

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 4

APRIL 1992

PART 1

Election Postponed

The Governing council meeting of the A A B held on 17-3-92 resolved to adjourn the Annual General Body Meeting and elections to the post of office bearers for 1992-93 from 11-4-92 to 5-7-92

A A B Seeks Writ

Advocates Association Bangalore presented W. P. No. 8532/92 seeking a writ of Mandamus / direction to the State Government and the High Court to fill up the existing vacancies of District Judges by direct recruitment. On 18-3-92 the Court (Rajendra babu .J.) granted Rule nisi and ordered emergent Notice regarding the interim prayer.

Transferred

During March 92 Sri G. Dakshina Murthy Additional Judge, Court of small causes, (S C C H 12) was transferred and posted to the Law Department, Government of Karnataka, Bangalore as Deputy Secretary.

National Law School

Application forms for Admission Test for B.A., LL.B. (Hons.) Degree Course 1992 provided by National Law School of India University should reach the Registrar on or before 18-4-92. The Admission Test is scheduled to be held on 3-5-92.

Cricket Tournament

It is learnt that from 19 to 25th April '92 Bangalore Advocates Association will be hosting III All India Lawyers Invitation Cup Tournament open to all the State level Cricket teams of Lawyers.

Appointment Quashed

By a landmark judgment delivered on 10-3-92 the Supreme Court Quashed the appointment of Mr. K. N. Srivastava as a judge of Guwahati High Court. A Division bench consisting of Justice Kuldeep Singh, Justice P B Sawant and Justice N.C. Kasliwal quashed the Presidential notification appointing Mr. Srivastava, former Secretary to Dept. of Law and Judiciary Govt. of Mizoram, on the ground that he did not fulfil the qualification laid down in the Constitution for such appointment.

State Conference

6th Karnataka State Lawyers Conference is scheduled to be held from 1 to 3rd May 1992 at Mysore. It is learnt that the local Bar Association is endeavouring to get participation of large number of delegates and make the conference a great success.

Lawyer Assaulted

It has been reported on 24-3-92 Keshava Murthy, an Advocate, was assaulted at the Mayo hall unit by his client one Subramanyam. The latter having been arrested was remanded to judicial custody. An emergent general body meeting of the A A B held on 26-3-92 strongly condemned the assault on its member.

Official Language

On 29-3-92 Sri P R. Kumara Mangalam, Union Minister for State for Law and Justice announced in the Rajya Sabha that the Government has accepted the proposal to make Hindi the official language of the High Courts in Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh.

New Court Opened

On 28-3-92 the Court of Judicial Magistrate First Class (Sales Tax) was opened at the premises of the Commissioner for Commercial Taxes. "Srinivasa Complex", Seshadripuram, Bangalore 560020. to exclusively deal with the cases falling under the provisions of the Karnataka Sales Tax Act. Sri Srirama Reddy, the Registrar, Court of small causes, Bangalore was transferred and posted as the Presiding Officer.

Book Released

On 31-3-92 Justice R. Ramakrishna released the book "Strikes in Industrial Conflict a Critical and Comparative Study" written by Dr. V.B. Coutinho, Registrar, Bangalore University. Justice N. Y. Hanumanthappa was the chief guest of the function. Dr. N R. Madhava Menon, Director, NLSIU, presided. The function was organised by Janapara Sahitya Parishat of Bangalore.

Book Review

On 18-3-92 Nyayavadigala Sahitya Vedike had organised a programme of book review at the High Court Unit. S/s S.P. Shankar, Mahantesh Hosmath, K.B. Adhyapak and B.S. Raikote, Advocates, expressed their views on the book Nyaya - Anyaya written by Sri C.B. Srinivasan, Advocate. Sri K.N. Subba Reddy, President AAB, presided over the function.

Kannada Workshop

The BLU and the Directorate of Kannada and culture jointly propose to conduct a workshop for lawyers from 20th to 26th April 1992 regarding use of Kannada as administrative language. Interested persons may register their names in the literary union.

News Spectrum

□ During the last week of February 1992 the Irish Supreme Court permitted a fourteen year girl, a rape victim, to travel to England to undergo abortion on humanitarian grounds. The Predominantly Catholic Ireland's law prohibits abortion. The Supreme Court set aside the Judgment of a county court refusing permission to the girl to go abroad.

