

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 12

SC has Power to Oversee Working of Government - PVN

The Executive Head cannot decide whatever it should do. It is subject to the rule of Law. The Judiciary has a special role to see whether the Executive has acted justly. We must accord utmost importance to the independence of Judiciary declared Sri P.V. Narasimha Rao, the Prime Minister of India in the function organised to mark the celebration of the 150th year of the Chikkodi Bar Association and the Court on March 2, 1996.

The Prime Minister asserted that the Supreme Court has the power to determine whether the Executive used its powers rightly or had exceeded its role. In the context of the Hawala cases the Prime Minister made these remarks.

Mr. Rao also said that the Government wants to ensure speedy and inexpensive justice to the needy particularly to the weaker sections of the Society. In this regard the Prime Minister pointed out that steps were being taken to computerise all the Courts with a view to facilitate speedy disposal of cases. He called upon the Lawyers to co-operate in the Government's endeavour of ensuring speedy justice.

The function was attended by the Chief Minister Mr. H.D. Deve Gowda, Union Minister of State for Personnel Ms. Marga et Alva, Local MP Mr. Shankaranand and several other dignitaries.

Emulate SC - CJI

Chief Justice of India Justice A. M. Ahmadi called upon the High Courts to emulate the example of the Supreme Court in bringing down pendency of cases. Justice Ahmadi was speaking at the function to inaugurate the Moot Court at

the NLSIU, Bangalore on March 3, 1996. He said that there were more than 1 lakh pending cases in the Supreme Court and now it has been brought down to 30 thousand cases.

Justice Ahmadi said that the country has brilliant Judges and Chief Justices but they are not endowed with administrative and managerial skill. As a result the management aspect of the Judicial system had been neglected for a long time and therefore a team is constituted under the auspices of the Judicial Academy to provide a module for management of High Courts and other subordinate Courts. It is in this background computerisation of High Courts was undertaken and it was almost complete. Now steps are taken to computerize all the sub-ordinate Courts in the country in the next eight months.

Justice Ahmadi also hinted that new Law Schools on the lines of NLSIU are likely to come up in Kerala and Rajasthan. Chief Justice of the High Court of Karnataka Justice M. L. Pendse and noted Jurist Mr. Ram Jethmalani also participated in the function.

Humour in Courts

A Company Secretary approached the Lawyer as to the steps he had to take regarding a case of misappropriation of Rs. 2,000/- by an erstwhile employee. The Lawyer had suggested to lodge a police complaint. Subsequently when the Company Secretary met the Lawyer it transpired thus.

Lawyer: What happened to your complaint?

Secretary: The police cop promptly came the next day and asked me to pay Rs. 2,000/- and I asked the reason for such demand to which he replied that the former employee is to be traced and for this purpose petrol is to be procured for using the jeep!

Election Petitions

In March 1993 there were 74 pending Election petitions before the Supreme Court and 324 Election Petitions before various High Courts in the country. It is learnt that 15 Election Petitions are Pending disposal in Karnataka High Court as on January 1996.

News Spectrum

Getting a divorce is so easy in California. All that one has to state is that there are irreconcilable differences between the spouses. California provides for such divorce and infact there is what is called as "no fault divorce law."

CAMPUS WATCH

□ Ms. Anu Chengappa and Ms. Shwetha Krishnappa of University Law College bagged First and Third prize, respectively, in the Inter-Collegiate (English) Seminar "What I expect from Cinema" organised by Suchitra Film Society, Banashankari.

□ NLSIU team from Bangalore secured first place in the recently concluded All India Moot Court Competition conducted by the Kerala Law Academy, Thiruvananthapuram. The team comprising Mr. Raghavendra, Mr. Srivatsa and Ms. Jayna Kothari of Bangalore University Law College were the runners up. Ms. Kothari was also adjudged the best lady participant.

□ On 14-2-96 activists of Students Federation of India staged a demonstration in Bangalore protesting against the Bar Council of India's decision to introduce pre-enrolment apprenticeship. Again on 23-2-96 a similar protest demonstration was held under the banner of the Akhil Bharatiya Vidhyarthi Parishad.

□ On 20-2-96 Model Lok Sabha Competition was held in Bangalore under the auspices of YMCA. SJRC Law College secured the first prize and BU Law College secured the second prize in the competition.

**Wish you
Happy Ugadi**

It is the duty of a Judge to administer the law,
not to make it.
—Latin Phrase

Judicial Activism

The Chief Justice of India, Justice A. M. Ahmadi defended the Judicial Activism Particularly in the light of recent interventions by the Apex Court. He expressed that this role was imposed on Judiciary by the prevailing circumstances, he felt that this is only a temporary phase. Justice Ahmadi was speaking in a seminar in New Delhi during February 96.

In recent times no day passes without people noticing reports in the media about Court proceedings. Be it the case of anti-corruption, anti-defection, Banking scam, Constitutional validity, Contempt of Court, demolition of unauthorised construction, damages, environment, Godman, Hawala, Human Rights, pollution, the people have found that approaching the Apex Court is the most expedient method of getting justice. So much so the Apex Court had to issue directions to the Chief Election Commissioner and the Election Commissioners to meet and resolve their differences; suggesting to the prime Minister to amicably resolve the cauvery water dispute.

Is it that the public have suddenly become conscious of their rights or more scandals are uncovered or the Legislature and Executive have become ineffective or the Courts of Law have started asserting to fill the void or the people's confidence in Judicial system has found a new measure? The answer is that all these factors have been independently and or jointly responsible for the enhanced Judicial Activism. Public Interest Litigation has been a catalyst in enhancing the role of Judiciary in matters of general importance. The observation of the President of India in his address to the

Indo-Canadian Legal Conference at New Delhion 16-2-96 that the Judiciary has been doing an efficient job in mitigating the problems faced by the people assumes a greater significance with regard to the role played by the Judiciary in recent times.

It is not that people have whole heartedly welcomed this situation. Leader of the opposition in the parliament Mr. Atal Behari Vajpayee has recently expressed his concern during his parikrama Yatra that the developing situation wherein the Judiciary is assuming greater role is not a healthy trend in a democratic set up. The Union Minister of state for Personnel and Public Grievances Ms. Margret Alva also expressed her concern about the tendency of the Courts to assume power over Executive matters during her speech in KPCC (I) Legal Cell Convention at Bangalore. Several letters have also appeared in the press both for and against this trend. In other words an informal debate at National level is already in motion. Since the issue involves a very important question of this nature it is time that the professional bodies like the Lawyers' Organisation should necessarily participate in this National endeavour.

All said and done the Judiciary has its specified role under the Constitution. In the name of Judicial Review the Judiciary cannot tread the paths earmarked for Executive and the Legislature. After all judicial clasticity is limited and it cannot be stretched beyond a point. Every good thing would have a saturation point and thereafter the theory of diminishing returns will operate.

Judiciary and Speedy Justice

Justice M. F. Saldanha

(continued from last issue)

If the specialised fields are carefully assessed and the Judges are consulted in the matter, it will be possible to best utilise their expertise in the fields with which they are adept and through such a procedure there will be a 100% acceleration in the disposal of cases.

The rules framed by all the High Courts require certain classes of cases to be placed before a Division Bench of two Judges. I am totally opposed to this procedure for a variety of reasons, the most important of them being that with the limited number of Judges that we have at present, we cannot afford this luxury. Apart from this, in actual practice, it is found that the senior Judge always dominates the Bench virtually rendering the presence of the other Judge almost redundant. Until the rules are amended and the majority of cases other than references and a small category of very serious matters such as death sentence confirmation cases are retained before the Benches, I would suggest that working norms be evolved by the individual Judges whereby the work is not only shared by both the Judges on the Bench equally but more importantly that one complements the job of the other. If the Second Judge were to get ready with the next matter while the previous judgment is being dictated, it will be found that at the end of the session, the Division Bench has disposed of the number of cases which not two but three Judges could have finished.

It may be flattering to the Judiciary that whenever something of consequence occurs be it a communal riot, an aircrash or a bridge collapse,

a Judicial enquiry in the form of a Commission is set up. This has not only embarrassed the Judiciary but has depleted the number of Judges available for judicial work by as much as 26%. I am totally opposed to assigning these functions to sitting Judges. The Government should request retired Judges, who are extremely competent and experienced to help out with these Commissions. If this is done we will immediately have 26% more capacity available for the courts.

In present set up, there is no necessity nor is the justification for verbose and long judgments or orders. By application of the principles of brevity exactly 50% of the working time of the courts can be increased. In those of the cases, where the judgment is likely to take time, it would be useful to defer it so that the dictation could be done in Chambers after court working hours. I have found that by following such a procedure in selective cases literally double the amount of work can be completed in the courtroom. This would mean literally a 100% improvement over the normal disposals.

I need to emphasise that pre-supposes efficiency and if one expects these two factors, the necessary infrastructure must be provided. The working conditions in the courts are pathetic. I had recently pointed out that most of the time the Lawyers and Judges are working in sub-human conditions with no ventilation, no proper furniture, hardly any light and in one case with a gas-light on the Judge's desk. The reference books and library facilities are extremely poor.

(to be continued)

"Role of courts" needs debate,

— Margaret Alva

There is a need for debate on whether Courts could assume the power of the Executive as otherwise the situation may lead to serious consequences declared Ms. Margaret Alva, the Union minister of state for Personnel and Public Grievances. She was speaking at the valedictory function of the State Lawyers' Convention organised by the KPCC (I) Legal Cell on 15-2-96 at Bangalore. In her address to the Convention Ms. Alva also stated that Courts should devote equal attention to cases other than public interest litigation.

Calling upon the Lawyers to bestow their attention to solve social issues Ms. Alva pointed out that the delay and pendency of cases in Courts were worrying the people. She said that it should be the concern of the Government and the Lawyers to evolve a system which could reduce the pendency of cases. She was of the opinion that not many in the legal profession were prepared for such changes. It is in this context the role of "Congress Lawyers" is vital. Ms. Alva also said that it was the Congress Party that introduced the concept of free legal aid.

Referring to the issue of corruption in public life, State funding of elections and electoral reforms Ms. Alva said that they require immediate attention. She congratulated the Congress Party and the Union government for the proposed introduction of the Lok Pal Bill and the establishment of the Human Rights Commission by the centre.

The former Chief Minister

Mr. M. Veerappa Moily also addressed the Convention. He said that Lawyers should become relevant to the democratic process by fighting injustice. He felt that communalization of politics is as worst as criminalisation of politics and that the Lawyers should play a leading role in putting down these elements. Mr Moily called upon the Lawyers to strengthen the hands of Prime Minister Mr. Narasimha Rao for attempting to cleanse public life in the context of the Hawala Case and allowing the law to take its own course.

Former Deputy Chief Minister Mr. S. M. Krishna who presided over the function complemented the Prime Minister for his swift action in the Hawala Case. Mr. O. P. Sharma, the Chairman of AICC Legal Cell, also addressed the Convention. Chairman of the KPCC (I) Legal Cell Mr. P. A. Krishna Peddy, welcomed the gathering.

Advocate Held

During the third week of February 1996 Yelahanka Police arrested six persons of a gang headed by Mr. P. R. Bhat, a Bangalore Advocate, allegedly involved in the manufacture of bogus land records and mutation entries. The City Police Commissioner Mr. T. Srinivasulu informed the media persons that this gang had helped several persons to avail Bank loans over a couple of crores on the basis of the fabricated land revenue documents. He also told that the Police have managed to unearth two trunk loads of forged documents, blank sheets of Khata, Patta, tax paid receipts, Form No. 10 and BCC tax paid receipts.

