

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 3

Record Nominations Received As Election Fever Shots Up

From our Special Correspondent

Bangalore, June 13: An unprecedented record number of nominations [113] have been received for the nine posts of Directors to be elected in the 32nd Annual General Body meeting of the Bangalore Legal Practitioners' Co-operative Society scheduled to be held on Monday the 20th June 1994. It is noteworthy to mention that the last election was held on 30th August 1987 and since then the Society has achieved tremendous progress. The Society earned gross profit of over Rs. 8.19 lakhs for the period ending 30.6.88; Rs. 19.79 lakhs for the period ending 30.6.89; Rs. 22.80 lakhs for the period ending 30.6.90; Rs. 24.94 lakhs for the period ending 31.3.91; Rs. 40.37 lakhs for the period ending 31.3.92; Rs. 51.60 lakhs for the period ending 31.3.93 and Rs. 25.78 lakhs for the period ending 30.9.93. This is apart from other substantial incomes received during the period. Therefore, it is quite natural that a lot of importance is attached to the elections. Considering the fact that the Society has on its role 1878 members as eligible voters, the members who are contesting the present election come to 6.05%.

Phenomenal Increase

Perhaps, the increased level of aspiring candidates for the election indicates a spurt in enthusiasm among the members of the Society to be elected as its directors. There are in all nine posts of Directors to be elected to the

Executive Committee of the Society out of which 1 seat is reserved for SC/ST and another post for the women. What makes one wonder as to the spurt in the increase in number of aspiring candidates is the causes for such increased enthusiasm. It is apparent that the magnitude of the financial transactions handled by the Society is increasing year by year and it is found to result in increase of profits to the Society. Perhaps, this is the most vital reason for a large number of nominations filed for the present election.

The Litigation Factor

It is a known fact that a writ petition was filed to the High Court of Karnataka challenging the validity of the elections scheduled for 27-10-91 which had attracted about 40 nominations and that election was stayed by that court. The present election is held as per the directions of the High Court dated 18-3-94 permitting the election to the Executive Committee of the Society as per the calendar of events announced by the Election Officer appointed by the court. Perhaps the past events leading to the stay of elections scheduled for 27-10-91 by the High Court can also be one of the reasons for the increase in nominations.

Powerful Lobbies

With the completion of the second phase of elections & hardly a week remaining for

the election the atmosphere is surcharged with a lot of severe whole campaigning. Each candidate is working according to his/her strategy to enthrone the limited voters. Considering the past experience 50 to 60% polling is anticipated by them. However, one noticeable feature is the emergence of two well-knit syndicates each trying to outwit the other in the race for whole success. While both the syndicates euphemistically described as "the official" and "the opposition", for working hard to garner support for its lists without leaving anything to chance. Speculations are rife as to the chances of success of each of the syndicates perhaps live in the individual aspirants well behind in the race.

The Outcome

All eyes are set on the outcome of the election since it is going to decide the future course of events in the working of the Society during the next 5 to 6 years. While it may be undesirable to predict the outcome, the buzz is ready for ticking on the D-day. It is also significant that it is proposed to obtain enblock amendments to the Bye Laws of the Society during the annual general body meeting which provides amongst other things & increase in the authorised capital of Rs. 50 Lakhs made up on 50,000 shares of Rs. 100 each from the present level of Rs. 1 Lakh of Rs. 1000 shares of Rs. 100 each.

New Judges for SC

The President has appointed Mr. Justice S.C. Sen, Judge, High Court of Calcutta and Mr. Justice K. S. Pari-poornan, the Chief Justice of Patna High Court, as the Judges of the Supreme Court of India.

Humour in Courts

□ A Lawyer had assured his client that once the Judgment was pronounced he would forthwith intimate the result by wire. The case having been decided, the Lawyer sent the telegram. "Right has triumphed".

The Lawyer received a reply telegram from his client. "Appeal at once".

News Focus

□ On 23-5-94 AAB, Magistrate's Court Unit, had arranged a farewell function in honour of Sri D. Krishnappa, CJM and Sri Basavantharaya Patil, III ACMM, who were transferred from the Unit.

□ On 30-5-94 welcome address favouring Justice P. Krishna Moorthy and Justice H. N. Tilhari was presented in Court Hall No. 1 of the High Court by Mr. S. T. Patil, Chairman of the Bar Council of Karnataka. The Judges reciprocated their sentiments to the Bar.

