

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 8

May 1996

Part 2

Justice Babu Acting C J

Justice S. Rajendra Babu has been appointed as the Acting Chief Justice of Karnataka High Court. He was sworn in as the Acting C.J. on 10.5.1996. The vacancy was caused on account of the retirement of Justice S.A. Hakeem as the Chief Justice of Karnataka High Court.

Limit Raised

The Government has now permitted the Bangalore Legal Practitioners Co-operative Society Ltd., to sell non-judicial stamp papers of maximum limit of Rs. 1,00,000/-. The previous limit was Rs. 50,000/-.

I L R Gets New Editor

Mr. B.M. Baliga, has been appointed as the Editor of the Indian Law Reports [Karnataka]. He succeeds Mr. M.G. Satyanarayana Murthy who served the publication with distinction for 12 years.

Appointments

With effect from 1.3.1996 the following Advocates have been appointed as Additional Government Standing Counsel in the Bangalore Bench of Central Administrative Tribunal for a period of three years. Mr. Vishnu Bhat; Mr.K.N. Chandrashekar; Mr. N. Amresh and Mr. S. Chellaiah.

Retirements

- Mr. K. Rachaiah, IX Addl. CMM, Bangalore, retired from service on 30.4.1996.
- Justice M.M. Mirdhe retired as a Judge of the Karnataka High Court on 24.4.1996.
- Justice S.A. Hakeem, retired as the Chief Justice of Karnataka High Court on 9.5.1996.

Undertrials Get Justice

In a significant Judgment the Supreme Court has held that the undertrials cannot be held indefinitely without violating Article 21 of the Constitution and as a matter of course they are entitled for bail in the event of delay of trial. Thousands of undertrials languishing in jails all over the country are bound to be benefitted from this landmark judgment.

The Apex Court judgment dated 6.5.96 has laid down guidelines for release of thousands of undertrials all over the country on bail and significantly held that the Magistrates have an obligation to release undertrials without insisting on individual bail applications the Court has directed that all Magistrates to send reports of compliance of this judgment to the respective High Courts within three months from the date of the judgment.

A Division Bench comprising Justices Jeevan Reddy and S.B. Majumdar held that the undertrials lodged in jails for a period of six months to one year facing charges of offences punishable with imprisonment ranging from one to seven years are to be freed. Their release could be made on the basis of a bail application or on the execution of a personal bond. Since it is the constitutional mandate of personal liberty the court held that there is no need to file individual applications and the Magistrates and the Magistrates have a duty to release all such undertrials without waiting for filing of such applications the Court, however, held that these directions do not apply to those category of cases like the TADA, NDPS Act, Arms Act, Foods Adulteration Act, Laws relating to smuggling, Cheating, Corruption, Defamation, Environment.

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Mr. S.N. Prashanth Chandra comparing the proceedings of the symposium "judicial Activism - Recent Trends" jointly organised by AAB and Lahari. Seated from left to right are Messers. P.G.C. Chengappa, Dr. N.R. Madhava Menon, R.N. Narasimha Murthy, K.N. Subba Reddy, M.R. Janardana and K.N. Putte Gowda.

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✂ *Litigation should not be immortal when man himself is mortal. Law helps the vigilant and not one who sleeps over rights.*

– Mr. V.K. Maheshwari, Addl. Chief Metropolitan Magistrate, New Delhi while dismissing an application filed by the American Relief Agency "Care" seeking to recall the defendant for cross examination in a case involving a copy right dispute.

✂ *The investigative agency, which operates directly under the Prime Minister, has been dilly-dallying on the investigation due to government's lukewarm attitude. Investigation has been going on for years without tangible results while it would not have required much time to get to the bottom of the case.*

– Mr. Prem Kumar, Chief Metropolitan Magistrate, New Delhi, in his order dated 30.4.96 issuing NBW against Tantrik Chandraswamy.

Lawyers Protest

★ Lawyers in Maharashtra are protesting against the dress regulations. Their demand is that they should be permitted to wear such dress conducive to the season rather than following the prevailing dress regulations.

