riding two horses of the money market and the share market once feels an urgent demand of funds for investment in shares.

Necessity is the mother of invention. The broker's pocket is full of Banker's Receipts issued by one Bank to another. He goes to a third Bank and seeks loan on the basis of Banker's Receipts as security. The trick works. He bets the share purchase with borrowed money. The trader's practice has by now considered a 30 days affair. The life to the Banker's Receipt is thus legitimised. Thus, all Banker's Receipts are put up as securities for the debts the broker borrows! The month long validity is sufficiently convenient for him to make money

(to be continued)

Article 356 - Scope of Judicial Review

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

(from the last issue)

appointed by the Government under Section 4 of the Act held that there was no basis for the Notification banning R.S.S. and cancelled it.

As far as the communal riots are concerned it was several times more, both in magnitude and the number of persons killed, in Maharashtra, Gujarat, Assam and Karnataka which were ruled by the same party which is ruling at the Centre. This is how the power under Article 356 is used nay abused with an evil eye and for collateral considerations i.e., intolerance towards opposition parties. This is a sad commentary on the functioning of our Democracy under the Constitution.

The role played by the Governors, in aiding the abuse of power by the Central Government, at the behest of the latter in many cases and in the aforesaid cases is most unfortunate. This has brought down both the credibility and dignity of that high gubernatorial office.

Voice of the National Press

It always so happens that the Central Government which dismisses the State Government justifies the dismissal as good and proper, whereas the party which is the victim of the exercise of power calls it an abuse.

Therefore, it is appropriate to see how the National Press which voices public opinion has viewed the use of power under Article 356 in dismissing the three Governments of Madhya Pradesh, Rajasthan and Himachal Pradesh.

Overwhelming majority of the News Papers in the Country in their editorials expressed the view to the effect that the dismissal of the three Governments were

unjustified and was made abusing the power conferred on the Central Government under Article 356. Some of these editorials by leading News Papers were:

Statesman, dated 17-12-92. The Pioneer, Indian Express, dated 17-12-92. The Tribune, dated 17-12-92. The Economic Times, dated 16-12-92. The Hindustan Times, dated 17-12-92. and the Independent, dated 17-12-92.

It is in view of the aforesaid proclamation made under Article 356 which have been widely resented to as an instance of abuse of power the question has assumed great National importance.

Judicial Review Existence and Scope of

Under the scheme of our Constitution, Supremacy of the Constitution, Democracy and Judicial Review of all Legislative and Executive actions are its basic structures as held by the Supreme Court in the case of Keshavnanda Bharathi Vs. Union of India (A.I.R. 1973 S.C. 1461)

Therefore, whenever the power conferred under Article 356 or any other provision of the Constitution is abused, person aggrieved has the right to seek relief under the Constitutional provision before the Supreme Court or the High Courts as the case may be. Even so Proclamation issued under Article 356 by the President, saying that he was satisfied that the Proclamation should be issued is not open for the Judicial review happens to be the preliminary objection which is being raised by the Central Government, whenever the Constitutional validity of a Proclamation is challenged. But, such a question has

(to be continued)

Around the Courts

On 11-2-94 a Division Bench of Madras High Court ruled that the doctors and hospitals will not come under the purview of the Consumer Protection Act, 1986 though para-medical services of all categories and kind will come under the Act.

The Court held that the services rendered to a patient by a medical practitioner or a hospital by way of diagnosis and treatment, both medicinal and surgical, would not come within the meaning of "services" as defined under Sec. 2(1) (o) of the Act. The Court also held that a patient to undergo treatment under a medical practitioner or a hospital by way of diagnosis and treatment, both medicinal & surgical, cannot be considered to be a "consumer" with in the meaning of Sec 2(1)(d) of the Act. However, the medical practitioner or hospitals undertaking para-medical services of any category or kind could not claim immunity from the application of the provisions of the Act, the court ruled.

The Bench comprising Justice D. Raju and Justice A. R. Lakshmanan disposed off by this judgment Writ Petitions filed by Mr. C. S. Subramanian and 28 doctors & patients.

Court Building Collapses

On 12.2.94 the Munsiff Court building, under construction, in Hirekerur collapsed causing instantaneous death of a seven year girl and injuring forty two children in the age group of eight to eighteen. The Chief Minister Mr. Veerappa Moily and the Social Welfare Minister Mr. Dharam Singh who were about to board a Helicopter from Hirekerur visited the spot of the accident and consoled the victims and their wards. Some of the seriously injured were taken to Government Hospital, Davanagere for treatment.

T.N. Lawyers Boycott Courts

Lawyers in Tamilnadu and Pondicherry boycotted Courts on 16-2-94 protesting against the arrest of Mr. Kumar, son-in-law of Madras High Court Judge Justice Lakshmanan & "intimidation" of the judiciary by the Tamilnadu Government.

