

Log-jam in Appointment of Dist. Judges

At the end of the tunnel there appears to be no light for the eight Advocates selected by the Karnataka High Court for being appointed as the District Judges. The issue has reached the flash point and appears to have reached a point of no return. A prestige of sorts between the state government and the Karnataka High Court has developed. All eyes are focussed on the next move as to how the juggernaut would be resolved.

More than five months ago the High Court selected eight Advocates for appointment as District Judges and the list was forwarded to the government for issuing appointment orders. Meanwhile two lawyers submitted a memorandum to the governor assailing the selection of the eight Advocates as violative of Articles 14 and 16(4) of the Constitution in as much as the High Court Notification of December 1996 calling for applications did not specify the reserved post as per the amended Roster Rules of June 20, 95. The governor having forwarded the memorandum to the State Government received the latter's response in support of the contentions raised by the memorialists.

Simultaneously the Chief Minister appears to have written to the Chief Justice explaining the view point of the government vis-a-vis the memorandum and received a reply from the Chief Justice justifying the selection process. It seems that the reply received from the Chief Justice also contained a deadline for issuing the appointment orders as May 25 which was later extended to 2 p.m. on May 28. But the government apparently not being satisfied about selection process is holding over the appointments. The government sources have adopted the stand "how can we issue the appointment orders when the recruitment itself is not in accordance with the provisions of the constitution

and the rules framed by the government?" Whatever may be the outcome of this undeclared war of nerves, the matter of fact is that the long standing vacancies of District Judges remain vacant. A good example of clearing the mounting backlog of cases in District Courts!

An off shoot of the imbroglio is the sudden recall and relieving of the State Law Secretary Mr S.K. Venkata Reddy who has been posted as the leave reserve. In this tussle between the High Court and the State Government which was not inclined to relieve Mr. Reddy from the post of the Law Secretary, the High Court seems to have won the first round of battle. The government, faced with the situation of fait-acompli on the question of relieving of Mr. Reddy, appears to be preparing for the long term battle. Smarting under the fast developments the government appears to be pondering over the idea as to whether it should go in for the appointment of the Law Secretary without seeking deputaton from the High Court. Considering the importance of the issues and the institutions involved, there appears to be battle royale ahead.

SC Vacation

Supreme Court is closed for summer vacation from 15-5-98 to 12-7-98, both days inclusive.

Judges Exempt From Professional Tax

The government of Karnataka has issued a notification under section 29 of the Karnataka Tax on Professions, Trades and Employment Act granting exemption to the Judges of Karnataka High Court from payment of professional tax. The notification has come into effect from April 1, 1998.

A.P.P. Appointments

The Secretary Department of Prosecution and Government Litigation, Sixth Floor, Cauvery Bhavan, Bangalore-09, has called for applications from the eligible candidates for appointment as Assistant Public Prosecutors. Last date for submitting the application is 30-6-98.

Notaries Petition

Under the leadership of Mr. D. Mohiadin several Notaries of Bangalore have recently submitted a petition to the Bangalore Advocates Association seeking reduction of monthly rent from Rs. 500/- to Rs. 250/- and also to take remedial action against the touts/agents.

Addl. Solicitor General Appointed

Mr. K.N. Raval, a senior Advocate, from Gujarat High Court has been appointed as the Additional Solicitor General of India on 6-5-98. He was a Standing Counsel for the Income Tax Department apart from specialisation in Constitution, Company, Tax and Labour Laws.

FOBA Resolutions

The Council meeting of the Federation of Bar Associations in Karnataka held on 31-5-1998, passed the following resolutions:

- a) to thank state government for enhancing the amount from Rs. 50,000/- to Rs. 1,00,000/- payable to Advocates, in pursuance of the Karnataka Advocates Welfare Fund Act, 1983;
- b) to request the state govt. to allot annual grant to; i) Advocates Association, Bangalore-Rs. 2,00,000/- ii) District Bar Associations-Rs. 1,00,000/- and iii) Taluk Bar Associations - Rs. 50,000/-;
- c) to request the state govt. to provide grants as and when new District Bar Associations are formed;
- d) to request the KSBC to reduce the age of retirement from practice from 50 years to 35 years and to consider that incapacity to practise amounts to retirement;
- e) to request the state govt. to supply important statutes to the Bar Association at a nominal cost;
- f) to request the state govt. to provide copies of gazettes to the Bar Associations free of cost;
- g) to request the Bar Associations to secure stamp vending licenses from the competent authorities, wherever Advocates Co-op. Societies are not functioning;
- h) to request the Advocates Advocate General and Government pleaders to employ Trainee Advocates and to financially help them;