★ Lawyers in Bihar are protesting against the steep increase in respect of Court fee payable on writ petitions. Till recently the Court fee payable on a writ petition was Rs. 6.50/-. Now the litigants have to pay court fee of Rs. 1,500/-. On account of this revision the number of writ petitions filed before Patna High Court was substantially come down.



To be Conscious that you are ignorant
is a great step to knowledge

-Benjamin Disraeli

Transfers / postings

With effect from 27-5-1996 the following New Presiding Officers will be functioning in Bangalore:

City Civil Court

CCH-2: H.V. Ramachandra Rao [Vice H.P. Desi Gowda]
CCH-4: G.V. Hegde [Vice Kulkarni Rama Rao]
CCH-6: S.T. Kudasomannavar [Vice K.N. Nagendra Kumar]
CCH-10: K.H. Malleshappa [Vacant]
CCH-14: R.H. Raddi [Vacant]
CCH-15: Shekharagowda Patil [Vacant]
CCH-18: S. Mariyappa [Vice S.A. Deshpande]
CCH-19: D. Krishnappa [Vacant]
CCH-23: G.P. Veerabhadrappe [Vice V.K. Dwarakanath]
CCH-24: S.V. Patil [Vice M. Chidananda Rao]
Registrar: Nadiga Jayaswamy [Vice V.B.S. Jadhav].

Small Causes Court

SCCH-1: M.S. Rajendra Prasad [Vacant]
SCCH-2: M.K. Purohit [Vice H.V. Ramachandra Rao]
SCCH-11: S.G. Pallad [Vice Ms. K. Sukanya]
SCCH-16: R.M. Shettar [Vice S. Mariyappa]
SCCH-19: K. Ninge Gowda [Vice H.S. Ramanna]
SCCH-21: M.M. Khan [Vice V.G. Charatti]
Registrar: K.H. Mallappa [Vice C. Chandramalle Gowda].

Magistrates Court

CJM: Kenche Gowda [Vice A.H. Adappannavar];
II Addl. CMM: B.M. Sindagi [Vice S.B.N. Prakash];
V Addl. CMM: D. Vishweswara Bhat [Vice S.M. Raddy];
IX Addl. CMM: M.L. Shivanna [Vice K. Rachaiah, since retd];
XI Addl. CMM: S.G. Kashimath [Vice A.M. Pattar];
Spl. Court for Eco. Offences: Avin Thippanna Hanumappa
[Vice L. Subramanya].

Bangalore Rural District

Prl. Dist. & Sessions Judge: B.S. Srinivasa Rao [Vacant];
I Addl. Dist. & Sessions Judge: Jawad Rahim [Vacant];
II Addl. Dist. & Sessions Judge: M.A. Muchandi [New created post].

Note: In City Court and Small Causes Court there may be internal changes.

Undertrials Get Justice

(Continued from 1st Page)

Representation of people Act and FERA. At the same time the Apex Court directed the Court of Magistrates/Sessions to try those offences on a priority basis.

In respect of cases involving lighter traffic offences where the trial is pending for two or more years by reason of non-serving of summons or similar reasons the Apex Court has directed that the

accused by discharged or acquitted and the file be closed. The courts has also directed that similar measure may be adopted in cases involving minor offences under IPC which areailable and non-cognisable where the trial has either not begun or the cases have been pending for two years. The judgment says that similarly the accused could be discharged or acquitted in cases where the offence is not of a recurring nature and punishable by fine only which have been pending trial for more than a year.

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Judiciary and Speedy Justice

@Justice M.F. Saldanha

(Continued from last issue)