O Maharashtra Medical Council Act, 1965 & Rules, 1967 :

A Division Bench of Bombay High Court comprising of Justices M. B. Shah and A. V. Sawant in a judgment delivered in January 1996 held that a patient or his near relative, on demand and payment of required charges should be given the copies of the case papers and all the relevant documents pertaining to the patient by the hospital authorities and the doctors concerned. They said that the Maharashtra Medical Council Act, 1965 & the Rules, 1967 permit such an action and directed the Maharashtra Medical Council to issue necessary circulars in this behalf to all the hospitals and doctors in the State of Maharashtra. They added that they do not think that hospitals of the doctors can claim any secrecy or any confidentiality in the matter of copies of case papers relating to the patient. The above judgment & directions were given on a Writ Petition filed by one Mr. Raghunath G Raheja against the Maharashtra Medical Council, State of Maharashtra & others challenging a resolution passed by the Executive Committee of the Maharashtra Medical Council absolving two doctors of charges of giving negligent medical treatment to the petitioner's wife. The resolution was passed after the Executive Committee went into the complaint given by Mr. Raheja on the negligent medical treatment given to his wife who had earlier undergone a bypass surgery and later on died of myocardial infarction.

O Inherent Powers under Section 482 of Cr. P. C. :

A Division Bench of the Supreme Court comprising of

Justices G. B. Patnaik and K. Ramaswamy in a judgment delivered in the last week of January 1996 setting aside the orders of Patna High Court held that a High Court can quash under its inherent power under Sec 482 of Cr. P.C., an order of 'cognisance' of an offence made by a Magistrate in a criminal case after perusal of the 'charge sheet' and other relevant papers and materials filed by the Police (after investigation) only when the allegations in the FIR or the complaint together with other materials collected during investigation taken at their face value do not constitute the offence alleged. The Bench observed that at that stage it is not open to the Court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. This Judgment was delivered in Special leave appeal filed by the State against the order of Patna High Court.

O Consumer Grievances Redressal - impermissibility of transfer of amount from an account of a person to adjust the outstanding dues of her husband's account :

The Karnataka State Commission for Consumer Grievances Redressal in an order made in January 96 pulled up State Bank of India for unjustifiably transferring a woman's fixed deposit amount to her husband's account for adjusting it towards money due from him. The complainant had asked SBI to close her fixed deposit account and pay back the money with interest. Instead the Bank under one pretext or the other declined the request and contended that it had filed a suit for recovery of money

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Resolutions Adopted

The recently concluded All India Notaries' Meet at Bangalore unanimously adopted resolutions requesting the Government of India to prescribe common procedure for appointment of Notaries on the basis of the population, fix ratio/quota; revision of fees fixed under the Notaries' Act/Rules; to amend the Notaries Act and the Rules prescribing common Stamp Duty for notarial acts; deleting provisions of Rule 5 of Notaries' Rules; to treat the functions of Notaries as essential service and to extend the privileges of getting telephonic connection and other public distribution system on priority basis and to form an All India Notaries' Association.

News Focus

- On 16-2-96 the National Law College of Shimoga celebrated Silver Jubilee of its establishment.
- On 20-2-96 Acharya Samma Darshini addressed the members of AAB, High Court Unit on the topic "Kalki the personal God".
- On 28-2-96 Justice M. F. Saldanha addressed the members of AAB, Magistrates' Court Unit, on the topic "Right to Speedy Trial".
- On 5-3-96 Justice Mr. K. Ramaswamy, Judge, Supreme Court of India, delivered the valedictory address of the Golden Jubilee Bruhat Nyayalaya organised by the "District Legal Aid Committee, Bangalore and the Karnataka Legal Aid Board, Bangalore. Chief Minister Mr. H.D. Deve Gowda was the chief guest. The State Law Minister Mr. M. C. Nanaiah, Mr. Justice S. A. Hakeem, Mr. K. N. Subba Reddy, President, AAB and several other dignitaries participated in the function.
- On 8-3-96 under the auspices of Lahari Mr. K. S. Ramanathan, Advocate, delivered a lecture on "The Concept of Joint Hindu Family."

MISCELLANY

- With effect from 9-2-96 Mr. D. Jayaramaiah, Advocate and Central Government Standing Counsel, is functioning from his new chamber 65/66, 2nd Floor, Cubbonpet Main Road, Bangalore-02. Phone (R) 603175.
- On the night of 17-2-96 there was a burglary in the chamber of Mr. B. R. Sathenahalli, Advocate, Bangalore and cash of more than Rs. 60,000/- was taken away by the burglars.
- W.e.f. 1-3-96 Mr. Yatkal Lakshmikanth & Ms. Y. Malathi Reddy, Advocates, shifted their Chamber to No. 13, Swasthik Complex, Seshadripuram, Bangalore-20.

- Designated TADA Judge Mr. J. N. Patel, trying the Bombay Blast case is appointed as a Judge of the Bombay High Court with effect from 11-3-96.

- Mr. Anil Scaria and Mr. P. S. Dinesh Kumar, Advocates from Mayo Hall Unit have been appointed (on recruitment) as Civil Judges (Junior Division) in Goa.

Clarification

It is hereby clarified that the Review Petition in RFA No. 451/95 was filed by Mr. B. N. Rama Murthy, Advocate and not AAB as reported in February 1996 part of Communique.

Around the Courts

(continued from page 3)

due from her husband and he had requested the Bank to adjust it out of the fixed deposit of the wife. The Commission ordered SBI to pay back the amount to the complainant with interest at 12% and costs.

Point Blank

- I cannot remove even a class IV employee.

Sri P. V. Narasimha Rao in his recent speech at Chikkodi.

- Enough of this. Where is the seizure list? we don't even know how to describe what you have seized.

Justice J. S. Verma, Judge, Supreme Court while chiding Mr. Deepankar Gupta, Solicitor General of India, during the recent hearing of Hawala case.

Tit Bits

- An Urdu daily from Hyderabad is titled "Munsiff".

ಲಿಟರರಿ ಯೂನಿಯನ್

- ದಿ|| 28-2-96ರಂದು ರಂಗ ಕಲಾ ವಿದ್ ಶ್ರೀಮತಿ ಚಂದ್ರೋಡಿ ಲೀಲಾರವರೂ "ಕನ್ನಡ ನಾಟಕ ಕಲೆ ಮತ್ತು ಅದರ ಬೆಳವಣಿಗೆ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

- ದಿ|| 7-3-96ರಂದು ತ್ಯಾಗರಾಜ ಹಾಗೂ ಪುರಂದರದಾಸರ ಆರಾಧನೆ ಉತ್ಸವ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು. ವಿಜಯ ಕಾಲೇಜ್ ಆಫ್ ಮ್ಯೂಸಿಕ್‌ನ ಕಲಾವಿದರಿಂದ ಸಂಗೀತ ಕಾರ್ಯಕ್ರಮ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು.

OBITUARY

- C. B. Siddaiah (68) Advocate, passed away at Bangalore on 3-3-96.
- K. Narayana (85) Advocate, passed away at Bangalore on 7-3-96.
- O. Krishna Murthy (68), Advocate, passed away at Bangalore on 8-3-96.

Office Accommodation Required

Office accommodation in the vicinity of Gandhi Nagar is required immediately. Specific proposals may be conveyed to

Ms. Smitha

Advocate

Phone : 8396638, 363271

Lahari Book Fair

For your need of Law Books, General Books, Children's Books visit the Second Book Fair organised by Lahari, the Forum of Advocates for Socio Cultural Activities, Bangalore. Major publishers and Book Distributors are participating Don't miss the opportunity.

Venue :
Conference Hall
Bangalore City Civil Court

Period :
2nd, 3rd & 4th
April 1996

Timing :

10-30 a.m. to 5-30 p.m.

Jagadish Mundargi
Project Co-ordinator

P G.C. Chengappa
President, Lahari

C. Prakash
Convenor

S.N. Prashanth Chandra
Secretary, Lahari