□ In a leading decision, the Canadian Supreme Court has given a new dimension to the concept of equality and the idea of obscenity as well. In the case of Butler V/S Her Majesty the Queen, involving a winnipeg video store owner, who was convicted for distributing obscene materials, the Supreme Court rejected the plea that sexually explicit were a form of protected speech. It upheld the government's power to outlaw pornographic magazines and films if it could be shown that such materials 'degraded' the women thus offending the equality.

Humour in Courts

The wife had filed M.F.A. against the Judgment and order for restitution of conjugal rights. The case was listed for Admission.

Judge : (to the Counsel for Appellant) why doesn't your client join her husband?

Counsel : My Lord, the husband is suffering from Venerable disease !

Communique

Wishes its
Readers and Advertisers
a Happy & Prosperous

UGADI

*You are not punished for the sin but punished
by the sin —Gita*

CODE OF CONDUCT FOR JUDGES

The framers of the Indian constitution must have thought that the persons occupying the posts of Judges in the High Courts and the Supreme Court will be the icons of virtue. Hence it is natural that they might to have not foreseen a number of issues which have cropped up both in the appointment of the Judges and their conduct during the period of their being in office. Though unfortunate, News papers, periodicals and mass media, have been reporting a large number of scandals involving the judges at the High Court and the Supreme Court level. Suffice it to state that these instances have had the effect of tarnishing the image of judiciary. It is high time that mechanisms should be evolved to deal with such instances if we want the image of the judiciary should not suffer further. A code of conduct for judges at the higher level might be one such mechanism to begin with.

The recent happenings in the Supreme Court in the contempt proceedings initiated against Justice Ramaswamy has raised many imponderable questions which require urgent solutions. Three out of the four Judges designated by the Chief Justice of India to hear the said contempt petition declined to hear the same on the basis that their brother Judge is the Respondent to the said proceeding. Though this reasoning appears to be plausible at the first sight an analysis of the same cannot ultimately sustain the reasoning given by the learned judges. If every judge of the Supreme Court adopts this as a reason to decline to hear the contempt proceedings against Justice Ramaswamy it will mean that the Supreme Court is disabled to adjudicate the matter. Then where should the complainant

go? Does it mean that the Respondent can go scot free on account of non-availability of a forum in which he can be prosecuted?

This means that High Court Judge or a member of subordinate Judiciary cannot be tried by other members of the judiciary having coequal status whatever might be offence alleged against such judge. This also means that the members of judiciary (at least higher judiciary) form privileged class by themselves and that they cannot be tried for whatever reason as in the case of a commoner. Was this the intention of framers of the Constitution and or the law makers?

If the Chief Justice assigns any work to the puisne judges whether it is open to them to decline to discharge such responsibility is another question which requires an answer. The judges holding constitutional posts are to discharge their duties without fear or favour or without bothering who is the person who stands before them. If the judges so assigned to deal with the case decline to discharge their duty can it be considered an act of impropriety, dereliction of their duty or abdication of their onerous responsibility?

Had there been a code of conduct, preferably with statutory force, for judges perhaps many of the issues which are presently facing the higher judiciary could have been effectively tackled. Since we have not been able to have any such code of conduct or such mechanisms it is found difficult to overcome such eventualities. Therefore it is high time that the Government and the judicial administrators should apply their mind and bring in the necessary mechanism.

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LAW AS PROTECTION FROM POWER

Justice M. N. Venkatachalaiah

(from the last issue)

doing that which the legislature has authorised, if it be done without negligence, although it does occasion damage to anyone; but an action does lie for doing that which the legislature has authorised, if it be done negligently. And I think that it is by a reasonable exercise of the powers, either given by statute to the promoters, or which they have at common law, the damage could be prevented. It is, within this rule, 'negligence' not to make such reasonable exercise of their powers...."