Sometimes cases are part-heard when assignments change or Judges retire. Most of these situations are avoidable and must be so planned as not to result in loss of precious Judicial time. A recent survey showed that this factor accounted for a loss of as much as 31% of Court working hours. If a Judge were to regard his calling as a vocation and not a job he could ensure that this did not happen. I share the view that participation in these activities is vital for a Judicial officer but the planning should be such, when choosing the date, as not to encroach the court working hours. Where it cannot be avoided the Judge must ensure that the lost time is made up. I have tried to adhere to this principle and have made up time in the evenings and on Saturdays and holidays - the Bar has willingly co-operated and we had ensured that more than the lost time was made up for. In fact, most of these were cases that were substantially part heard when my assignment changed, and which a sense of responsibility made up complete though nobody could have insisted on it. The last occasion was, ironically enough in April 1994 when I read in the papers that I had suddenly been transferred from the Bombay High Court. Justice Kantharia and I had heard a very important matter for 3 1/2 months in which over 35 counsels had appeared. We reserved the judgment only to save the court time as it would mean about 2 weeks lost if the judgment were to be dictated in open court. I had at that time completed about 90 pages of the judgment working in my spare time and it was impossible to complete it before I left that High Court. This would have meant that the entire matter would have had to be re-argued before another I left that High Court. This would have meant that the entire matter would have had to be re-argued before another Bench. I appointed this out to the

Chief Justice of India and requested him to defer my joining date at Karnataka so that I could complete the judgment and we could pronounce it. This was done, and even though it meant by having to work 18 hours a day, the job was completed in time. I cite the example that "Where there is will, there is a way".

In the ultimate analysis, it is a degree of missionary zeal and dedication that are required if the system is to be lifted out of its present sluggishness. Jawaharlal Nehru, himself a tireless worker drew inspiration from Robert Frost's poem:

"The woods are lovely dark
and deep

But I have promises to keep
And miles to go before I sleep
And miles to go before I sleep."

Claud Mullins in his book, "In Quest of Justice" has said: "It was the boast of Augustus that he found Rome of brick and left it of marble. But how much nobler will be our sovereign's boast, when he shall have it to say that he found law dear and left it cheap; found it the patrimony of the rich, left it the inheritance of the poor; found it the two edged sword of craft and oppression, left it the staff of honesty and the shield of innocence."

These are inspiring words, but carry a message to the Judiciary that it must rise to the need of the hour, which is an efficient and effective justice dispensation system. Towards this goal my friends it is for the judiciary to strive - a Judge's work never ends, it only begins and goes on.

I must end with the beautiful prayer of St. Francis of Assisi:

"Lord grant me the serenity to accept the things I cannot change, courage to change the things I can and the wisdom to know the difference".

[concluded]

A Newcomer On Curtailing Litigation Time

Mr. Hanikishore, Advocate.

(Continued from last issue)

In the year 1995, a total of approximately 1,26,500 summons were ordered to be issued by the Registry of the City Civil Courts at Bangalore, comprising 49,998 summons from the Civil Courts, 29,223 Small Causes Summons, about 4,200 summons transferred by the District Rural Courts and nearly 43,000 summons from Courts in other parts of the country. On average, each of the 59 Summons Servers and 28 Bailliffs was required to deliver 1,460 summons, which on a daily basis, after discounting the 121 non-working days and holidays for the year (although Summons Servers are known to favour weekends and other holidays to descend upon their quarry for strategic reasons), represents less than 6 summons to be served.

Of these, it is not known how many summons were returned with endorsements stating, Address unknown/incorrect, Addressee not found/not available at time of delivery/left/not in station, Door locked and similar other not-so-original inventions. When summons are neither served nor returned within a reasonable length of time, and one month's time is more than reasonable for the purpose, the Court could allow the Plaintiff to take steps for the issue of fresh summons. For the Plaintiff to take such fresh steps, a week's adjournment is all that is needed in most cases, instead of putting off the cases for months as some Courts are wont to do.

Available evidence would suggest that a Defendant who conspires to avoid being served with Court summons the first time is unlikely to have changed his mind when attempts are made to have him served a second or third time. Since Courts, by rote, insist on this fruitless exercise being once through at least thrice before permitting the Plaintiff to

have the summons served by substituted service and since at the end of it all the Defendant is liable to be placed ex-parte anyway the time spent in the process could well be truncated secure in the knowledge that no compromise would be made on the principle of Audi Alteram Partem. Until a bold and imaginative Legislature declares measures to bring errant Summons Servers to book, Judges would do well to react to ground realities and turn on the heat in this department.