**Read
Communique**

Kolar Diary

- The following Judicial Officers have been posted to various courts in Kolar District: Mr. R.D. Deshpande as Principal District and Sessions Judge, Kolar; Mr. G.V. Hegde as II Addl. District and Sessions Judge, Kolar; Mr. K. Diwakar Rao as II Addl. Sessions Judge and SC/ST Special Court, Kolar; Mr. Iqbal Patel as Civil Judge [Sr.Dn.] and JMFC, Chintamani and Mr. B.M. Mallikarjunaiah as Civil Judge [Jr. Dn.] and JMFC, Gowribidanur.
- Mr. Siddappa, Chairman, District Consumers Redressal Forum, Kolar, retired on 20-5-98.
- The following Advocates have been elected as office bearers of Advocates Association Mulbagal for the year 1998-President: Sri Gopalakrishna; Vice President: Sri M. Varada Reddy; Secretary: Sri B. Nagaraj; Treasurer: Sri K.R. Rajanna.

Retired Judge Held

Gulbarga City Police arrested Mr. Wahiuddin Ansari, a retired Civil Judge, his wife and four others on the ground of harassment of Mr. Ansari's daughter-in-law. She had complained to the police that she was tortured and driven out of home since she could not bring car as a part of dowry.

Viewes and Vignettes

Mr. P.K. Vijay, Advocate, has suggested that the Karnataka High Court must have a hygienic canteen in the Annexe building so as to cater to the needs of the lawyers and the litigants.

Literary Union

On 27-5-98 Sri S.V. Prasad provided a Sugam Sangeetha Programme in the Auditorium of AAB.

FOBA Resolutions

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- i) to conduct one day state level Advocates Conference at Bangalore.
- j) to condemn the police atrocities against Sri V. Ramappa, Advocate, Davangere and to press for immediate action against the police;
- k) to request the Chief Justice, Karnataka High Court, to provide addl. accommodation and better facilities to the Advocates and litigants in the High Court;
- l) to request the Chief Justice, Karnataka High Court, to provide accommodation to the FOBA;
- m) to request the state govt. to give information to the respective Bar Associations in the first week of March every year to enable the Bar Associations to provide necessary information and particulars for the release of the grants;
- n) to request the state govt. to make arrangements to pay the lapsed grants to the respective Bar Associations, and
- o) to request KSBC to issue directions to the sub ordinate to permit the Trainee Advocates to appear and make submissions before it.

Communique Classifieds

For Sale: 1998 model fiat car with new tyres in good condition. Contact: Ms. Lata Prasad, Advocate. Phone: 6653367.

Obituary

on 1-5-98 C.J. Sundaradas, Advocate and Notary, passed away at Bangalore.

Political Fallout of Nuclear Tests in Southasia

S.P. Shankar, Advocate

It was hard to convince others, a few decades ago that India did have a team of scientists who can rub shoulders with their counterparts in the advanced countries. Thanks to Dr. Abdul Kalam and comrades, India has undesignedly fallen into or elevated itself upto third slot among the nuclear weapon states. May 11 and 13, 1998 have become significant days for India as it could successfully testfire nuclear bombs, without in the least disturbing the ecology or affecting the nature muchless yeilding radio-active fallout.

The credit in regard to this is based on a situation which has led to more damage than the country can control. It has invited the wrath, political and economic, from the Big Powers in the world. It has created envy and suspicion in the minds of our neighbours. Maybe it will create a sort of negative competition in nuclear testing which would not augur well for the inhabitants of this earth. On 28th and 30th Pakistan conducted underground nuclear tests to cryeven with India.

What then, are the merits and demerits of this calculated risk taken by the present governments in demonstrating their nuclear capability. Going nuclear is not a product of a day's labour. From the days of Dr. Homi Bhaba and Pandit Jawaharlal Nehru India was always at the threshold of demonstrating its nuclear capabilities through a quantum leap to match the prowess of the two Big Powers. In 1974, the then government conducted nuclear tests and warned the rest of the world about the potential nuclear capability of India. It was an affair of rising upto a particular level in defence mechanism and to leave the rest of the world to imagine as to what India could do.

Twenty four years later in almost a repeat performance India has

done what it could, forcing the other nations including the Big Two to sit up and reckon India as a nuclear capable country. In this interrugnum France, Korea, China openly exhibited their nuclear power and capability while other countries were making progress, without being vocal about it or active enough to be reckoned as a country possessing nuclear capability. Across the broder lies the dormant power of using its nuclear capability. There has been an attempt at striking even with India. What is scaring is whether this game of equalling would escalate into something wholly avoidable.

