

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 7

April 1995

Part 1

HC STAFF HAULED UP FOR CONTEMPT

Justice H.N. Tilhari has ruled in his order dated 8-4-95 that Sri B. Venkata Reddy, the Assistant Registrar, Sri K. Narayan, Section Officer and Smt. C. V. Rajamma, a clerk in the stay drafting Section have committed Contempt of Court and sentenced them to undergo simple imprisonment for two days and pay a fine of Rs. 1,000/- each and in default undergo a further term of simple imprisonment for three more days. However the sentence has been ordered to remain suspended and be not given effect if the contemnors do not commit any such act or mistake amounting to Contempt of Court during the period of three years.

This far reaching order is based on the finding recorded by the Court that while drafting the interim order these officers have deleted and interpolated certain words as well as terms of the interim order dated 29-11-94 passed in a Writ Petition by Justice G. C. Bharuka. The interim order dated 29-11-94 passed by the Court read "Mr. Kaladgi, learned High Court Government Pleader accepts notice on behalf of Respondents 1 and 2. Let the case be listed for final disposal on January 5, 1995. In the meanwhile, if the petitioner is in possession, the same shall not be disturbed". But the interim order drafted and approved by the three officers read "If the petitioner is in possession of the land bearing Sy. No. 29 of Arakere Village, Bhadravati Taluk, measuring about one acre and 27 guntas, the same shall not be disturbed, till January 5, 1995".

Quoting the Halsbury's Laws of England the Judge said "Contempt of Court may be committed not only by interfering with persons officially connected with the Court or proceedings but by those persons themselves in carrying out their official duties". The Judge pointed out that the officers concerned had not only committed a grave mistake but acted in a manner which lowered the dignity and authority of the Court. It was held that this act also pollutes the course of justice and needs to be controlled with strict hands and therefore it becomes the duty of the Court to take serious view of such matter in order to save the majesty of the law administered by the Court.

DJS Appointed

By a notification dated 5-4-95 the Government has promoted the undermentioned Civil Judges and appointed them to officiate as District Judges until further orders subject to fixing their seniority after direct recruitment quota is filled :

N. Prahladacharya ; A. H. Naik ; S. A. Deshpande ; Tripuranthakaswamy ; G. H. Prasad ; H. P. Devendraiah ; D. A. Lathe ; M. Chidananda Rao ; Kukkaje Ramakrishna Bhat ; M. K. Sripathi ; R. Venkatesh ; Prakash Bellary ; Basavantharaya Patil ; B. S. Reddy and Subhash Shetkar.

**Wish you
Happy Ugadi**

Campus Watch

□ Mr. Vikram Raghavan and Mr. B. N. Harish of the NLSIU were adjudged the best and the second best speakers in the recently concluded Indian Regional Afro-Asian Moot Court Competition held in Bangalore. Ms. Nandini Parthasarathy and Mr. V. Srinivasa Raghavan were the Research Assistants associated with the prize winners.

□ In the recently concluded All India Moot Court Competition sponsored by Kurukshetra University (Haryana) Mr. Dhyan Chinnappa and Mr. S. Subramanyam of the University Law College, Bangalore, secured the First Prize.

New Chairman for BCI

Consequent upon the vacation of the post of the Chairman by Mr. V.C. Mishra, Mr. R. Muthukrishna has taken over as the Chairman of the Bar Council of India.

New Appointment

Mr. A. N. Jayaram of M/s Jayaram and Jayaram has been appointed as the Additional Solicitor General of India.

Status Report

There were 7,03,579 pending cases before the Courts of Munsiff and JMFC in Karnataka as on 1-1-95, 2,73,254 pending cases before the Courts of Civil Judges and CJM Courts, 1,99,050 pending cases before the District Courts and 1,51,566 pending cases before the High Court of Karnataka as on that day. This information was furnished by Law and Parliamentary Affairs Minister M. C. Nanaiah in reply to a question by the BJP MLA Mr. Y. Ramakrishna in the State Assembly on 27-3-95.