The boycott was a sequel to certain Tamil wall posters displayed in vantage places in and around the High Court premises and the Secretariat containing certain personal allegations against a High Court Judge and his son-in-law. A section of the Advocates led by the former President of the Madras High Court Advocates Association presented a Petition on 15-2-94 to the Chief Justice bringing to his notice the pasting of the wall posters. Taking cognizance of the Petition the court observed the Petition contended that the published material per se had the effect of scandalising the Court and lowering the authority of the Court in the eyes of the public. Holding that the printer, publisher, the author of the wall posters and those who had aided or abetted in writing, printing and publishing the posters were evidently liable for prosecution for an act of contempt the Court directed the Madras City Police Commissioner to produce the printer of the wall posters before it.

K.T.C.A Seminar

Sri K. Jairaj, IAS, Commissioner of Commercial Taxes in Karnataka, inaugurated a State level Seminar on simplification of sales tax structure in Karnataka organised by the Karnataka Tax Consultants Association at Bangalore on 12-1-94. Sri K. Anandam, President, FKCCI, presided over the function. Sri S. Narayana and Sri E. R. Indra Kumar, Advocates and Sri D.R. Balaji Singh, JCCT (Admn), Bang-

(continued on page 4)

NEWS FOCUS

□ On 11-2-94 Sri C. B. Srinivasan, Advocate, addressed the members of AAB, High Court Unit, on the topic "Humour in Literature".

□ On 21-2-94 lawyers in the City Unit abstained from court from 11 a.m. to 12 noon in protest against the delay in releasing funds for purchasing of a Generator.

□ On 21-2-94 Sri K. B. Krishna Murthy, Chairman, LID-KAR, inaugurated 3 days Exhibition cum sale of leather goods manufactured by LID-KAR in the AAB, City Unit. 30% rebate was provided on all spot sales.

□ On 22-2-94 Dr. Charles Brooks, Assistant Director, U. S. Department of Justice, addressed the members of AAB, High Court Unit. The topic was "The Law, Society and Ethnic Conflict-Protecting Minority Rights". Mr. Justice E. S. Venkataramaiah, former Chief Justice of India, was the chief guest.

□ On 22-2-94 a batch of lawyers led by Mr K. N. Subba Reddy, President AAB, visited the victims of recent Thilaknagar communal clashes at Sanjay Gandhi Hospital and wished them speedy recovery.

□ On 24.2.94 a farewell function was organised in AAB, City Unit, in honour of Sri B. K. Somasekhara who was appointed as a judge of the High Court.

□ On 28.2.94 under the auspices of AAB, City Unit, Sri Rudraswamy and friends gave Yogasana programme.

□ On 1.3.94 Dr. Subramanian Swamy, M.P., addressed the members of AAB, HC Unit, on the topic "Union Budget 1994-95".

□ On 1.3.94 Mr. S. Bangarappa, Former Chief Minister of Karnataka addressed the

members of AAB, City Unit, on the topic "Dunkel Proposals".

□ On 5.3.94 Justice S. Mohan, Judge, Supreme Court of India, addressed the members of AAB, City Unit, on the subject. "judicial delay in disposal of cases".

□ On 5.3.94 Sri Harnahalli Ramaswamy, Minister for Law, inaugurated the 31st Janatha Nyayalaya at Mysore. He indicated that the State Government proposes to set up Statutory Legal Boards to deal with the accident claim cases and land disputes. He further stated that the State Government has already sought Centre's permission in this regard.

□ On 11.3.94 Justice D. P. Hiremath inaugurated Addl. Court of Munsiff at Athani, Belgaum District.

SC Holds TADA Valid

By a majority decision the Supreme Court on 11-3-94 rejected all legal challenges to the Constitutional validity of the Terrorist and Disruptive Activities (prevention) Act, 1987 and held that the same is Constitutionally valid. The court declared that in view of fast spreading acts of violence by terrorists in the country it is constrained to uphold the validity of TADA.

Justice S. R. Pandian who headed the Constitution Bench of five Judges observed that "in fact terrorists had launched a domestic war against the sovereignty and the integrity of the country; security is at peril and law and order under disruption."

The court has also laid down guidelines in its judgment on the basis of which it expects the Government to amend the provisions of TADA. These guidelines

Urgent Action Needed

(continued from page 2)

up by the Court. Of late, it is noticed that no proper care is taken in the preparation of the cause list and there appears to be no supervision with regard to the preparation of cause list. A number of instances of shabby preparation of cause lists have come to light. One such instance is the cause list for 23rd Feb 94 in respect of Court Hall No. 20, Serial No. 12, in the category of cases listed for Admission. A reading of notings found therein makes no sense. Will the authorities take remedial action in the matter?