Another major factor telling upon the duration of Court Cases is the deliberately delayed filing of Written Statement by the Defendant. On the face of it, one cannot be faulted for concluding that Advocates are squarely to blame on this count, although it must be realised that in many cases, Defence Lawyers are hired and rewarded precisely to stall matters for as long as their forensic skills make it possible. The onus then, on determining the time taken by the Defendant in filing the Written Statement is in no small measure on the court. Except in the most extraordinary circumstances, no matter can be so complicated or no Advocate so busy that a Statement cannot be filed within 60 days, and Courts should insist on the deadline being met.

More time, it appears, is being spent on the framing of Issues of Courts, than while passing final Judgment in a given case, which is rather superfluous, considering that in most cases, a cursory glance at the respective pleadings is all that it takes for the relevant points of contention to be tossed up. This, coupled with the readiness of both parties to a suit in providing the Courts with draft issues, would make it difficult to explain why cases are allowed to drift adjournment are made times without number.

(to be continued)

Around the Courts

□ *The Consumers Protection Act, 1986, providing parking space for vehicles at a fee does not constitute service and the agency providing such service is not responsible for safety of the vehicles:*

A complaint raised a dispute in the District Consumer Forum at Madras alleging deficiency in service and claiming compensation and damages for the loss of his two wheeler parked in the specified area of the Madras City Corporation which was leased out to Tamil Nadu Ex-Servicemen's Corporation which collected a nominal fee for such parking. The District Forum dismissed the complaint holding that the complainant could not establish that the employee in charge who was collecting the fee was responsible for the safety of the vehicle and it opined that only a nominal fee was collected not with a view to earn profit but to regulate the traffic. The State Commission which considered the appeal took the opposite view and held that the person or the authority which receives the vehicle for parking and collects the fee and issues a receipt is in the position of the bailee under S.148 of the Contract Act and that the agency and the Madras City Corporation have failed to exercise the care which an ordinary prudent man would have taken. On a further appeal by the Madras City Corporation the National Commission allowed the revision petition and set aside the order of the State Commission. It held that the parking area provided was mainly for ensuring orderly parking of vehicles and smooth flow of traffic, and the person providing the facility is collecting only a nominal fee and is not undertaking to ensure the safety of the vehicle. It also expressed the hope that the Madras City Corporation would evolve a system where the expectation of

the Public that their vehicle parked in the parking area would be secure until taken is fulfilled.

□ *Power of State Bar Council to restrict entry for persons into legal profession:*

By a judgment dated 10.4.96 a Division Bench of Supreme Court comprising Chief Justice A.M. Ahmadi, Justice S.B. Majumdar and Justice Sujatha Manohar upheld the condition prescribed by the Bar Council of Maharashtra and Goa in barring entry of Medical Practitioners into the legal profession and held that such a restriction is constitutionally valid. The Apex Court held that "the power conferred on the State Councils to lay down power conditions for controlling entries to the legal profession cannot be said to be an unguided power conferred on them by the Bar Council of India Act".

The 43 page verdict was passed by the Court on a special leave petition filed by Dr. Haniraj L. Chulani against a Bombay High Court judgment dismissing his petition challenging the rule making power of the State Bar Council. The Judges held that they could not agree with the contention of the petitioners that the Rule Prohibiting entry to the Doctors into the legal profession suffered from the vice of excessive delegation or authority.

Trekking in Himalaya

5 Advocates from Bangalore have undertaken a high altitude trekking expedition from Gangotri-Kalindi pass to Badrinath in Uttara Kashi and Chamoli District of Uttar Pradesh from 4 - 29th May 1996 under the leadership of Mr. S.B. Pavin and Ms. Dakshayani Vikram. The team has planned to scale height of 19,500 feet. The team members are Jagadeesh Mundargi, Ashok Karmadi, S.Z.A. Kureshi and M.H. Sawkar.