ಲಿಟರರಿ ಯೂನಿಯನ್

□ ತಾ|| 24-2-95 ರಂದು ಲಿಟರರಿ ಯೂನಿಯನ್ನಿನ ಆಶ್ರಯದಲ್ಲಿ ಸಂತ ಪುರಂದರದಾಸರ ಹಾಗೂ ಸಂತ ತ್ಯಾಗ-ರಾಜರ ಆರಾಧನಾ ಮಹೋತ್ಸವ ಆಚರಿಸಲಾಯಿತು. ಜಯನಗರದ ವಿಜಯ ಸಂಗೀತ ಕಲಾ ಶಾಲೆಯ ಕಲಾವಿದರಿಂದ ಸಂಗೀತ ಕಾರ್ಯಕ್ರಮ ಏರ್ಪಟ್ಟಿತ್ತು.

□ ತಾ|| 2-3-95 ರಂದು ಲಿಟರರಿ ಯೂನಿಯನ್ನಿನ ಆಶ್ರಯದಲ್ಲಿ ವಿವಾದದ ಸಂಭವಿಸಿದ "ಮಹಾಚೈತ್ರ" ನಾಟಕದ ಕತೆ ಶ್ರೀ ಎಸ್. ಆರ್. ಶಿವಪ್ರಕಾಶ್ ರೊಂದಿಗೆ ಸಂವಾದ ಕಾರ್ಯಕ್ರಮವನ್ನು ಏರ್ಪಡಿಸಲಾಗಿತ್ತು.

ರಾಮೋತ್ಸವ

ತಾ|| 10-4-95 ರಂದು ಬೆಂಗಳೂರು ವಕೀಲರ ಸಂಘದ ನಗರ ಹಾಗೂ ಮಯೋ ಹಾಲ್ ಘಟಕಗಳಲ್ಲಿ ಶ್ರೀ ರಾಮನವಮಿ ಉತ್ಸವವನ್ನು ವಿಜೃಂಭಣೆಯಿಂದ ಆಚರಿಸಲಾಯಿತು. ನಗರ ಘಟಕದ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಕರ್ನಾಟಕದ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ನ್ಯಾಯಮೂರ್ತಿ ಎಚ್. ಎನ್. ತಿಲಹರಿರವರು ಮುಖ್ಯ ಅತಿಥಿಗಳಾಗಿ ಭಾಗವಹಿಸಿದ್ದರು.

ಪುಸ್ತಕ ಬಿಡುಗಡೆ

ತಾ|| 9-4-95 ರಂದು ಸಮಕಾಲೀನ ಅಧ್ಯಯನ ವೇದಿಕೆ, ಬೆಂಗಳೂರು, ಸಂಸ್ಥೆಯ ಆಶ್ರಯದಲ್ಲಿ ವಿಚಾರ ಸಂಕೀರ್ಣದ ಅಂಗವಾಗಿ ವಕೀಲರಾದ ಎಸ್. ಆರ್. ಗೌತಮ್‌ರವರ ಲಿಖಿತ "ಹೃದಯದಿಂದ ಹೃದಯಕ್ಕೆ" ಎಂಬ ಪುಸ್ತಕದ ಬಿಡುಗಡೆ ಮಾಡಲಾಯಿತು. ಬೆಂಗಳೂರಿನ ನವ ಕರ್ನಾಟಕ ಪಬ್ಲಿಕೇಷನ್ಸ್‌ರವರ ಪ್ರಕಟಣೆಯಾದ ಈ ಪುಸ್ತಕವನ್ನು ಖ್ಯಾತ ನಾಟಕ ಕಾರ ಶ್ರೀ ಗಿರೀಶ್ ಕಾರ್ನಾಡ್‌ರವರೂ ಬಿಡುಗಡೆ ಮಾಡಿದರು.

