

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Unruly Scenes in Family Court Complex SP Become the Target of Public Ire

Bangalore March 1 : An irate mob of public and lawyers attacked Mr. N. Somashekhar, Superintendent of Police (Fingerprint Bureau), Bangalore as the latter attacked his sister-in-law Kavitha Reddy and a lawyer Krishna Swamy with baton and publicly scolded them in the Additional Family Court Bangalore at about 11-45 a.m on 1-3-95. The seriously injured SP with bleeding injuries on the face and head was temporarily shifted to the President's chamber in AAB, City Unit, where he was kept for an hour to avoid further attacks on him was finally shifted to the Victoria Hospital in an Ambulance in a semi-conscious state after the Bangalore City Commissioner of Police Mr. T. Srinivasulu and the Additional Commissioner Mr. A. R. Infant intervened in the matter at about 1-30 p.m. After the initial treatment at the Victoria Hospital Mr. Somashekhar was admitted in NIMHANS for further treatment. The state government has promptly suspended Mr. Somashekhar pending a high level inquiry into the whole affair. Considering the reaction of the State Home Minister Mr. P. G. R. Scindia who remarked that "I am appalled. It is a shame that a police officer of such a high rank took law into his own hands" shows that the state government has taken the matter seriously. In a subsequent development N. Someshekar has lodged a complaint running to fifteen pages naming some of his relatives and two Advocates as responsible for attack

on him. He has also claimed that he can identify all those who attacked him on the ill-fated day.

It all started with the arrival of Mr. Somashekhar along with some friends at 11-30 a.m. in a jeep to attend an M. C. Case filed by his wife Samanthakamani seeking divorce. The jeep was being driven in a rash and negligent manner and but for the diligence of some Advocates and litigant public who were standing at the entrance of the Court premises the jeep could have caused injuries to them. They had to run for safety. Mr. Somashekhar who was dressed with a blue-black coat wearing cooling glasses and a baton in his right hand got down from the jeep and entered the Additional Family Court. As soon as he entered the chamber of the presiding officer Mr. Somashekhar noticed that his sister-in-law Kavitha Reddy was complaining to the Judge that Somashekhar had infact bet her sister Samanthakamani and locked her up in the house so as to prevent her from attending the Court. Apparently being enraged by this turn of events Mr. Somashekhar started abusing Kavitha Reddy and Advocate Krishna Swamy and later assaulted them with his baton. As he emerged out into the Court Hall the lawyers and the litigants who had witnessed these happenings caught hold of Somashekhar and severely thrashed him. An appeal by the Presiding Judge to desist from attacking

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Bar Council Asks CJ to Quit

By a resolution dated 19-2-95 the Bar Council of Maharashtra and Goa sought the resignation of Chief Justice of the Bombay High Court Justice A. M. Bhattacharjee. By another resolution the Bar Council requested the Chief Justice of India to conduct investigations into the circumstances leading to the resignation of Justice Vijay Bahuguna of the Bombay High Court on 16-2-95. While pointing out the reports relating to the conduct of Justice Bahuguna the Bar Council expressed the view that the Judge must not be allowed to merely resign without further action being taken so as to restore the confidence of the Bar and the public in the judiciary. The Bar Council also appointed a privileges committee headed by Senior Advocate Mr. M. P. Vashi to independently go into the details and the circumstances of Justice Bahuguna's resignation.

The resolution seeking resignation of the Chief Justice A. M. Bhattacharjee has been adopted in the wake of the learned Judge receiving an amount of US Dollars 80,000 from M/s Roebuck publishing, London, towards the overseas rights of his book "Muslim Law and the Constitution." The Chief Justice having confirmed the receipt of this amount from him also disclosed that US Dollars 75,000 has been offered by the same publisher towards overseas rights of another book "Hindu Law and the Constitution" authored by him.

In an interesting development the Advocate General of

Maharashtra has admitted that the Chief Justice though informed him of the offer made by the foreign publisher in a casual way he was not informed of other details including the quantum of amount paid by the publisher. After the news was leaked to the press at one stage the Chief Justice who was on leave offered to resign from his post though it had not materialised at the time of our going to press. In yet another development Mr. H. R. Bhadrachari, the Union Law Minister, declined to interfere in the matter since the question of resignation did not concern the government.