Growth comes from destruction but equally it could be said that hazardous growth may lead to destruction. Constraints of highest order & protection of territorial integrity are to be balanced against each other, to appear diplomatically successful. None has taken kindly to these nuclear tests, Sanctions are galore. Time alone will enable India to take stock of the damage likely to the caused by the sanctions. But a self sufficient India having economic stability & possessed of immense potentiality to be self reliant, it can smother all odds and difficulties and rise above like a sphinx.

The country needs the support of the people, atleast for the purposes of protecting its unity to the outside world. Can we if not may we, be united?

What is not noticed is that the security of the country is paramount and cannot be sacrificed at any cost. Acquisition of "nukes" may cost India dearly. But the cost of providing security of "Z" and other grades to countless politicians, ex dignitories and a host of others is far higher than the cost of acquiring a dozen "nukes". Expenses on nuclear bombs is one time affair while the expenses on our politicians, ex dignitories and others are recurring and unending.

News Panorama

No running around lawyers, no court attendance, now divorce can be obtained in the United States on a computer-net. At Divorce Institute there is a complete divorce package for those who are unhappy with their marital relations. Candidates call up a six page questionnaire, print it out and filling details of income, property, children involved and other disputed items apart from reasons for divorce. Divorce Institute on receiving such information draws up the relevant documents for approval by the couple.

Campus watch

- National Law School of India University, Bangalore, will hold a test on June 28, 98 for admissions to LLM/JSD with specialisation in Business Law, Public Law, Criminal Law etc. Applications for the test can be obtained by furnishing a D.D. for Rs. 200/- favouring the Registrar. NLSIU, Bangalore.
- University Law College, Bangalore, has invited applications for five years law degree course from eligible candidates. The last date for issue and receipt of applications is June 30, 1998.

Prof. Guttal's Speech in USA:

Extract of the speech delivered by Prof. R.B. Guttal at the Santa Clara University Law School California, USA:

It gives me immense pleasure to be in your midst and that too to talk on the Indian constitution as a matter of unique opportunity to express my views on this occasion.

Before I take you to the Indian constitution, I may be permitted to say a few words about the American constitution. In the declaration of Independence on July 4, 1776, it was stated by the founding fathers of the American constitution.

"We hold these truths to be self evident that all men are created equal, that they are endowed by their

creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness".

In this the most remarkable aspect is that they say that all men are created equal. That means the founding fathers of the constitution recognised equality among all men. They didn't confine it to Americans only. This shows the magnanimity and noble Qualities of the framers of the constitution. In this background the constitution adopted in 1787 and in the Preamble it was stated.

"We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare and secure the blessings of Liberty to Ourselves and posterity, do ordain and establish this constitution for the United States of America".

In the American constitution there are only 7 Articles and the constitution has been amended only 27 times during the period of 212 years.

At this juncture I want to state about the Indian constitution and the basic principles of the Indian constitution.

India won Independence on 15th August 1947 and the constitution was adopted on 26th November 1949. In the Preamble itself it is stated.

"We the people of India having Solemnly resolved to constitute India into a Sovereign, Socialist, Secular democratic Republic and to secure to all its citizens Justice-Social, Economic and Political, Liberty-of thought, expression, belief, faith and worship; Equality of status and opportunity and to promote among them all, Fraternity assuring the Dignity of the Individual and the Unity and Integrity of the Nation."

Our constitution consists of 395 Articles and it has been amended on 80 occasions during the period of 50 years.

The Preamble itself will reveal that the constitution has embraced all the Basic Principles of the American constitution. In addition to this the Indian constitution uses the words Democracy and Socialism in the Preamble. Thus the Indian polity is a Democratic Socialist polity unlike the

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Annual Sports Meet-1998

The following Advocates secured prizes in the recently held Annual Sports Meet:

Below Thirty years

Mr. H.M. Subramani-First prize-100 mtrs., 200 mtrs., Javeline; Second prize-Shotput and Third prize-Discus Throw, Long Jump: Mr. G.V. Shashi Kumar-First prize-800 mtrs; Long Jump, High Jump and Second prize-200 mtrs.: Mr. Divakar Maddur-First prize- Shotput, Discus Throw: Mr. M.B. Murulidhar-Second prize-Discus Throw and Third prize-100 mtrs: Mr. S.N. Ramprasad-Second prize- High Jump and Third Prize-Shotput; Mr. H.V. Mari Gowda-Third Prize-100 mtrs.: Mr. Venkataramaiah-Second prize-800 mtrs.: Mr. N.S. Shivadutt-Third prize-800 mtrs.: Mr. S.R. Ravi Kumar-Third prize-400 mtrs, 800 mtrs.