Some problems arose in *Sheppard V. Glossop Corporation*. The Glossop Corporation, in exercise of its statutory powers under Section 161 of the Public Health Act 1875 installed street-lamps and one such was put on a retaining wall of a street; but in accordance with its resolution, the light was turned off at 9 p.m. The plaintiff, owing to the darkness which fell over the retaining wall claimed damages, on the ground that the Corporation was negligent in turning-off the light in a dangerous place. This, it was urged, came within *Geddis* principle. The action was dismissed on the view that there was only a power—and no obligation—to light the area and that the Corporation was not liable when it had decided in the exercise of its discretion only to light the area for a certain period of time. This case illustrated the "central problem of dividing between the type of cases which were susceptible to adjudication on negligence and those which were not". *Sheppard's* reasoning was used in *Kent's* case.

In *East Suffolk Rivers Catchment Board vs. Kent* (1941 AC 74) the Board which had the statutory power to repair a river wall and which undertook such repairs did not

execute the work with reasonable dispatch. As a result of this delay, the plaintiff's land remained flooded for longer period than it would have been had the work been executed with the requisite care. House of Lords held that the Board had a power, but no duty, to mend the walls; it could have lawfully refrained from acting and the only duty it owed in repairing the wall was to avoid causing 'fresh' damage; it was not liable for failing to cure existing damage, caused by natural flooding, expeditiously. Some thirty years later the English courts took a fresh look at the issues raised in the earlier cases.

There are two decisions of the House of Lords which are important in the direction they give to the law. The first is the *Home Office vs. Dorset Yacht Club* (1970 AC 1004) and *Anns vs. Merton London Borough Council* (1978 AC 728). *Anns* case was applied in *Dennis vs. Charnwood Borough Council* (1983 QB 409) and *Fellows vs. Rother District Council* [1983 (1) All ER 513]. *Anns* case made distinction between policy and operational levels of functions in relation to liability in negligence. This distinction between policy and operational levels was accepted by the Supreme Court of Canada which had itself suggested a similar distinction between administrative and business powers. (See *Barratt vs. District of North Vancouver* (1980 2 SCR 418).

In *Dorset Yacht Co. Ltd. v. Home Office* ([1970] A.C. 1004) some borstal boys who were working on an island under the supervision of probationary officers, escaped and caused damage to the plaintiff's yacht. The claim was against the Home Office on the ground of negligence in the applying supervision of the escaped boys.

(to be continued)

Presidential Reference

K. S. Savanur, Advocate

Article 141 reads "the law declared by the Supreme Court shall be binding on all courts within the territory of India".

Article 143 reads "(1) if at any time it appears to the President that a question of law and fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon. (2) The President may not withstanding any thing in the proviso to Article 131 refer a dispute of the kind mentioned in the (said proviso) to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

Articles 141 and 143 of the present Constitution are similar to sections 212 and 213 respectively of the Government of India Act, 1935. Article 395 of the present Constitution repeals the Government of India Act 1935. The transitional provisions from the Government of India Act, 1935 to the present Constitution is under article 392.

The jurisdiction or the power of judicial review of the Supreme Court are as under:

(a) Article 32: Remedies for enforcement of rights conferred by part III, this remedy under article 32 is itself of the fundamental rights; (b) Article 131: Original jurisdiction to Supreme Court. (c) Article 132: Appellate jurisdiction of Supreme Court in appeal from High Courts in certain cases. (d) Article 133: Appellate jurisdiction of Supreme Court in appeals from

the High Courts in regard to civil matters. (e) Article 134: Appellate jurisdiction to Supreme Court in regard to Criminal matters: (f) Article 135: Jurisdiction and powers of the federal court under existing law to be exercisable by the Supreme Court. (g) Article 136: Special leave to appeal to and by the Supreme Court. (h) Article 137 Review of judgments and orders by the Supreme Court. (i) Article 138: Enlargement of the jurisdiction of the Supreme Court. (j) Article 139: Conferment on the Supreme Court of the powers to issue certain writs. (k) Article 140: Ancillary powers of Supreme Court.

When the Supreme Court exercises the power or jurisdiction in any one of the above said articles and pronounces its judgment or decisions or passes any order under its power of judicial review and the ratio decidendi becomes "the law declared", by the Supreme Court and which is made binding on all Courts. Further such law declared by the Supreme Court is binding on the state, Central or provincial, and also on its officers. For rendering of any such judgment, decision or order the procedure prescribed by the Supreme Court rules are applicable. In such case before the Supreme Court when so considered, by it under any of the above stated articles the lis is before it, all the facts will be before it the parties will be before it and they will be heard by the Supreme Court.