Justice Nanavati Elevated

The President appointed Justice Girish Thakorlal Nanavati, Chief Justice of High Court of Karnataka, Justice Saiyed Saghir Ahmad, Chief Justice of Andhra Pradesh High Court and Justice Kondaswamy Venkateswamy Chief Justice of Patna High Court as the new Judges of the Supreme Court. It is a happy coincidence that after Justice S. P. Bhattacharya, Justice S. Mohan and Justice S. B. Majumdar Justice Nanavati is the fourth consecutive Chief Justice of Karnataka High Court to be elevated as a Judge of the Apex Court. Bar Council had organised a farewell function to Justice Nanavati in Court Hall No. 1 of the High Court on 4-3-95.

The Three Judges were sworn in on 6-3-95 at the Supreme Court. With their addition the present strength of the Supreme Court has risen to 24.

Judges are best in the beginning: they deteriorate as time passes — Tacitus

Code of Conduct for Judges

Increase in the number of instances of unsavoury controversy involving High Court Judges is not a good augury for the image of judiciary. The recent case of a Supreme Court Judge being the subject matter of public controversy show that even the Apex Court is not immune from being the target of controversy. Members of higher judiciary should not allow themselves to be subject of controversy by observing utmost restraint in their conduct as otherwise not only their personal image gets tarnished but also the confidence of litigant public in the efficacy of judicial process gets eroded.

Perhaps the framers of the Indian Constitution had not foreseen a situation wherein the members of higher judiciary would allow themselves to be ridiculed by the society at large and particularly the resolutions of Bar Councils. Now that such situation has developed in a vibrant manner steps should be taken forthwith to insulate the higher judiciary from becoming the target of criticism. In the course of a single year three Judges of the Bombay High Court had to resign on account of public controversies. There are also other such cases with regard to other High Court Judges.

Code of conduct is a necessary concomitant concerning all employments. That being so certain norms (be it called the code of conduct or otherwise) be adopted which the members of higher judiciary should follow in their own interest. The mere fact that the appointments of higher judiciary are made by the President in exercise of his Constitutional prerogative does not wish away the necessity of adopting a model code of conduct for service Judges and if need be even for retired Judges.

Apart from this an internal judicial mechanism should also be evolved by the judiciary itself to deal with situations of the members of higher judiciary being the target of criticism. There should also be overall judicial surveillance over the observance or non-observance of the model code of conduct by the Judges. All situations involving Judges cannot be met with only by way of removal of the Judges as provided under the Constitution. Besides all instances of breach of model code of conduct need not necessarily result in the penalty of removal. In this background having a permanent internal judicial mechanism which would provide for scrutiny of alleged breach of model code of conduct by the members of the higher judiciary would go a long way in minimising attack on the judicial system.

It goes without saying that there is obvious shortcomings in the selection process of Judges. Therefore there is necessity to streamline the effectiveness of scrutiny of candidates for appointment to higher judiciary which would minimise the occurrence of breach of the model code of Conduct by the Judges. Some of these remedial measures have to be resorted to on a priority basis before it is too late, will the authorities bestow their immediate attention to the problem?

Revised Subscription

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The Judges Case-A Critique

Sriram Panchu, Advocate, Madras

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affirming the correctness of the decision in Gupta's case.

The decision of Ahmadi J. will appeal to those who favour the classical and traditional role of the Judge in the interpretation of the Constitution, namely, that the plain language of the Constitutional provisions should be given effect to and that it is impermissible under the guise of interpretation to replace the provisions or rewrite them.

Ahmadi J. held that the word "Consultation" as understood in ordinary parlance, means to ask or seek advice or the views of a person on any given subject but it does not convey that the person so seeking is bound by the advice. He pointed out that the Constitution uses different expressions to meet different situations and convey different meanings. "Consultation" is used in Articles 124(2), 217(1) and (3) and 233(1), the expression 'previous consent' is used in Articles 127, 128 and 224 A, the word 'recommended' is used in Article 233(2) and the word 'approval' is used in Article 143 and proviso to Article 229 (2) of the Constitution. If, says Ahmadi J. the Constitution makers desired to transfer the power of appointment to the Chief Justice of India, nothing would have been simpler than using the expression "concurrence" or "consent". He, therefore, held that these expressions have deliberately not been employed because the Constitution makers did not intend to vest the final say in the Chief Justice of India.