Advocates Sport Meet

Annual Sports Meet of AAB was held on 14.4.96 and the results of the Sports Meet are as follows:-

Men's Section [Below 30 years]

H.S. Chandraiah, I prize in 100 meters, 200 meters, 400 meters and long jump; S. Venugopal, I prize in high jump, II prize in long jump, 100 meters and 200 meters; Yathiraj, II prize in shotput, III prize in 100 meters and 200 meters; V.B. Patil, I prize in 800 meters, II prize in 400 meters and III prize in longjump; Prakash, III prize in 400 meters; Siddaraju, III prize in 800 meters and shotput; Appaiah I prize in shotput and discus throw, III prize in long jump; Shivshankar II prize in high jump; M. Diwakar, II prize in discus throw and III prize in highjump; K.R. Dinakar, II prize in 800 meters; K.V. Sathyanarayana, III prize in 400 meters(joint winner);

30 - 40 years age group:

I.M. Devaiah, I prize in 100 meters, 200 meters, 400 meters, II prize in long jump and high jump; H.S. Muniraju, II prize in 100 meters, 200 meters, III prize in discus throw and shotput; H. Ramachandra, I prize in long jump and high jump; Adhinath Narde, I prize in 800 meters, II prize in 400 meters, and III prize in 200 meters; S.G. Rajendra Reddy, I prize in discus throw, II prize in shotput; B.R. Krishna, I prize in shotput and II prize in discus throw; L.P. Amruthesh, II prize in 800 meters, III prize in highjump; R. Rajashekhar, III prize in 100 meters and 400 meters.

Above 40 years:

K.M. Basavaraju, I prize in 200 meters, 800 meters, II prize in 100 meters, 400 meters, III prize in long jump and discus throw; Ashok Karmadi, I prize in 100 meters, discus throw, II prize in 200 meters, long jump and high jump and shotput; Basavaraj Mecci, III prize in 100 meters and 400 meters; K.N. Putte Gowda, III prize in 200 meters; Subramanya, III prize in 800 meters; Malleshaiah, III prize in shotput; B.R. Sathenahalli, III prize in high jump; Chandrakanth Koujalgi, I prize in shotput, II prize

in discus throw; Ashok Kumar, II prize in 800 meters; Abdul Majeed, I prize in 400 meters, long jump and high jump.

Women's Section:

M.L. Srimathi, I prize in 100 meters, 200 meters, 400 meters, Javelin throw, shotput, discus throw, long jump, high jump and musical chair; Shobha Shankar, II prize in 100 meters, 200 meters, 400 meters, javelin throw, long jump and musical chair; Smitha, II prize in shotput, III prize in 100 meters, 800 meters, javelin throw, discus throw and long jump; Anuradha, II prize in 800 meters, discus throw, III prize in high jump, shotput and musical chair; Abida, I prize in 800 meters, II prize in high jump.

Staff Members:

Venkatesh, I prize in 100 meters, 200 meters and discus throw; Amarnath, II prize in 100 meters, 200 meters and III prize in discus throw; Sadashiva, II prize in discus throw, III prize in 100 meters and 200 meters.

Cultural Events

The following are the winners of the competitions held by the AAB between the 17th and 19th April 1996:

Nagarathna, I prize [bhava geethe], II prize [janapadha], II prize in [shasthriya sangeetha], IV prize in [desha bhakti geethe]; Bharathi Bhat, I prize [desha bhakti geethe], II prize [bhava geethe], III prize [chitra geethe]; B.G. Tejaswini, I prize [shasthriya sangeetha], II prize [chitra geethe], III prize [desha bhakti geethe]; Radha Raju, I prize [janapadha], II prize [shasthriya sangeetha]; Rekha Nayak, consolation prize [chitrageethe]; K.M. Basavaraj, I prize [mimicry]; K.M. Nagaraju, I prize [ekapatrabhinaya]; Diwakar Maddur, III prize [janapadha], consolation prize [bhavageethe]; K.N. Mohan, II prize [mimicry]; M.R. Ravindra, II prize [ekapatrabhinaya]; K.L. Sridhar, III prize [ekapatrabhinaya]; Krishnamurthy, consolation prizes in mimicry and [janapadha]; Yateesh Kumar, III prize [bhavageethe]; S.S. Padmaraj, I prize [chitrageethe].