ಉಪನ್ಯಾಸ ಕಾರ್ಯಕ್ರಮ

ತಾ|| 19-3-95 ರಂದು ನೆಲಮಂಗಲ ಕನ್ನಡ ಗೆಳೆಯರ ಬಳಗದವರು ಏರ್ಪಡಿಸಿದ್ದ 50ನೇ ಸಾಹಿತ್ಯ ಸಂಜೆ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಬೆಂಗಳೂರಿನ ವಕೀಲರಾದ ಶ್ರೀ ಜಿ. ಎಸ್. ನಟರಾಜನ್‌ರವರು "ಜ್ಞಾನಪೀಠ ಪ್ರಶಸ್ತಿ ಪಡೆದ ಕನ್ನಡ ಸಾಹಿತಿಗಳು" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಉಪನ್ಯಾಸ ಮಾಡಿದರು.

The best law leaves least discretion to the Judge
—Latin Proverb

The Verdict

The verdict in V.C. Mishra's case has come as a rude shock to the Lawyers Fraternity. It is quite but natural that Lawyers all over the country have lodged protest on the question of the Apex Court suspending the sanad of V.C. Mishra for a period of three years and divesting him from all elected/nominated posts in his capacity as a Lawyer. It is a good thing that the matter has now been referred to the Larger Constitution Bench which will go into certain important issues affecting the Lawyers fraternity as a whole. Since this decision will be a trend setter and a precedent engulfing the privileges of the Bar all eyes are set on the Apex Court regarding the outcome of the verdict of the larger Bench.

The Apex Court while rejecting the contention that since the contempt committed by V.C. Mishra was against a Judge of the Allahabad High Court it should not assume jurisdiction over the matter held that Article 129 of the Constitution clothes itself with the necessary jurisdiction since it is a Court of Record. Assuming that the Apex Court has the necessary power to take cognisance of the contempt of a High Court judge one can say that same has resulted in the denial of right to Appeal to the aggrieved person which was the normal course under the law. Further when the Allahabad High Court itself was empowered to deal V.C. Mishra there appears to be no special reason for not allowing the Allahabad High Court to deal with the case.

The Apex Court has not only sentenced V.C. Mishra

to undergo imprisonment but also suspended his sanad apart from divesting him from all posts he held as an Advocate. The punishment meted out to V.C. Mishra has not only resulted in causing double jeopardy to him but also taken away the right as the Bar Council which is a statutory body exercising power under the Advocates Act, 1961. The Court has justified this by citing Article 142 of the constitution which enables it to pass such order as is necessary for doing complete justice. It may be that the Apex Court has jurisdiction under Article 142 to pass "such order" but such power should be used only in rarest of rare cases. While exercising this power the consideration should not be whether the accused is holding the important position of the chairman of Bar Council of India or such other important position. After all law cannot be construed according to the status of the accused and naturally it shall be the same for all. In the usual course when an Advocate is sought to be punished by way of suspension of sanad the concerned High Court has to approve or the same and thereafter the aggrieved Lawyer has the right of Appeal to the Apex Court why this procedural safeguard should be denied to a Lawyer irrespective of his standing is an important question that all of us have to ponder over.

More than all what is the guarantee that V.C. Mishra's case will not be held as a precedent in any

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The Judge Case-A Critique

Sriram Panchu, Advocate, Madras

(continued from last issue)

The reasoning process employed by the majority is as follows:

a) The question of primacy of the CJI must be considered in the light of the constitutional purpose of selecting the best available persons for composition of the Supreme Court and the High Courts so essential to ensure the independence of the judiciary, and thereby, to preserve democracy. A fortiori, any construction of the constitutional provisions which conflicts with this constitutional purpose or negates the avowed object has to be eschewed, being opposed to the true meaning and spirit of the Constitution and, therefore, an alien concept.

b) The debate on primacy is intended to determine who amongst the constitutional functionaries involved in the integrated process of appointments is best equipped to discharge the greater burden attached to the role of primacy.

c) It is necessary to eliminate political influence even at the stage of the initial appointment of a Judge since the provisions for securing his independence after appointment are alone not sufficient for an independent judiciary.

d) Independence of judiciary is the basic feature of the Constitution.

e) The will of the people is embodied in the Constitution.

f) To the judiciary, belongs the role of interpretation of the Constitution.

g) The judiciary is accountable and answerable to the people regarding the functioning of the judiciary.

h) Contemporary circumstances and values should be given expression through the interpretative process.

i) Ordinary rules of interpretation of statutes should not be applied in construing Constitutional provisions.

To put it plainly, the Court is saying that through its power of interpretation and the process of reviewing and reconsidering the earlier decisions, the Court can update the Constitution to keep it responsive to the needs of the times. While Verma J. is rather circumspect in voicing this tremendous power, Pandian J. and Kuldip Singh J. are not.

Pandian J. says, "But law is not static and immutable but ever increasingly dynamic and grows with the ongoing passage of time. So it falls upon the Superior Courts in a large measure the responsibility of exploring the ability and potential capacity of the Constitution with a proper diagnostic insight of a new legal concept and making this flexible instrument to serve the needs of the people of this great nation without sacrificing its essential features and basic principles which lie at the root of Indian democracy."

Kuldip Singh J. says, "Interpretation of the Constitution is a continual process. It is not enough merely to interpret the Constitutional text. It must be interpreted so as to advance the policy and purpose underlying its provisions. A purposeful meaning, which may have become necessary by passage of time and process of experience, has to be given. The Courts must face the facts and meet the needs and aspirations of the times."

So the S. P. Gupta's case must be considered in the light of our entire experience and not merely in that of what was said by the framers of the Constitution. While deciding the questions posed before us we must consider what is the

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Expectation Vs Efficacy

K. Suryanarayana Rao, Advocate

(from the last issue)

only in exceptional circumstances as otherwise it will amount to causing injustice to litigants who have approached the Courts at an earlier point of time.

Constitution of separate Benches only for hearing purpose on a sustained basis would go a longway in disposal of the older cases. However sufficient notice of the possible hearing of earlier cases should be given to the lawyers to enlist their co-operation in disposing off such cases.

Many a time it is seen that the Courts tend to dispose off the cases having political ramifications on a priority basis while allowing other cases to lie over. Similarly instances of cases involving VIPs, businessmen, Corporations and multinationals have gained precedence over other cases in the matter of early disposal. There is no perceptible reason for this kind of treatment to the above category of cases vis-a-vis other types of cases.

Granting or refusing of interim order is another grey area which results in the increase or decrease of number of cases before the Courts. Very often no reasons are forthcoming for granting of interim order, particularly the ex-parte orders. In the name of discretion scope is created for arbitrary exercise of power by the Courts while passing interim orders. Therefore the question of grant of interim orders on the basis of reasoning (even the ex parte orders) requires to be made mandatory to remove the scope for arbitrariness. Furnishing of Certified copies and the service of notice of interim order on the opposite party without loss of time should also be made mandatory. This measure will also reduce the

possibility of reducing the instances of non-observance of the interim orders.

With regard to the dealing of Contempt of Court cases the High Courts should have regard to the conduct of the Respondents to find out whether non implementation of the Court orders, Judgments or Directions is deliberate or otherwise. In the event of court coming to the conclusion that the contempt has been the result of deliberate action or inaction on the part of Respondent action against erring Respondent should be a necessary consequence. Once the authorities come to know that the courts are strict in this regard they will not give scope for non-implementation of the Court orders, Judgments or Directions. This will ensure not only the authority of the Court but also reduce the scope for increased litigations. Taking a liberal view about the contemnors would obviously result in increased litigation.

One of the most important aspects of justice dispensation system is the superintendence and control over the Administrative Branch. While Judges/Judicial Officers do their jobs in the Court it is necessary that the officials working in the Court office should do their job diligently and with least delay. It is found that notwithstanding the creation of large number of posts of Registrars, Additional Registrars, Assistant Registrars, Administrative Officers and Section Officers the quality of work turn out in the Court offices is very much unsatisfactory. Sanction of staff strength based on periodical assessment of work load, maintenance of leave reserves, reduction in incidence of absence of employees, sustained assessment of the work turnout by the employees will go a long way in improving the

(to be continued)

Around the Courts

☐ Section 10 of the Indian Divorce Act, 1869 :

By a Judgment dated 24-2-95 a Full Bench of the Kerala High Court ruled that Christian women could seek dissolution of their marriage on grounds of desertion and cruelty without necessarily proving adultery. The Bench comprising Chief Justice Pareed Pillai, Justices T. V. Ramakrishnan and P. Shanmugam modified Section 10 of the Act and made adultery, desertion and cruelty independent grounds for divorce of Christians in the country.

Section 10 of the Act stipulates that the Christian women could seek divorce on the grounds of their husbands being guilty of incestuous adultery or adultery coupled with cruelty or adultery coupled with desertion. It is to be noted that adultery had to be proved compulsorily even when desertion or cruelty are made as grounds for divorce. The Court also held that Section 10 is violative of Article 21 of the Constitution and as such it would be revocative to the new sensitiveness of the present day society of India including the Christian masses. The Court also observed that modified Section 10 would be more or less similar to the provisions of other similar enactments such as the Hindu Marriage Act and the Special Marriages Act in respect of seeking divorce.

Obituary

☐ On 31-3-95 A. Srikant-swamy (60), Advocate, passed away at Bangalore.

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Latest News**

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☐ We never appointed a Judicial Commission because we have no power to do so. The Judge (Justice H.G. Balakrishna) arrogated to himself the role of a Commission of Inquiry while we wanted him to function as an inquiry officer. Only the Government can appoint a commission under the Commission of Inquiry Act.

—Bangalore University spokesman

☐ The Syndicate may be in the habit of making such assumptions for the sake of convenience and expediency, but certainly not the Commission which is headed by a former Judge of the High Court.

—Justice H.G. Balakrishna

☐ Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument.

—The Judgment of the Supreme Court in V. C. Mishra's case

☐ We might have to introduce some other agency if they (CBI) are not doing the work they should.

-- The Supreme Court Bench hearing the Hawala Transaction case expressing its annoyance to the Solicitor General over the role of CBI.

Dear Reader,

With the publication of this part "Communique" is in the seventh year of its service to the legal fraternity. You are aware that there has been qualitative changes in the contents of the news letter over the years. Your valuable suggestions to further improve the quality of "Communique" is always considered valuable.

Yours Sincerely
Editor.

Sundar to lead Karnataka

C.G. Sundar has been retained as the captain of the Karnataka State Advocates Team selected to participate in the K.R.D. Karanth Memorial All India Advocates Cricket Tournament being held at Bangalore from April 13th to 16th. Other members of the team are B. H. Rajendra, Radhakrishna Rai, B. K. Nandakumar, Manohar Jeerige, Satyanand Bhandary, K. M. Nataraj, Suresh Reddy, Ashok Kumar, Shivadutt, S. Vijayakumar, M. S. Manjunath, R. Yatish Kumar, C. G. Anand and B. Anil Kumar. Mr. K. C. Sudarshan has been nominated to be the manager of the team.

The Verdict

(continued from page 2)

future cases involving a Lawyer for his alleged actions of contempt of Court? will this verdict not lead to a situation that the Bar Council is deprived of its disciplinary role in all cases of contempt of Court proceedings?

As for as awarding the sentence of suspending the licence of V.C. Mishra it would have been appropriate for the Apex Court to hear the Bar Council of India since under the normal course it is the prerogative of the Bar Council to permit or not to permit a person to function as a Lawyer. The larger question involved in this case is one of utmost importance viz. "independence of the Bar" while no one wants independence of judiciary should be affected in any manner the same thing should apply to independence of the Bar as well since both of them are equally important for the effective functioning of deliverance of justice in the country. These aspects and all other relevant questions affecting the independence of the Bar as a result of the Supreme Court verdict requires to be effectively canvassed before the larger Bench of the Court.

News Focus

Following a scuffle between a Constable of the City Reserve Police and a class IV employee of the CMM's Court all the employees of Magistrate's Court Complex went on a snap strike on 8-3-95 and resumed work only after 4 pm after they were assured that a case will be registered against the Constable. Before that the Principal Sessions Judge Sri Mohammed Anwar, Sri G. K. Bekal, DCP (Central) and the CMM held a discussion about the incident. The Court employee and the Constable have lodged separate complaints against each other before the police.

On 14-3-95 Mr. B. V. Acharya, Former Advocate General, addressed the members of AAB, City Unit, on the topic "professional ethics and need for having refresher course for young Lawyers".

On 17-3-95 Mr. H. D. Deve Gowde, the Chief Minister of Karnataka, addressed the members of AAB, High Court Unit and City Unit.

On 22-3-95 Lawyers in Bangalore abstained from attending the Courts protesting against the Supreme Court verdict regarding Mr. V. C. Mishra.

On 28-3-95 Sri Mohammad Anwar, Principal City Civil and Sessions Judge, addressed the members of AAB, City Unit.

On 29-3-95 Mr. M. R. Janardana, Advocate General of Karnataka, addressed the members of AAB, City Unit on the topic "ways and means of reducing the pendency of litigations".

Under the joint auspices of AAB & Lions Club of Majestic, a Voluntary blood donation Camp was organised in the High Court Premises. Justice S. A. Hakeem, Acting CJ inaugurated the programme. Justice M.F. Saldanha was the guest of honour.

On 7-4-95 Advocates in Karnataka wore black bands/ribbons protesting against the Supreme Court's order suspending the Sanad of Sri V. C. Mishra for a period of three years. This was pursuant to the resolution of the Karnataka State Bar Council.

Miscellany

Recently some Lawyers of Bangalore under the leadership of Mr. V. T. Raya Reddi submitted a memorandum to Sri M. C. Nanaiah, the Minister for Law and Parliamentary Affairs, demanding allotment of sites to Lawyers, Construction of Vakil Bhavan, publication and supply of important State laws with upto date amendment at affordable prices, continuance of payment of stipend to junior Lawyers, provision of Car Parking and Canteen facilities, group insurance scheme and enhanced assistance from Advocates, Welfare Fund, exemption of Professional Tax upto 15 years after enrolment and Construction of Lawyers' Chamber near the High Court.

On 5-4-95 M/s. V Rao & Co. Advocates and Tax Consultants opened their Branch Office at B-103, Brigade Majestic, First Main Road, Gandhinagar, Bangalore-9.

In the election held on 18-4-95 Mr. N. S. Satyanarayana Gupta has been elected as the Lieutenant Governor of the Lions club International District 324-D1 for the year 1995-96.

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The best way to show respect to Mr. Desai would have been to close Bars, pubs and wine shops on April 11th and 12th since he was very fond of enforcing prohibition.

K. N. Subba Reddy, while expressing his unhappiness over declaration of public Holidays on account of demise of Morarji Desai.

Member Removed

On the basis of the report of Dharwad District Consumer Forum a member of the said Forum was recently removed. This was disclosed by Food and Civil Supplies Minister S. Nanjappa in the State Assembly on 27-3-95. The Minister warned that the government has decided to remove the defaulting and erotic members of the District Consumer Forum in future with a view to ensure expeditious disposal of cases.

Case Against HC Typist

The Registrar General of Karnataka High Court has filed a Criminal complaint before the CMM, Bangalore accusing three persons including a High Court Typist, of tampering with Judicial Records of the Bangalore Family Court in a M. C. Case.

Novel Identity

I.T.M.R.S. Ramesh Kumar (26 years) is a Lawyer practicing at the Madras High Court. What does I.T.M.R.S stand for? Don't mistake it for some unheard/know'n degree. I.T.M.R.S. are the initials of the Lawyer which stand for India, Tamil Nadu, Madurai, Rajeshwari and Subramaniam. Mr. Ramesh Kumar who has got his new name published through a gazette notification states that "This is for my own satisfaction and not for publicity". He is of the strong opinion that the initial of the mother's name should be introduced as a pre-fix of the name of every person as a legal necessity.

Humour in Courts

A Lawyer in the High Court was mentioning to the Judge that his case requires to be adjourned due to some personal reasons. There were more than one list before the court
Judge: which is the list which contains your case?
Lawyer: My Lord, until I am disposed off List?