While the majority draws heavily on the concept of primacy of the CJI to rest its decision, Ahmadi J. questions this basis by attributing three different elements to the concept of primacy, namely: (i)

primacy of the Chief Justice of India as 'paterfamilias' of the Indian Judiciary, (ii) primacy to be accorded to his views amongst the consultees referred to in Articles 124(2) and 217(1), and (iii) primacy in the sense of the Chief Justice of India's view being binding on the President, i.e., the executive. Ahmadi J. agrees with the doctrine of the CJI's primacy only in the first sense.

He puts the issue in a nutshell when he says, "however, convincing it may sound to the ideal of judicial independence that the views of the Chief Justice of India must have primacy as his views expressed after consulting his two senior-most colleagues would be symbolic of the views of the entire judiciary, the submission cannot be accepted unless the Constitution is amended."

Punchhi J. steers a middle path between the majority and Ahmadi J. by concluding that the role of the CJI in the matter of appointments is unique, singular and primal but participatory vis a vis the Executive in a level of togetherness and mutuality and neither he nor the Executive can push through an appointment in derogation of the wishes of the other. He comes down strongly on the majority's attempts to create plurality in the appointment process and terms the proposed structure as an oligarchy unknown to the Constitution.

As I said above, Justice Ahmadi's opinion is in line with the known and accepted role of the Judge and his limits in the interpretation of statutes.

It is extremely interesting to see how the majority gets out of the straight jacket that traditional theories of interpretation place on Judges

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Expectation Vs Efficacy

K. Suryanarayana Rao, Advocate

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go On arguing with the Counsel.

Assignment of work in the High Court has assumed greater significance in view of the fact that a number of Judges in each High Court are not conversant with the local language. Judgments/orders of the Sub-ordinate Courts, depositions, documentary evidence are often in Vernaculars. Providing of english translations of such documents though a desirable practice is bound to result in the increased burden on the lawyers and litigants. As such it may be desirable that while the Judges who are not conversant with the local language may be entrusted with the original side work and other Judges may be given the task of dealing Appellate and Revisional Work. This will go a longway in reduction of delay in disposal of the cases.

With a view to provide authentic translations from vernacular to english a separate section may be created in the High Courts. This will not only facilitate the High Court to get authentic translations but will also go a longway in helping the lawyers/litigants to have the translations prepared by payment of prescribed fee. Further this will also help in creation of employment opportunities for those who are qualified to provide translation.

Frequent changes in the type of cases assigned to individual Judges have resulted in delayed disposal of cases. This is due to the fact that all Judges are not fairly conversant about all branches of law. Therefore it is appropriate to allow them to gain fair amount of control over one type of cases before assigning other type of cases. Another reason for delay in disposal of cases is a strange

reality that some of the Judges fail to recognise that there are two stages about each case viz. "Admission" and "Hearing." This is more so in respect of Judges who are elevated from the cadre of District Judges who are not normally exposed to the experience of High Court work. It is desirable that this important distinction in recognised by all the Judges while dealing with the cases.

It is an irony of fact that on certain occasions working hours of the High Courts are extended by half an hour or so, the functioning of Courts during the normal working hours are not ensure. Unfortunately some Judges are in the habit of regularly attending the Court late. Obviously the working hours get reduced adding to the delay factor.

Requisitioning of the services of the High Court Judges to head various Commissions of Enquiry from time to time is bound to hamper the working of the High Courts Contributing thereby to inordinate delays in the disposal of pending cases. The governments must consider the question of appointing retired High Court Judges or creation of a panel of eminent persons (who are otherwise eligible to hold the posts of High Court Judges) who can be requisitioned for this purpose. This will go a long way in removing the pressure on the working of the High Court Judges.