Ms. H.Y. Annapurna-First prize-100 mtrs, 200 mtrs, 400 mtrs., Long Jump, High Jump; Second prize-Shotput and Third prize-Musical chair; Ms. Rukmini-First prize-Shotput; Second prize-200 mtrs.; Javeline and Third prize-Long Jump, High Jump, Discus Throw; Ms. Aruna-Second prize-100 mtrs., Long Jump, High Jump and Third prize, Shotput; Ms. Sridevi, Trainee Advocate-Consolation Prize.

Above 30 years

Mr. S.N. Amarnath-First prize-Shotput, Javeline, Discus Throw: Mr. H.S. Cnadraiah-First prize-100 mtrs., 200 mtrs., 800 mtrs., Long Jump and Second prize-Javeline: Mr. S. Venkatesh-First prize-400 mtrs. and Second prize-100 mtrs., 200 mtrs., Long Jump: Mr. H.S. Muniraju-Second prize-Discus Throw and Third prize-100 mtrs., Long Jump, Javeline: Mr. Prakash Hegde-First prize-High Jump: Mr. A.N. Gangadharaiah-Second prize-400 mtrs. and Third prize-200 mtrs.: Mr. Mohan-Second prize-High Jump: Mr. R. Rajashekar-Second prize-Shotput: Mr. Venugopal-Second prize-Javeline: Mr. Prakash Rao-Third prize-Discus Throw: Mr.

Yethiraj-Third prize-Shotput: Mr. M.S. Venkatesh-Third prize-High Jump: Mr. H.R. Naik-First prize-400 mtrs.

Ms. Srimathi-First prize-100 mtrs., 200 mtrs., Discus Throw, Javeline and Second prize-Long Jump, High Jump, Shotput: Ms. B.J.G. Sathyasree-First prize 400 mtrs., Long Jump, High Jump, Shotput and Second prize-100 mtrs., 200 mtrs., Discus Throw, Javeline, Musical Chair: Ms. Shoba Shankar-First prize- Musical Chair; Second prize-400 mtrs. and Third prize-100 mtrs., Long Jump, High Jump, Shotput, Discus Throw.

Above 40 years

Mr. Pandurangaswamy-First prize-100 mtrs., Shotput, Discus Throw, Javeline: Mr. S. Mruthyunjaya-First prize-100 mtrs., 200 mtrs. and Second prize-Long Jump: Mr. H. Ramachandra-First prize-High Jump, Long Jump: Mr. Malleshaiah-First prize-400 mtrs.; Second prize-High Jump and Third prize Long Jump: Mr. K. Jayaraj Naik-Second Prize-100 mtrs., 200 mtrs., 400 mtrs: Mr. Bhargava V. Sastri-Second prize-100 mtrs., Long Jump: Mr. C. Ramakrishna-Second prize-400 mtrs., 800 mtrs. and Third prize-Javeline: Mr. Basavaraj Mekki-First prize-800 mtrs.: Mr. K.N. Putte Gowda-Second prize-100 mtrs., Discus Throw: Mr. K.M. Basavaraj-Third prize-100 mtrs, 200 mtrs., 800 mtrs., High Jump: Mr. Chandrakanth Koujalgi-Second prize-Shotput and Third prize-Discus Throw: Mr. Chikkavenkate Gowda-Third prize-100 mtrs., Shotput: Mr. B. Basavaju-Third prize-Discus Throw, Javeline.

Office Staff

Mr. Venkatesh-First prize-100 mtrs., Shotput and Second prize-Javeline: Mr. Puryanaik-First prize-Javeline and Second prize-shotput, 100 mtrs: Mr. S. Amarnath-Third prize-100 mtrs., Shotput, Javeline.

News Focus

Foreign Tours

- ❑ On Saturday, the 30-5-98, judicial work was undertaken by the High Court of Karnataka.
- ❑ On 25-5-98 three addl. courts were established in Bangalore City Civil Court and the court halls are numbered as CCH-25, CCH-26 and CCH-27. These court halls are located in the sixth floor.
- ❑ On 28-5-98 Prof. R.B. Guttal, Advocate, addressed the members of AAB, High Court Unit on his impressions of USA.
- ❑ On 31-5-98 Justice Madan Mohan Punchchi, the Chief Justice of India, addressed the members of the AAB, High Court Unit. He emphasised the need for better co-ordination between the bar and the bench. Chief Justice of the Karnataka High Court Justice R.P.Sethi said that he is getting the utmost co-operation from the AAB President. Mr. K.N. Subba Reddy in his welcome address stressed the need for setting up to a Supreme Court Bench at Bangalore.