KTCA Seminar

(continued from page 3)

alore were among the speakers who participated in the seminar. Sri S. K. Nahar, President of the Association, extended warm welcome to the large number of participants who included officers of the department, tax practitioners, lawyers, traders and manufacturers. Sri T. P. Gandhi, Secretary of the Association, proposed vote of thanks. 'Swaralahari' provided light music at the end of the seminar.

Obituary

□ On 26-2-94 T. A. Mutalik, Advocate, Athani (Belgaum Dist.), passed away.

□ On 27-2-94 M. Ranga Rao, Advocate, passed away at Bangalore.

□ On 27-2-94 K. Venkatappa, Advocate, passed away at Bangalore.

□ On 7-3-94 S. Mani, Advocate, died at Bangalore.

include the shifting of burden of proof on the prosecution, provision of appeal to the High Court against the rejection of the bail application, right to file writ petition challenging their detention by the accused and appointment of judicial officers to expeditiously deal with the TADA cases.

ಪುಸ್ತಕ ಬಿಡುಗಡೆ

ತಾ. 16-2-94 ರಂದು ಬೆಂಗಳೂರು ನಕೀಲರ ಸಂಘದ (ನಗರ ಘಟಕ) ಆಶ್ರಯದಲ್ಲಿ ನ್ಯಾಯಮೂರ್ತಿ ಎಸ್.ವೈ. ಹಸುಮಂತಪ್ಪನವರು "ಜಾನಿವೀನಿ ವಿಧಿ ವಿಧಾನಗಳು" ಎಂಬ ಪುಸ್ತಕದ ಬಿಡುಗಡೆ ಮಾಡಿದರು. ಹರಪನಹಳ್ಳಿ ನಕೀಲರಾದ ಹೆಚ್. ಎಂ. ವೀರಭದ್ರಯ್ಯನವರು ಈ ಪುಸ್ತಕದ ಕರ್ತೃ. ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಕನ್ನಡ ಮತ್ತು ಸಂಸ್ಕೃತಿ ವಿಭಾಗದ ಮಂತ್ರಿಗಳಾದ ಶ್ರೀ ಹೆಚ್. ವಿಶ್ವನಾಥ್‌ರವರು ಮುಖ್ಯ ಅತಿಥಿಗಳಾಗಿದ್ದ ಸಮಾರಂಭದ ಅಧ್ಯಕ್ಷತೆಯನ್ನು ಸಂಘದ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ಕೆ. ಎನ್. ಸುಬ್ಬಾರೇಡ್ಡಿಯವರು ವಹಿಸಿದ್ದರು.

ಲಿಟರರಿ ಯೂನಿಯನ್

○ ತಾ. 11-2-94 ರಂದು ಆರ್.ವಿ. ಕಾಲೇಜಿನ ಸಂಸ್ಕೃತ ವಿಭಾಗದ ಮುಖ್ಯಸ್ಥರಾದ ಡಾ|| ಎಸ್. ರಂಗನಾಥ್‌ರವರು "ಸ್ವಾತಂತ್ರ್ಯೋತ್ತರ ಸಂಸ್ಕೃತ ನಾಟಕ ಸಾಹಿತ್ಯಕ್ಕೆ ಕರ್ನಾಟಕದ ಕೊಡುಗೆ" ಎಂಬ ವಿಷಯದ ಬಗೆಗೆ ಮಾತನಾಡಿದರು.

○ ತಾ. 18-2-94 ರಂದು ಖ್ಯಾತ ರಂಗ ಕಲಾವಿದ ಸಿ. ಆರ್. ಸಿಂಹ "ನಾಟಕ ರಂಗ, ಸಿನಿಮಾ ಹಾಗೂ ಟಿ.ವಿ.ಮಾಧ್ಯಮಗಳ ಪ್ರಭಾವ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

○ ತಾ. 27-3-94 ರಂದು ಬೆಂಗಳೂರು ಲಿಟರರಿ ಯೂನಿಯನ್ನಿನ ವಾರ್ಷಿಕ ಸರ್ವ ಸದಸ್ಯರ ಸಭೆ ಮತ್ತು 1994-95 ರ ಸಾಲಿಗೆ ಕಾರ್ಯಕಾರಿ ಸಮಿತಿ ಸದಸ್ಯರ ಚುನಾವಣೆಯನ್ನು ಹಮ್ಮಿಕೊಳ್ಳಲಾಗಿದೆ.

Miscellany

□ On 6-3-94 Mr. H.S. Dwarkanath, Advocate, Bangalore hosted a party to mark completion of two decades of his professional service.

For Your Requirement of Any Law Books. Contact :

M.V. Prabhakara,
Law Books Seller,
No. 196, Link Road,
Malleswaram,
Bangalore-560 003.

☎ 3311441