Giving importance to the new cases at the cost of the older cases undoubtedly increases the life of a pending case. Since the Judges are free to dispose off the cases at the stage of admission a number of Judges resort to disposal of the cases at the admission stage itself instead of giving priority to the order cases. This practice should be resorted to

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Around the Courts

□ Validity of the claim of demurrage for the period of detention of imported goods by the customs authority :

By a majority judgment (2:1) delivered on 23-2-95 the Supreme Court has held that the International Airport Authority (IAA) and the Central Warehousing Corporation (CWC) are entitled to charge demurrage for the period during which the importer was unable to clear the goods because of detention by the Customs authority. Justice S. P. Barucha and Justice N. Venkatachala delivered the majority decision while Justice R. M. Sahai disagreed with the majority view. By this judgment the Appeal filed by IAA against the judgment of the Delhi High Court was allowed. The SC rejected the view of the Delhi High Court that the IAA was the custodian of customs & therefore it was not entitled to recover demurrage.

IAA Vs: M/s. Grand Slam International and others.

□ Implementation of Roster System for promotion is applicable to the same category of staff :

In a recent judgment the five Judge Constitution Bench of the Supreme Court comprising Justices Kuldeep Singh, S. Mohan, M. K. Mukherjee, B. L. Hansaria and S. B. Majumdar held that the operation of Roster System for the purpose of effecting promotion in the Government jobs should be made applicable only to the employees serving in the same category to which the post belonged in the roster. For example if an official holding a post belonging to S C on the roster point retired the slot had to be filled up from the S C candidates and if the retiring official belonged to the general category on the roster point then the slot had to be filled up from the candidates belonging to general category. The court

held that by this process the balance between the general & reserved categories can always be maintained without causing imbalance. The Judgment disposed off a writ petition filed by the Senior engineers of Punjab Irrigation Department challenging the Reservation Policy.

□ Sections 14 (1) (a) & 15(1) of the Delhi Rent Control Act :

In a recent judgment the Supreme Court has held that the Rent Controller has the power to condone a default made in the payment of deposit of rent pursuant to an order passed Under Section 15(1) of the Delhi Rent Control Act and not to strike out the defence of the tenant against the eviction sought by the landlord on the ground of non-payment of rent. This decision was rendered by the Division Bench of the Supreme Court comprising J. S. Varma, S. P. Barucha and S. C. Sen.

The owner of a shop premises located in pandit Leelaram Market, New Delhi had let out the same on rent. As there was arrears of rent the owner sent a demand notice to the tenant to pay the arrears of rent within two months after service of notice. The tenant had received the notice did not comply with the demand. The owner instituted eviction petition against the tenant under Section 14 (1) (a) of the DRC Act. The tenant appeared and admitted arrears of rent. The Additional Rent Controller directed the tenant to pay the arrears of rent within one month from the date of the order and continue to pay the subsequent rents before the 15th of each Month. The tenant paid a portion of the arrears of rent within the stipulated time. The owner moved an IA under Section 15 (7) of the DRC Act for striking out the defence of the tenant on

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Late News

Over 150 Supreme Court Advocates have submitted a requisition to the Secretary of the Supreme Court Bar Association to convene a General Body Meeting to adopt a resolution urging the Chief Justice of India to constitute a committee to inquire the cases of the judges of the Apex Court having "lawyer - relatives" residing with them.

The Chief Justice of Bombay High Court Justice A.M. Battacharjee in a Press conference held at Bombay on 9.3.95 announced that he has tendered resignation to the President of India with a request that the same should be accepted to have effect from 1-4-95.

By a Judgment dated 10-3-95 the Supreme Court has convicted the Chairman of Bar Council of India Mr. V. C. Mishra for being guilty of contempt of the Allahabad High Court and sentenced him to undergo simple imprisonment of six weeks. However the Court has suspended the sentence of imprisonment for a period of four years with a direction that it may be activated in case the contemner is convicted for any other offence of contempt of court within the said period. Further the Apex Court has suspended the right of Mr. V.C. Mishra to practice as an Advocate for three years and made it clear that all elective and non-elective offices or posts at present held by him in his capacity as an Advocate shall stand vacated by him forthwith.

Justice Hakeem Acting CJ

Justice S. A. Hakeem has been made as the Acting Chief Justice of the High Court of Karnataka consequent upon the elevation of Chief Justice G. T. Nanavati.

Corpse Exhumed

Recently a case of exhumation of the corpse of a lady lawyer at Yellampalli in Bagepalli Taluk in the presence of Tahasildar has come to light. Nagaraja (32) of Yellampalli & Jayalakshmi got married three years ago and both of them were practicing law at Hubli. On the basis of a telegram received from Nagaraja to the effect that Jayalakshmi was ill his father-in-law reached Hubli and came to know that his daughter had died even before the telegram was sent and the body of the deceased was taken to Yellampalli. On the basis of suspicion of unnatural death Jayalakshmi's father lodged complaint with the Hubli Police as well as Women Lawyers Forum of Hubli. Investigations are on.

Around the Courts

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the ground of non-payment of ordered rent and for eviction of the tenant. This was conceded by the Additional Rent controller. The tenant preferred an Appeal before the Tribunal which intum remanded the case to the Rent Controller to consider whether the delay in the deposit of arrears of rent (which was deposited subsequently) could be condoned. On remand the Additional Rent Controller held that the delay on the part of the tenant in depositing the rent could not be termed as unilferl debitate and contumacious and at the most the owner mened be entitled to some compensation for the delay in depositing the rent. The owner preferred an Appeal to the Tribunal and the Appeal was rejected. The owner approached the High Court by way of an Appeal and the same was rejected. The owner took up the matter before the Supreme Court. In disposing of this Appeal the Supreme Court passed the above judgment. Kamala Devi Vs Vasudev.

S P Attacked

(Continued from Page-1)

Somashekhar as he proposed to register a Complaint against him went unheeded and the mob severely bet Somashekhar even as he laid on the ground. At this turn of events the Judge returned to his Chamber and the situation provided "free for all". The Court furniture became handy weapons to the irate mob to beat Mr. Somashekhar. The situation became unruly. It was an irony that the police officers who were present on the scene including the DCP Mr. G. K. Bekal not only remained mute spectators when Mr. Somashekhar was being assaulted but also when he was shifted to the AAB premises wherein he was confined for almost over an hour. It was only when the cop and other higher ups appeared at about 2-00pm on the spot Mr. Somashekhar could be shifted to the police Ambulance on a stretcher.

Infact this is the third occasion when Mr. Somashekhar got involved himself in fracas with the Bangalore City lawyers even though he was physically attacked for the first time. It is hoped that Mr. A. R. Infant who has been directed to conduct an inquiry into the matter would take note of this.

Scribes Attacked

The Inspector of correspondence and Lensman who had dawned on the scene to cover the ugly incidence have complained that they were roughed up by the lawyers threatening them to desist from covering the incident. In the meanwhile Mr. K. N. Subba Reddy president of the AAB expressed shock at the incidence in the court complex and termed as unfortunate that some media persons and photographers were roughed up in the melee.

Did Revenge Play a Role ?

It is learnt that a couple of plain clothed policemen

who were present on the scene on that day actively participated in attack on Mr. Somashekhar by subjecting him to fisticuffs. Being subjected to disciplinary action on previous occasions by Mr. Somashekhar seem to have utilised the opportunity to reck vengeance against their boss.

News Focus

On 20-2-95 Sri S. Nanjappa, Karnataka Minister of Food and Civil Supplies, addressed the members of AAB City Unit and distributed Ration Cards to some Advocates.

On 23-2-95 Dr. S. N. Bharath Chandra addressed the members of AAB, High Court Unit, on the topic "Laws on Human Behaviour."

On 23-2-95 newly appointed Munsiffs were felicitated by the AAB, in the City Unit.

On 24-2-95 Justice (Retired) P.P. Bopanna inaugurated a seminar on the topic "Amendment to Land Reforms Act" under the auspices of AAB in the High Court Unit.

On 8-3-95 Mr. P. D. Shenoy, Managing Director of KSRTC addressed the members of AAB, City Unit, on the topic "Functioning of KSRTC & how to make transport system in the city more easy."

Obituary

On 19-2-95 J. N. Javaji (80), Advocate from Chikballapur, passed away at Chikballapur.

On 24-2-95 B. Neelakanta (76), Advocate, passed away at Bangalore.

Revised Working Hours

With effect from 20-2-95 the working hours of Karnataka Administrative Tribunal has been revised as follows:

10-30 am to 1-30 pm and 2-15 pm to 4-15pm.