- ❑ Mr. B.V. Acharya, Senior Counsel, toured Europe between 28-4-98 to 8-5-98.
- ❑ Mr. S.N. Hatti, Advocate, left Bangalore for four weeks tour of USA and UK on 3-5-98 along with his family.
- ❑ Prof. R.B. Guttal, Advocate, returned to Bangalore on 9-5-98 after a stay of six months in the USA.
- ❑ On 12-5-98 Mr. C. Vinay Swamy, Advocate, left Bangalore on two weeks tour of Singapore and Thailand.
- ❑ On 19-5-98 Mr P. Krishnappa Advocate, left Bangalore for USA for three weeks Visit.
- ❑ During May 98 Mr. K. Shivaji Rao, Advocate, toured Europe and USA.

Read Communique

Prof. Guttal's Speech in USA:

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American constitution. In order to make these principles effective the constitution has enumerated various fundamental rights in Part III of the constitution. In this part the most important articles are from Article 14-18 which speak about the equality before law and the equal protection of laws. The equal protection of laws is a principle taken from the XIV amendment of the American constitution. Our Supreme Court has referred to various judgments of the Federal Supreme Court of America in interpreting the equal protection clause contained in Article 14 of Indian constitution. Freedom of Speech and Expression and other liberties are enumerated in Article 19 of our constitution. A provision to protect from double jeopardy is made in Article 20 of the constitution. We have not incorporated due process clause in our constitution.

Even though due process clause is not incorporated the supreme court of India has followed the precedents of the American federal supreme court in interpreting the clause "procedure

established by law". The clause "procedure established by law" is interpreted as equivalent of American due process" clause used in V and XIV amendments of American constitution.

In India democracy is saved by the judicial activism of the Supreme Court and the State High Courts. Apart from the fundamental rights incorporated in the part III of the constitution, the founding fathers of our constitution have laid down the directive principles of state policy in part IV of our constitution. These directive principles of state policy are fundamental in the governance of the country. The most important directive principles read as follows;

"The state shall in particular, direct its policy towards securing

- (a) That the citizens, men and women equally, have the right to an adequate means of livelihood.
- (b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good.



From Mainland to Island on M.V. Nicobar

- (c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
- (d) That there is equal pay for equal work for both men and women.
- (e) That the health and strength of Workers, Men and Women and the tender age children are not forced by economic necessity to enter avocations unsuited to their age or strength.
- (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

In order to avoid concentration of wealth and means of production to the common detriment the government of India has enacted Monopolies Restrictive Trade Practices Act. Even though the Act has been passed, it is not strictly enforced. In American also the Supreme Court has tried to curb the Monopolies by making use of AntiTrust Act. But in some cases the Supreme Court has failed to give a broader meaning to the word "Commence" and it has failed to apply the provisions of the AntiTrust Act. Thus for example in United States, V.E.C. Knight Company 156, USI (1895), the Supreme Court did not apply the provisions of AntiTrust Act. Thus the decision is a failure of the radical democratic tradition to develop judicial concepts and social strength adequate to the task of creating the more equitable sharing of economic power called for by AntiTrust a century ago.

to be continued

Miscellany

- ❑ Mr. T.S. Mahanthesh an Advocate from Bangalore, visited Andaman Islands for a week during May 1998.
- ❑ In the recently held examination for 10th standard [SSLC] Ms. Rajeswari K. Hasyagar secured 16th rank with aggregate marks of 95.36 percent. Rajeswari is the daughter of Advocate Mr. Krishnamurthy G. Hasyagar.
- ❑ With the avowed objective of improving the high standards of cricket by indentifying and encouraging young cricketers All India Cricket Game Fans Association has been established at Bangalore as a registered society. Mr. Ravishankar, Advocate, has been made the President of the Association.

Humour in Courts

- ❑ **Magistrate:** You have filed the bail application both under section 436 and section 437. Is there no difference between them?
- Counsel:** Yes your honour, the difference is one!
- ❑ **Magistrate:** On the last occasion you have filed memo of appearance for the Accused. But now you are mentioning that you do not represent the Accused. How can you say so?
- ❑ **Counsel:** Yes your honour, today I have filed my memo of disappearance!

Retirements

- ❑ Mr. Justice R.V. Vasantha Kumar, Chariman of the Karnataka Administrative Tribunal retired on 30-4-98
- ❑ Mr. Justice L. Sreenivasa Reddy retired as a judge of the Karnataka High Court on 19-5-98.