News Focus

On 13.4.1994 a symposium on the topic "Judicial Activism - Recent Trends" was jointly organised by the AAB and Lahari. Mr. M.R. Janardana, Advocate General of Karnataka delivered the keynote address. Mr. R.N. Narasimha Murthy, Sr. Advocate and Dr. N.R. Madhava Menon, Director NLSIU were the other speakers. The function was presided over by K.N.Subba Reddy, President of AAB, Mr. P.G.C. Chengappa, President of Lahari, welcomed the participants, Mr. K.N. Putte Gowda, General Secretary of AAB, proposed vote of thanks.

On 19.4.96 AAB had organised a function to bid farewell to Justice M.N. Mirdhe who retired as the Judge of the High Court of Karnataka.

On 20.4.96 Annual Day Celebration of AAB was held in the City Unit.

On 20.4.96 K.R. Nagar Bar Association [Mysore District] had organised a function to felicitate Justice M.B. Vishwanath and Justice Chandrashekaraiiah, Judges of the High Court of Karnataka, Justice A.J. Sadashiva presided over the function.

Between 22-24th April 96, Lahari had organised a orientation course in Bangalore for the Advocates intending to appear for the Munsiff's examination.

On 3.5.96 Justice S.A. Hakeem, was sworn in as the Chief Justice of Karnataka High Court by the Governor of Karnataka.

Miscellany

Very Recently the Sira Police raided the Local Bar Association in connection with the ongoing gambling and arrested three Advocates and two Court Clerks. The arrests were done on the orders of the local Magistrate. Two other Advocates are reportedly absconding. According to police the alleged gambling activity was going on for a long time and the previous warnings by them did not deter the concerned from indulging in gambling activity.

Stereo Stolen

The Stereo set fitted in a maruti car belonging to Advocate Mr. Krishnamurthy Hasyagar was stolen recently while the same was parked by the side of the Karnataka High Court. It is reported that the thieves are targetting the cars parked in between the High Court and KGID Buildings.

Obituary

On 11.4.96 K.T. Munivenkataramanappa, Retired District and Sessions Judge and Advocate passed away at Bangalore.

On 23.4.96 Mrs. Uma Shankar, Advocate, passed away in Bangalore.

On 28.4.96 D.M. Rudraiah (79), Advocate, passed away at Chitradurga.

On 1.5.96 Prof. S.R. Swamy(60), Advocate, passed away at Bangalore.

On 4.5.96 S.K. Joshi(48), Advocate, passed away at Bangalore.

On 6.5.96 C. Bheemappa Chetty(74), Advocate, passed away at Bangalore.

On 10.5.96 Abdul Lateef Khan, Advocate, Passed away at Bangalore.

Undertrials Get Justice

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The Court has specifically mentioned that these guidelines applicable not only to pending cases but also the cases that may be initiated in future. While disposing the public interest write petition filed by a social organisation "Common Cause" the Apex Court upheld the contention of the petitioner that the criminal prosecution were operating as engines of oppression when proceedings against persons accused of minor offences were kept pending for years together.

ಲಿಟರರಿ ಯೂನಿಯನ್

ದಿ 11 18-4-96ರಂದು ನ್ಯಾಯಮೂರ್ತಿ ಪಿ.ವಿ.ಶೆಟ್ಟರವರು "ವಕೀಲ ಮಿತ್ರ" ಮಾಸಿಕ ಪ್ರಕಟಣೆಯ ಪ್ರಥಮ ಸಂಚಿಕೆಯನ್ನು ವಿದ್ಯುಕ್ತವಾಗಿ ಬಿಡುಗಡೆ ಮಾಡಿದರು. ಸಮಾರಂಭದ ಅಧ್ಯಕ್ಷತೆಯನ್ನು ಕರ್ನಾಟಕದ ಅಡ್ವೋಕೇಟ್ ಜನರಲ್ ಶ್ರೀ ಎಂ.ಆರ್. ಜನಾರ್ದನರವರು ವಹಿಸಿದ್ದರು.

ದಿ 11 18-4-96ರಂದು ಸ್ವರ ಲಹರಿ ತಂಡದವರಿಂದ ಸುಗಮ ಸಂಗೀತ ಕಾರ್ಯಕ್ರಮ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು.