

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 7

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Part 2

Changes in Rent Control Law

Relief to the House Owners in Bangalore City

Through a notification dated April 24, 1995 the government has directed that the Provisions of sections 4, 5 and 10 A of the Karnataka Rent Control Act shall cease to be applicable to the areas within the limits of Bangalore City and the areas within a radius 3 Kms from the limits of the City. Announcing this to media Persons on 27-4-95 the State Revenue Minister R. L. Jalappa said that this step has been taken as these Sections pertaining to notification of vacancy of houses *Suo Motu* notification of vacancies and eviction of unauthorised occupants in the past had led to harassment of the public. He also said that on account of these stringent provisions the construction of houses by the owners for letting out was not getting necessary impetus.

The Minister also disclosed that experience has shown that the cost of each proceeding is abnormally higher apart from the fact that the efficacy of the system is wholly unsatisfactory. Elaborating on this aspect the Minister disclosed that during 1993 while 9,806 premises were notified, 1464 houses were allotted but actually the allottees were given possession of the notified premises only in 337 cases. The amount of expenditure incurred by the government on these cases was Rs. 85,999/- in respect of each case during 1993. Correspondingly during 1994, 1868 premises were notified, 282 premises were allotted but possession was given only in 58 cases. The expenditure in-

curred by the government in each allotment case was Rs. 50,890/- during 1994.

Mr. Jalappa also hinted that the State government proposes to bring in new Rent Control Legislation based on the Model Rent Control Act framed by the Centre. The salient features of the proposed Legislation would be that the Act will be applicable to Towns and Cities with more than 3 Lakh population houses upto 15 years after construction & below 10 sq. of area as well as commercial buildings will not come under the purview of the Act and 12 p.c. of the cost of the building will be fixed as "Standard Rent" with an annual hike of 9 p.c. A government authority will implement the Act.

BCI gets New Chairman

On 6-5-95 Mr. O. P. Srivastava, a Supreme Court Lawyer, was unanimously elected as the Chairman of Bar Council of India.

New CJs Appointed

The official release dated 8-5-95 states that Justice Prabha Shankar Mishra, a Judge of the Madras High Court has been appointed as the Chief Justice of High Court of Andhra Pradesh. The official release further states that Justice Gopal Ballav Patanaik a Judge of the Orissa High Court, has been appointed the Chief Justice of Patna High Court.

Revised Stamp Duty

The Karnataka Stamp Amendment Bill 1995 has amended the Articles of the schedule to the Karnataka Stamp Act, 1957 bringing into effect from 1-4-95 the revised rate of stamp duty in the following terms:

1. Acknowledgement of Debt by a Debtor — where the amount exceeds Rs. 100- but does not exceed Rs. 10,000. Re. 1.00; additional Re. 1 for every Rs. 10,000 and part thereof to a maximum of Rs. 100.
2. Affidavit—Rs. 15.
3. Agreement of sale of immovable Property—
 - a. When Possession is delivered Rs. 100. for every Rs. 1 000. or part thereof.
 - b. When Possession not delivered Rs. 10. for Rs. 5,000 Rs. 20.00 for Rs. 5,000 to Rs. 20,000. Rs. 100 for Rs 20,000 to Rs. 50,000 and Rs 200 for above Rs. 50,000 (maximum).
 - c. Rs 50. where the agreement does not relate to monetary transactions.
4. Articles of Association of a Company — Rs. 1,000 for every Rs. 5,00,000 or part thereof.
5. Partnership — Where capital does not exceed Rs. 5,000. — Rs. 100 In any other case Rs. 500. Where the capital contribution is by way of immovable property Rs. 100. for every Rs. 1,000 or part thereof on the value of immovable property.
6. General Power of Attorney given to Builder / Developer for construction or sale of property Rs. 100 for every Rs. 1000

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Around the Courts

☐ Denial of opportunity to a Person against his detention under COFEPOSA, 1974 and NDPS Act, 1988:

By its Judgment dated 18-4-95 a five Judge Constitution Bench of the Supreme Court comprising Chief Justice A. M. Ahmadi, Justices S. C. Agrawal, S. P. Bharucha, K. S. Paripoornan and Sujatha V. Manohar held as "unconstitutional and illegal" the denial of an opportunity to a person to represent against his detention under the provisions of Conservation of Foreign Exchange and prevention of Smuggling Act, 1974 or the prevention of illicit traffic in Narcotic Drug and Psychotropic Substances Act, 1988 or the failure of the officer concerned to consider the plea against detention. A batch of Appeals relating to detentions under these enactments were disposed off by the Apex Court through these Judgment.

☐ Banning of Video Games Valid

Recently the Supreme Court Bench comprising Justice K. Ramaswamy and Justice B.C. Hansaria has ruled that video houses run by common "Gaming houses" in the States of Tamil Nadu and Karnataka are not only subject to regulation by the State but could be closed down if it is found that allowing of the video games is obnoxious or injurious to public welfare rejecting the contention of the gaming houses that total prohibition in the name of regulation is violative of Articles 19(2) & 21

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If it were not for injustice, men would not know justice.

—Heraclitus

Transfers / Postings

The following transfers / postings in the cadre of District Judges have been ordered to take effect from 29-5-95 :

Mr. G. H. Prasad working as Deputy Secretary, Department of Law and Parliamentary Affairs has been posted as I Addl. City Civil and Sessions Judge, Bangalore ; Mr. H. P. Devendraiah, Principal Civil Judge and CJM, Kolar, has been posted as II Addl. City Civil and Sessions Judge, Bangalore; Mr. Basavantaraya Patil, Principal Civil Judge and CJM, Dharwad, has been posted as XI Addl. City Civil and Sessions Judge, Bangalore ; Mr. Kukkaje Ramakrishna Bhat, Civil Judge, Udupi, has been posted as XV Addl. City Civil and Sessions Judge, Bangalore ; Mr. R. Venkatesh, Enquiry Officer, Public works and Irrigation Department has been posted as XVII Addl. City Civil and Sessions Judge, Bangalore ; Mr. A. H. Naik, Deputy Director of prosecution has been posted as XVIII Addl. City Civil and Sessions Judge, Bangalore ; Mr. S. A. Deshpande, Civil Judge, Puttur, has been posted as XIX Addl. City Civil and Sessions Judge, Bangalore; Mr. Shetkar Shubhash, Principal Civil Judge and CJM, Mandya, has been posted as XXI Addl. City Civil and Sessions Judge, Bangalore ; Mr. M. Chidananda Rao, Enquiry Officer, Public works and Irrigation Department has been posted as XXIII Addl. City Civil and Sessions Judge, Bangalore.

Mr. H. Satyanarayana Setty, I Addl. City Civil and Sessions Judge, Bangalore, has been transferred to be posted as the Presiding Officer, Addl. Labour Court; Mr. G. Ramakrishna Rao, II Addl. City Civil and Sessions Judge, Bangalore, has been transferred as Principal

District and Sessions Judge, Shimoga ; Mr. B. Ranga-Swamy, XV Addl. City Civil and Sessions Judge, Bangalore, has been transferred as Addl. District and Sessions Judge, Gulbarga ; Mr. A. Krishnappa, XVII Addl. City Civil and Sessions Judge, Bangalore has been transferred as Addl. District and Sessions Judge, Chitradurga ; Mr. M. N. Shankar Bhat, XXIII Addl. City Civil and Sessions Judge, Bangalore, has been transferred to be posted as the Presiding Officer, Labour Court, Bangalore.

Mr. N. Prahladacharya, Addl. Judge, Court of Small Causes, Bangalore has been posted as III Addl. District and Sessions Judge, Mangalore ; Mr. Tripurantaka Swamy, Addl. Judge, Court of Small Causes, Bangalore has been posted as Addl. District and Sessions Judge, Madikeri ; Mr. M. K. Sripathi, Addl. Judge, Court of Small Causes, Bangalore has been posted as Addl. District and Sessions Judge, Hassan.

Mr. S. R. Venkatesh Murthy, Principal District and Sessions Judge, Mangalore, has been transferred as Principal District and Sessions Judge, Mysore ; Mr. Shankar Murgod, Principal District and Sessions Judge, Raichur has been transferred as Principal District and Sessions Judge, Bellary ; Mr. K. R. Prasad Rao, Principal District and Sessions Judge, Hassan, has been transferred as Principal District and Sessions Judge, Belgaum ; Mr. N. S. Veerabhadraiah, Member KAT, Bangalore, has been transferred as Principal District and Sessions Judge, Chickmagalur ; Mr. R. S. Futane, Principal District and Sessions Judge, Bellary, has been transferred as Principal District and Sessions Judge,

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The Judge Case-A Critique

Sriram Panchu, Advocate, Madras

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judiciary today and not what it was fifty years back. The Constitution has not only to be read in the light of contemporary circumstances and values, it has to be read in such a way that the circumstances and values of the present generation are given expression in its provisions".

Reading this judgement, I could not help going back to Chief Justice Marshall's masterly act of wresting for the judiciary the power of judicial review over Congressional acts in the celebrated decision *Marbury Vs. Maddison*. Marshall J. did so by enunciating with clarity the concept that the Constitution was the primary law and that it was upon the touch stone of the Constitution that the validity of all acts of Congress were to be tested and that the judiciary was the interpreter and protector of the Constitution. Out of the concept in these few sentences was born the enormous power of judicial review which allows the judiciary to test and check the acts of Governments and Legislatures.

The majority in the Judges case has done something quite as stunning. They proceed on the basis that Constitutional interpretation is on a footing different from other interpretation, that in constitutional interpretation, the Court should pay more attention to the great constitutional purposes which it seeks to serve (in this case independence of the judiciary and separation of powers and selecting the best available for composition of the Supreme Court and the High Courts) and in this process not being limited by the doctrine of precedents (and I submit, not even by the plain words of the Constitution). To do this, the concept and doctrine of interpretation responsive to

contemporary circumstances is brought into play so that the Court may differ from earlier opinions and even from "what was said by the framers of the Constitution".

Clearly, here is the assumption of a power to rewrite the Constitution to meet the needs and aspirations of present times.

Thomas Jefferson held the view that the Constitution should last for twenty years and should be reviewed after that period. The basis for this view was that changed circumstances would require changes in the methods of governance and in the balances that the Constitution fashions. Jefferson, however, would have wanted such review to be done by the Legislature and not by a Court whose power he resisted and whose occupants he distrusted.

There are other interesting aspects of the majority decision. While the CJI is given primacy as the head of judicial family and being the best person fitted to comment on the calibre of the potential appointees, the majority does not think it wise to rely solely upon one individual. "To safeguard against arbitrariness" the majority introduces the element of plurality and mandates a judicial view formulated by a consultative process between the CJI, the seniormost Judges of the Supreme Court and other Judges whose opinion is likely to be significant. The majority also mandates that the consultative process should be in writing.

Why should the process not include consultation with other members of the legal family. The Bar is a valuable source of information regarding the integrity, ability and track record of aspirants to High

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Expectation Vs Efficacy

K. Suryanarayana Rao, Advocate

(from the last issue)

quality of work turnout in the Court Offices. Vigilance seems to be conspicuous by its absence. Rampant corruption in the Court Offices has been the order of the day. Any one who speaks to the contrary must be a novice or himself abetting such practice. The average perception is that no work will be done in the Court Offices without greasing the concerned employee. In this background role of vigilance assumes greater significance.

It is the common experience that the office ignores the memos filed by the Lawyers, apart from the moved memos (occasionally), judicial and or Administrative orders with impugnity. Several IAs filed by the Lawyers are not posted before the Courts even after long durations: This situation is possible because of the fact that the Administrative staff is convinced of the fact that no action is likely to be taken against them by the concerned. Infact this impression has been substantially proved to be correct.

Grant of certified copies is another area where abnormal delay takes place. Even while the certified copies are granted it has not been done on first come first served basis. The excuse given by the copying branch is that the records have not been received from pending branch/stay drafting section/records room. Sometimes it is also told that the records are not received from the Court even after long periods after the Judgments are dictated in the Courts. As a matter of fact these excuses would be factually correct. However, nobody seems to be bothered about removal of these causes resulting in the delay of certified copies. Another aspect about the production of certified

copies in the High Court alongwith Appeals / Revision results in the office rising objection to the effect that typed copies of the certified copies have not been furnished. This objection is rised on the ground that the Judges will not be able to read the certified copies. This is also insisted when the certified copy is taken from the court records in manuscript form. Strange logic! The office expect the Lawyers to read certified copies and have them typed when the Judges are unable to read them. The moral of the situation is that quality of the certified copies prepared by the Courts should be good lest no one will have to complain the readability of the same.

Refund of Court deposits claimed by the parties is another area where delay has been tolerated. This is unwarranted in as much as the parties are put to avoidable hardship in getting back monies to which they are legitimately entitled. A time frame will have to be fixed within which the amounts claimed by the parties from the Court deposits should be paid failing which the Court should pay interest on the amounts claimed by the parties for the period of delay. Otherwise the parties are put to injustice on account of the laches of the Court which cannot be sustained.

The efficacy of Judicial system will be judged not only by the ultimate result but also the speed at which the proceedings are terminated. As the oft repeated saying goes "Justice delayed is justice denied". Our long experience in the working of the judicial system should necessarily result in diagnosing the ills afflicting the system, the bottlenecks & redtapism coming in the way of speedy disposal of cases and our eagerness to remove them should be a matter of concern for all of us. (concluded)

Transfers / Postings

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Chitradurga; Mr. V. G. Sabhanhit. Principal District and Sessions Judge, Chitradurga has been transferred as Principal District and Sessions Judge, Mangalore; Mr. D. R. Sundarasha. Presiding Officer, Industrial Tribunal, Bangalore has been transferred as Principal District and Sessions Judge, Raichur; Mr. G. Nandakumar, I Addl. District and Sessions Judge, Mysore has been transferred as Principal District and Sessions Judge, Hassan; Mr. B. Srinivasa Rao, Principal District & Sessions, Judge Chikmagalur has been transferred to be posted as Presiding Officer Industrial Tribunal, Mysore; Mr. V. D. Mahajan, Addl. District and Sessions Judge, Chitradurga, has been transferred as Principal District and Sessions Judge, Gulbarga; Mr. S. D. Majage, Addl. Secretary, Department of Law and Parliamentary Affairs has been transferred as I Addl. District and Sessions Judge, Mysore; Mr. S. B. Chanal, I Addl. District and Sessions Judge, Mangalore has been transferred to be posted as Addl. Secretary, Department of law and Parliamentary Affairs; Mr. K. Rajasekhar, II Addl. District and Sessions Judge, Mangalore has been transferred to be posted as Addl. Registrar, Karnataka Lokayukta, Bangalore; Mr. Arali Nagaraj Addl. District and Sessions Judge, Belgaum has been transferred as Addl. District and Sessions Judge, Mangalore; Mr. Prakash Bellary, Civil Judge Chikballapur has been transferred to be posted as member, KAT, Bangalore; Mr. D. A. Lathe, Civil Judge, Haveri has been posted as Addl. District and Sessions Judge, Chikmagalur; Mr. B. S. Reddy, Civil Judge and CJ, Bijapur, has been posted as III Addl. District and Sessions Judge, Belgaum; Mr. B. K. Sangalad, Principal District and Sessions Judge, Gulbarga has been transferred as Principal

District and Sessions Judge, Bangalore Rural District; Mr. B. S. Srinivasa Rao, Principal District and Sessions Judge, Shimoga has been transferred to be Posted as Presiding Officer, Industrial Tribunal, Bangalore.

Civil Judges

Mr. H. V. Ramachandra Rao working in Training Institute Mysore has been posted as Addl. Judge, Court of Small Causes, Bangalore; Mr. S. N. Vadnikop, Civil Judge and CJM, Madikeri has been transferred as Addl. Judge, Court of Small Causes, Bangalore; Mr. L. Subramanya, Presiding Officer, Special Court for Economic Offences has been transferred as the Registrar, City Civil Court, Bangalore; Mr. Vijay Jadhav, Registrar, City Civil Court, Bangalore has been transferred as the II Addl. Civil Judge, Bijapur; Mr. H. S. Ramanna, Deputy Registrar, Lokayukta Bangalore has been transferred as the Presiding Officer, Special Court for Economic Offences, Bangalore; Mr. I. S. Antin, Addl. Secretary, Legal Aid Board Bangalore has been transferred to be posted as the Principal, Training Institute, Bangalore; Mr. A. N. Bennur, Civil Judge, Arsikere has been transferred to be posted as the Addl. Secretary, Legal Aid Board, Bangalore; Mr. K. V. Narasimhan, Civil Judge and JMFC, Srirangapatna has been transferred to be posted as Deputy Secretary, Law and Parliamentary Affairs Department, Bangalore; Mr. Kenche Gowda, Addl. Judge, Court of Small Causes, Bangalore has been transferred to be posted as Registrar Debt Recovery Tribunal, Bangalore; Mr. N. S. Kulkarni, II Addl. Civil Judge, Mangalore has been Posted as I Addl. Civil Judge, Mangalore; Mr. N. Narayana, Principal, Training Institute, Bangalore has been Transferred as Civil Judge and JMFC Chikballapur; Mr. Shankar N. Naik, I Addl. Civil

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News Focus

□ On 21-4-95 Swamy Ranganathanandji, Vice President of Ramakrishna Mutt and Ramakrishna Ashram, addressed the members of AAB, City Unit on the topic "Message of Swamy Vivekananda for the development of the Country". Mr. Raju and Ms. Anita, son & daughter of noted singer Late Mysore Ananthaswamy gave a musical performance before the address of Ranganathanandji.

□ On 22-4-95 AAB Annual Day was celebrated in the City Civil Court Complex. Justice S. A. Hakeem, the Acting Chief Justice of High Court of Karnataka, was the Chief Guest. Justice R. V. Vasantha Kumar was given a farewell who retired on 1-5-95.

□ On 24-4-95 under the auspices of Bangalore District Legal Aid Board a Lok Adalat was held in the Central Jail Premises. Justice K. B. Navadgi, Judge, High Court of Karnataka inaugurated the camp. Sri K. N. Subba Reddy, President, AAB was the chief guest. Sri Vasudeva Murthy, Secretary, Karnataka Legal Aid Board presided. Cases of under trials languishing in the jail were examined during the camp.

□ On 8-5-95 Karnataka Tax Consultants Association, Bangalore had organised "Debate on State Budget 1995 - 96". Sri K. N. Subba Reddy, President AAB was the Chief Guest. The speakers included Mr. D. R. Balaji Singh, Joint Commissioner of Commercial Taxes, Bangalore, Mr. S. Narayana & Mr. E. R. Indra Kumar, High Court Advocates, Mr. S. K. Nahar, President of K T C A welcomed the participants. Mr. Manohar proposed vote of thanks.

Read Communique for Latest News

Campus Watch

□ On 21-4-95 Sri H. D. Deve Gowda, Chief Minister of Karnataka inaugurated the newly constructed First Floor of Vidyodaya Law College, Tumkur at the cost of Rs. 26 Lakhs. Retired Justice R. S. Mehendra inaugurated the function. Sri D. Nagarajaiah, Minister for Siriculture in Karnataka was the chief guest. Mr. H. S. Seshadri, Advocate and Managing trustee of Vidyodaya Foundation and Mr. Chandrashekar, District and Sessions Judge, Tumkur also participated in the function.

Literary Union

□ On 22-4-95 Under the auspices of the Literary Union Dr. P. S. Ramanujam, IPS, released the book "A case for Lawfing" written by Mr. S. R. Gautham, Advocate. The book published by Nava Karnataka Publication is priced Rs. 10/-.

Karnataka Emerge Champions

By defeating Madhya Pradesh Advocates Cricket Team the Karnataka Advocates has won the Trophy of the K.R.D. Karanth Memorial All India Advocates Cricket Tournament.

Retirement

On 1-5-95 Justice R. V. Vasantha Kumar retired as a Judge of the Karnataka High Court.

Revised Stamp Duty

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or part thereof on the value of property.

7. Supplemental Deed in respect of sale, Mortgage or settlement — Rs. 100.

NOTE- The Particulars furnished above are not exhaustive and only important transactions have been mentioned.

Around the Courts

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of the Constitution of India the Court held that public interest should be upheld as against the alleged rights of the gaming houses.

The Appeals preferred by the gaming houses were against the Judgments of the Madras and Karnataka High Courts. The Apex Court agreed with the reasoning given by the High Courts that allowing of such games would result in exposing the innocent children to the habit of gambling besides allowing the public to lose hard earned money.

□ Handcuffing of convicts / under trials, impermissible:

In a land mark decision dated 1-5-95 a Division Bench of the Supreme Court comprising Justice Kuldeep Singh & N. Venkatachala has held that without the permission of the Magistrate hand cuffs or other fetters should not be forced on a prisoner - convicted or undertrial, while lodged in a jail or while in transit from one jail to another or from jail to Court and back. Making it clear to all the Police & Prison authorities in the Country to obey the afore mentioned directions "meticulously" the Judges warned that violation of any of these directions by any rank of Police in the Country or members of jail authorities shall be summarily punishable under Contempt of Courts Act apart from other penal consequences under law.

Converting a letter received from the Human Rights Activist Kuldeep Nayar, President of Citizen For Democracy into a Petition the Court passed the above directions. Mr. Nayar had complained that during his visit to a government hospital in Guwahati late last year, he had observed seven TADA under trials crowded in a small room and handcuffed to the beds.

Transfers / Postings

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Judge, Mangalore has been Posted as Principal Civil Judge and CJM, Mangalore.

Mr. N. H. Savalgi, II Addl. Civil Judge, Bijapur has been Posted as III Addl. Civil Judge, Bijapur; Mr. M. K. Purohit, Addl. Civil Judge, Bidar has been posted as Principal Civil Judge and CJM, Bidar; Mr. K. M. Parwati, Addl. Civil Judge Bailhongal has been transferred as Civil Judge, Haveri; Mr. D. V. Shet, Principal Civil Judge, Bailhongal has been posted as Addl. Civil Judge, Bailhongal to sit at Saundathi; Mr. T. Rajashekaraiiah, Principal Civil Judge and CJM Mangalore has been transferred as Civil Judge and JMFC, Srirangapatna; Mr. M. S. Balakrishna, Addl. Judge, Court of Small Causes, Bangalore has been transferred as II Addl. Civil Judge, Mysore; Mr. Joshi Arun Rama Rao, Civil Judge, Gadag has been transferred as I Addl. Civil Judge, Bijapur; Mr. T. Nanjappa, I Addl. CMM, Bangalore has been transferred as Addl. Civil Judge, Mandya; Mr. M. G. Hiremath, Civil Judge and CJM, Bidar has been transferred as Civil Judge, Gadag; Mr. S. S. Nagarale, I Addl. Civil Judge, Bijapur has been posted as Principal Civil Judge and CJM, Bijapur; Mr. Diwakar Rao, Addl. Civil Judge, Kolar has been transferred as Civil Judge, Udupi; Mr. N. Srivatsa Kedilaya, II Addl. Civil Judge, Mysore has been transferred as I Addl. Civil Judge, Dharwad.

Mr. B. Narayana Poojary, Addl. Judge, Court of Small Causes, Bangalore has been transferred as Principal Civil Judge Bailhongal; Mr. M. G. Sudindra, Civil Judge, Virajpet has been transferred to be posted to Training Institute, Mysore; Mr. S. T. Kuda Somanavar, I Addl. Civil Judge, Dharwad has been posted as Principal Civil Judge and CJM, Dharwad.