Under Article 143 the below stated elements have to be satisfied.

(a) President's satisfaction; (b) question of law or fact has arisen or is likely to arise;

(to be continued)

Readers Write

To
The Editor, Communique,
Sir,

While calling for feedback on its performance, the Communique has exposed itself for some kind of a professional audit of its balance sheet.

"Journalism", Oscar Wilde said, "is unreadable but it is unread". And therefore, when it is read, then only it is worth evaluating. From that point of view, the Communique has reached a high index journalism at the hands of its editor and publishers. It has catered well for its readers from the point of view of social, professional and judicial aspects.

Every Balance Sheet has its two sides: from credit side, it has served well the social and official communication gap in the society of lawyers. It is also rightly critical of the governmental or judicial apathy for profession or justice. On the debit side, it has sometimes been indiscreet; even if it be partly true: e. g. casteism was indulged in the Bar Association elections (May, 1991), or on High Court judgment copies (July, 1991). If the latter were true, the Communique ought to have pursued the truth rather than expressing regrets.

"Around the Courts" column of already reported judgments is redundant, while the 'Law made easy' is elementary for lawyers. Instead, I would suggest for reporting unreported judgments under the column, 'What's new in Law'.

Pronouncing a balanced verdict, I may state that the Communique has served well as 'house magazine' of the community in Karnataka, fulfilling its felt needs of the times and the best tribute that could be given follows hereunder:-

"The profession is lively, dark and deep. And lawyers have promises to keep; But the Communique provides

them a peep. Into the life and problems they keep".

Yours faithfully,
Sd/- Prof. B.M. BALIGA

Among the letters received from our readers as feedback this letter is chosen to be the best by our panel. Prof. B.M. Baliga is to get the cash award for writing this letter.editor.

Around the Courts

Income - Tax Act, 1961 (Central Act No. 43 of 1961) -Section 135 (5)- where the warrant does not disclose the name of the person whose premises is sought to be searched, mere description of a premises there of is sufficient..... In the present case, the authorisation is in respect of income or property which is not likely to be disclosed, belonged to firms of which the Petitioner is a partner. For the purpose of the Act... when search was to be effected in the residential premises of the Petitioner, warrant of authorisation should have enabled the search in the residential premises of the Petitioner. There is no reference at all in the warrant of authorisation that such documents or money, bullion, jewellery or other valuable article or thing is in possession of the Petitioner in his individual capacity. As a necessary consequence the mere mention of residential premises does not enable the Department to effect seizure either of gold, jewellery or other articles or documents.

The concept of seizure is forcible taking over from the owner or who was in possession and who was unwilling to part with the possession. Admittedly, in the present case Rs. 25 lakhs was voluntarily offered by the Petitioner. When that is so there is no seizure effected at all and consequently there could not be an order under Section 135 (5).

N.S. Parmer Vs. A.C. Income-tax-ILR 1991 Kant. 4527.

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MISCELLANY

□ G. S. Rao, Advocate, from Bangalore attended as a delegate in the National convention on Human Rights Convened at New Delhi between 3rd to 7th of January 1992, jointly organised by the National Centre for Protection of Human Rights, New Delhi and the world Organisation Against Torture, Geneva.

□ On 14-3-92 YMCA, Bangalore had organised Model Lok Sabha 92 for College students.

□ On 14 - 3 - 92 Lahari had organised an excursion to Makedat in which 50 persons consisting of Advocates and their family members participated.

□ On 15 - 3 - 92 Lion N. S. Sathyanarayana Gupta was elected as Lieutenant Governor of District 324 D, for the year 1992 - 93.

□ On 20-3-92 United Lodge of Theosophists Bangalore - 4 observed "Judge day".

Around the Courts

(continued from page 3)

□ Motor Vehicles Act, 1939- Sec. 92 - A : No insurance policy issued by an Insurance Company on any day expressly specifying the date and time of issue on the cover note or the policy, covers the risk in respect of the accident caused by the vehicle earlier on the same day, in respect of which such policy is issued if the premium was paid and the insurance policy was taken/issued after the accident.

National Insurance Company Limited Vs Smt. Indirabai and Another : 1992 (1) Kar. L. J. 432 DB.

OBITUARY

□ On 16-3-92 G. Krishnappa, Advocate, passed away at Bangalore.

□ On 21-3-92 N. A. Mandgi, Advocate, expired at Bangalore.

□ On 28-3-92 C.B. Nandeeswar, Advocate, expired at Bangalore.

NEWS FOCUS

□ On 10-3-92 Karnataka Tax Consultant Association had organised a debate on the subject State Budget 1992-93 at Bangalore. S. Narayana and E. R. Indra Kumar, Advocates, were the guest speakers. Mr. H. G. Balakrishna, former judge of the Karnataka High Court Presided.

□ On 20-3-92 Justice N. Y. Hanumanthappa inaugurated a Telephone booth in the City Civil Court Complex. Lions & Lioness Club of Bangalore Jnanabharathi under their project D C. for Telephone Booths & Bus shelter programme sponsored the Telephone Booth.

□ On 26-3-92 Dr. N. Ananth, Director, Kidwai Memorial Institute of oncology addressed the members of AAB, in the High Court Unit, on the topic "Smoking and its effects".

□ On 28 - 3 - 92 Bangalore District Legal Aid Board conducted a workshop on legal literacy at yelahanka.

□ On 31 - 3 - 92 Bangalore District Legal Aid Board had organised 26th Janatha Nyayalaya camp at Bangalore to settle labour cases in BTS, KSRTC Bangalore and Kolar Divisions.

Code of Conduct for Judges

(Continued from page 2)

nisms which can tackle such innumerable issues that may crop up in future and or to deal with the prevailing situation.

A study of situation prevailing in other Countries and the existing provisions in such Countries which has enabled them to tackle such issues might be called for before embarking up on enacting new mechanisms in our Country. At the same time the higher judiciary and other professional bodies functioning within the legal fraternity should be consulted by the Government to see that the proposed changes are accepted by all the concerned without any resistance.

Periscope

□ Easy way of recording evidence : Recently have you visited the Magistrate's court complex in Bangalore. If not make an early trip. You need not be amused to find that one of the learned Magistrate has adopted a novel method of saving the time of the court while recording the evidence. While typist will be straight away typing the answers given by the witness the Magistrate will be meditating by closing his eyes. Best way of saving the time.

□ Summoning the Accused : After all why should an Accused should receive a copy of the summons from the Magistrate which involves wastage of stationary and man power. It is sufficient the policeman informs the Magistrate by writing a shara on the summons that the Accused is notified of the hearing and or merely write a shara to that effect. It is another thing that such endorsement by the policeman can be a ground or issue of NBW by the Magistrate.

□ Alas Ram came to rescue : AAB is no doubt a secular Organisation. But it may be a coincident that the Annual General Body Meeting was originally scheduled to be held on the Ramnavami day. Later it was thought that the postponement of Elections might be a welcome step so that the present office bearers can continue in the office for a further period of three and half months. But how to do was the question that confronted the governing council. Then somebody suggested that Ramnavami may be a ground to postpone the Elections. The same was accepted.

□ All about Telephone Bills : Often the AAB has to pay huge telephone bills since the collections it receive from the phone users will be less than the bill. How much of this due to Association work and how much is an account of private calls. An interesting subject for watch.

□ A subject for research : If the High Court does not provide the particulars of the pending cases to the state legislature being demanded by the latter will it amount to breach of privilege of the Legislators to have the information. On retaliation if it is suggested that no amount should be released to the High Court whenever demanded will it amount to interference in the working of judiciary. A good subject for research.

□ Best economy : What if the air conditioning is not working since April 1991 where five computers purchased at the cost of Rs. 12 lakhs are kept in the High Court. You can be certain to that extent electricity consumption is brought down. As for as computer virus is concerned it is not so rampant in India and as such what if there is no airconditioning for the computers.

□ King can do no wrong : While the subordinate courts are expected to work according to the time schedule the same need not always be the case with the High Court Judges. Therefore one need not be unnecessarily bother if some judges in the High court do not work according to the time schedule.

□ Lawyers job is to wait : Even if the presiding officers of the various Tribunals and Revenue Courts are on tour or otherwise engaged dates can be conveniently given on such occasions. If the P.O. is not available the lawyers may come & know the fact and return. What better business lawyers do have.

—Insider