□ On 6-6-94 reference was held in memory of Mir Iqbal Hussain, Retired Judge, in Court Hall No. 1 of the High Court.

□ On 8-6-94 Mr. A. K. Subbaiah, MLC & Advocate, addressed the members of AAB, City Unit on the topic "Present Political Situation in Karnataka and the Role of Lawyers".

Laws always lose in energy what the government gains in extent.
—Immanuel Kant

Around the Courts

□ By judgment dated 9-5-94 the Division Bench of the Supreme Court held that the Special Court Bombay, set up to try the multi Crore scam cases had no jurisdiction to order payment of amounts from a notified person (Fairgrowth Financial Services Ltd.) under Section 3(2) of the Special Courts Act to any bank or financial institutions or mutual fund which is not directly involved in the transaction. Chief Justice M. N. Venkatachalaiah and Justice S. Mohan gave this ruling dismissing an appeal of the public sector Kudremuk Iron Ore Company Ltd., against an order of the Special Court rejecting its claim for repayment of Rs. 55 crore deposited with the Andhra Bank Financial Services Ltd., which in turn had invested it in the Fairgrowth Financial Services Ltd. a company involved in the scam. The court held that there is no 'Privity' between the notified person and the Appellant and as such the Special Court had no jurisdiction to order for making repayment by the 'notified person'.

□ Consumer Protection Act, 1986: A Division Bench of the Supreme Court consisting of Chief Justice M. N. Venkatachalaiah, Justice S. Mohan and Justice A. S. Anand delivered a 31 page Judgment holding that the District Consumer's Disputes Redressal Forum had no power to grant ex-parte interim stay on public issues as well as meetings of Board of Directors of the companies on the complaints filed by the disgruntled adventurous applicants for allotment of shares at the eleventh hour. In the Judgment dated 23-5-94 the Court held that only final reliefs could be granted in such cases.

The Court's Judgment came on an appeal preferred by Morgan Stanley Mutual Fund against the Calcutta Consumer Forum order granting an ad interim stay of its December 13, 1993 public issue by various petitioners mainly on the ground that there were several irregularities in the approval granted by the SEBI regarding the public issue.

The Apex Court while allowing the appeal held that before allotment of shares an applicant did not fall into the category of consumer. He was only a prospective investor of future goods and there was no purchase of goods for consideration. Therefore, it was only after allotment of shares the rights may accrue in favour of the allottee as per the contract and certainly not before a share allotment. The Court also held that a company issuing shares in the market meant for building up capital cannot be construed as a "practice relating to carrying of trade." Creation of share capital without allotment of shares did not bring shares into existence. Therefore a prospective investor like the Respondents or an Association of such Respondents was not a "Consumer" under the Act. While disposing of the appeal the Court mulcted one of the Respondents with the costs of Rs. 25,000 considering the frivolous nature of the complaint.

New Chairman For KSBC

During May 1994 Mr. S. T. Patil from Dharwad and Kumman Shivalingappa from Gulbarga were elected as the Chairman and Vice-Chairman of the Karnataka State Bar Council.

THE SCAM

(Its Genesis and causes)

C.B. Srinivasan, LL.B., Advocate

(from the last issue)

To add to this confusion, recorded events of discounting, of bills without transaction, the advances to Broker's Associate concerns and the issue of Banker's Cheque against brokers supplied BR's proceeds to the brokers account indicate that in the frenzy of a broker running around has an in house agent of the bank and its staff, there is eccentricity at its height. The broker, in classical style, runs with the hare and hunts with the hound.

One need not think that the foregoing account is complete. When the curtain is raised one sees only the horizon on the other side. And the horizon recedes as one goes forward. The committee found that the accounts of the bank has been tampered with altering the value of the securities from Rs. 1170.95 Crores to Rs. 1670.95 Crores. One has heard of the Cheques altered by the individuals but here the bank is found to have altered its own account to the extent of the holding of the securities. Something is rotten, as they say in the State of Denmark!

Further disclosures show that in several transactions with a bank the broker had demanded credits to his accounts on the allegation that another named bank is a contracting party & the amount had to be debited to its account. The credit to the broker's account & the debit to the other bank's account are simultaneously made to learn only later that the passed bank had no transaction at all with the broker.

Speed, in the capital market has been break neck. An individual opens an account one day. Two other companies also open two accounts the same day. The individual presents two Bills drawn on the two Companies, the aggr-

egate of which was more than Rs. 49 Crores. The same day the 'Proceeds' of the Bills are credited to the individuals accounts from where the same is transferred to two old current accounts of the two companies. And, the same day, the amounts are withdrawn by the Companies. To such happenings the charge of the "Prevalence of a practice" of madness appears to be too mild a comment.

For the purpose of this article enough unto the day is the evil thereof. May be the findings of the Joint Parliamentary Committee will show the capital Market in all its nudity and crudity.

Editor's Note: This article was prepared by the learned author at a time when the mega scam was still unfolding. Subsequently the JPC report has been published.

[concluded]

Attention Please

Consequent to the coming into force of the Karnataka High Court (Amendment) Act, 1993, with effect from 8-3-94, all First Appeals against a decree or order passed in a suit or other proceedings, the value of subject matter of which is Rupees Three lakhs or more is to be heard by a Division Bench of the High Court while other First Appeals is to be heard by a Single Judge.

All Criminal Appeals against judgments in which sentence of death or imprisonment for life is passed or acquittals in which offences are punishable with death or imprisonment for life is to be heard by a Division Bench of the High Court and other Criminal Appeals is to be heard by a Single Judge.

Consequent upon the amendment the same procedure will apply to all pending cases except where such cases were part heard as on 8-3-94.

Article 356 - Scope of Judicial Review

Justice (Retd.) M. Rama Jois

(from the last issue)

expounding the scope of power of judicial review the Supreme Court said thus: "It is axiomatic that if a question brought before the court is purely a political question not involving determination of any legal or constitutional right or obligation, the Court would not entertain it, since the court is concerned only with adjudication of legal rights and liabilities. But merely because question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution, if it raises an issue of constitutional determination — the controversy before the Court may be political in character, but so long as it involves determination of a constitutional question, the Court cannot decline to entertain it. This is also the view taken by Gupta J. and myself in *STATE OF RAJASTHAN Vs. UNION OF INDIA* (1977) 3 S.C.C. 592 : (A.I.R. 1977 S.C. 1361). I pointed out in my judgment in that case and I still stand by it, that merely because a question has a political colour, the court cannot fold its hands in despair and declare "Judicial hands off". So long as the question is whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. — The court is the ultimate interpreter of the Constitution and when there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the court to intervene. Let it not be forgotten, that to this court as much

as to other branches of government, is committed the conservation and furtherance of constitutional values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the court. Tact and wise restraint ought to temper any power but courage and the acceptance of responsibility have their place too". The court cannot and should not shirk this responsibility because it has sworn the oath of allegiance to the Constitution and is also accountable to the people of this country. It would not therefore be right for the Court to decline to examine whether in a given case there is any constitutional violation involved in the President issuing a proclamation of Emergency under clause (1) of Article 352.

In the case of *A.K. ROY Vs. UNION OF INDIA* (A.I.R. 1982 S.C. 710) the Supreme Court referred to the deletion of clause (5) of article 356 and held thus:

"The Rajasthan Case (A.I.R. 1977 S.C. 1361) is often cited as an authority for the proposition that the Courts ought not to enter the "political thicket". It has to be borne in mind that at the time when that case was decided Article 356 contained Clause (5) which was inserted by the 38th Amendment, by which the satisfaction of the President mentioned in Clause (1) was made final and conclusive and that satisfaction was not open to be questioned in any Court on any ground. Clause (5) has been deleted by the 44th Amendment and therefore,

(to be continued)

Grooming District Judges For Elevation

R.I.D'sa, Advocate

The selection of Munsiffs and District Judges is made from among lawyers who are more often than not trial court practitioners. It follows that Munsiffs promoted as Civil Judges and Civil Judges promoted as District Judges would neither have done nor even seen any quality work being done in the High Court. They would also not have had any exposure to the high standards of courtesy, decorum and dignity associated with High Court proceedings. The functioning of our subordinate courts could certainly do with considerable improvement in all these areas.

Given the present recruitment policy and altered conditions of service, it is inevitable that an increasing number of District Judges will have to be elevated to the High Court bench. Though not lacking the basic ability, knowledge and other qualities of a good judge, they tend to take a considerable time, after being elevated, to acquire the finesse and manner of dealing with men and matters on the plane expected of a High Court Judge.

An easy way of giving senior Civil Judges and District Judges the required exposure and hands on experience would be to post them in the High Court as Government Pleaders and Government Advocates respectively, say for a period of one year. They would then actually handle and also watch proceedings of Criminal and Civil appeals and Revision Petitions, Motor Accident and Land Acquisition Compensation Appeals, Writ Petitions, Constitution, Rent Control and other special enactment cases. Not only would they familiarise themselves

with those subjects but also they would learn to produce brief, correct and precise judgments. Imbibing the atmosphere of the High Court would be more than a fringe benefit. The experience of being a practitioner on level terms with Advocates would make subordinate court judges more sympathetic to the genuine difficulties faced by lawyers and would also strive for better relations with the Bar. The change for sitting judges would be an invigorating and welcome break from the monotony of routine work. Further, if not being able to use the opportunity to make the grade for possible elevation they will at least get better equipped for practice after retirement.

The experience gained at the High Court in a year's actual work would produce better results than any number of lectures and refresher courses. More than ever, this would be one method of improving and raising the sagging levels of judicial performance without having to particularly alter the existing framework of the administration of law. Trying to make the subordinate courts a little more like the High Court is by far a better proposition than passively allowing its distressing converse to happen.

B L P C S Elections

The High Court of Karnataka has appointed Sri V. Tarakram to be the Election Officer & to conduct the election of New Office Bearers to the Bangalore Legal Practitioners Co-Operative Society. The election is scheduled on 20.6.94 & the venue will be the Karnataka Government Secretariate Club, Cubbon Park, Bangalore-1.

New Judges Appointed

President has appointed during 3rd week of June 94, Six Judges to the Punjab & Haryana High Court.

Justice Kandaswamy Muthuswamy of Madras High Court has been appointed as the new Chief Justice of Patna High Court.

Justice D. P. Hiremath has been appointed as a member of the Central Administrative Tribunal, Cuttack.

Attention Required

It has been reported that on 8-6-94 a lady Advocate fell down from the staircase while climbing to the 1st Floor in the High Court and fractured her left arm. This was caused because of the fact that the coir mat put on the wooden staircase is torn out in certain spots. Notwithstanding the fact that this has been reported by the concerned lady Advocate to the Registrar General no remedial action has been taken to change the coir mat.

News Focus

On 13-6-94 welcome address to Justice Gopichand Bharuka was presented by the Chairman of the Karnataka State Bar Council in Court Hall No.1 of the High Court.

On 16-6-94 welcome address was Presented to Justice J. Eswara Prasad in Court Hall No. 1.

New Chairman for CAT

Justice S.K.Dhaon has been appointed as acting Chairman of the Central Administrative Tribunal. He takes over from Justice V S. Malimath who retired on June 11 after two-and-a-half years of service in CAT. Justice Dhaon was Vice-Chairman of CAT at the principal bench and prior to that he was a judge at the Allahabad High Court

Miscellany

Ms. P. G. Gowri and Mr. K. Pavan Kumar, Advocates, have been co-opted as the members of the Karnataka Legal Aid Board for a term of three years.

In the recently held Second Year PUC Examination P.V. Sandhya D/o P.Venkataramana Bhat, Advocate, a student of Mount Carmel College, secured IV Rank.

In the recently held SSLC Examination K.S. Kavitha D/o K.S. Sathyamurthy, Advocate, has secured VIII Rank.

With effect from 1-4-94 P.M.Chandrashekar, Advocate, is functioning from his chamber G-07, Blue Cross Chamber, No. 11, Infantry Road Cross, Bangalore-1 Phone : 5591610.

With effect from 13.5.94 Munigovindaraju, Advocate, has shifted his chamber to 311A, Mittal Tower, 6/47, M. G. Road, Bangalore - 1 Ph: 5594421.

With effect from 5.6.94 V. Ranga Ramu, Advocate & Notary, opened his law chamber at No. 20, 1st floor, Rathan Mahal Building, Malleswaram Circle, Bangalore 560 003.

With effect from 12.6.94 R. Om Kumar, Advocate, shifted his chamber from No. 58/304, V.V. Road, Basavanagudi, Bangalore-4 to No. 1991, 9th Main, BSK 2 stage Bangalore-70

With effect from 12.6.94 K.R. Anantha Murthy, Advocate, shifted his chamber to No.122, 1st floor, Mahesh Market, Next to Udupi Sri Krishna Bhavan, Balepet, Bangalore-53.

In the elections held on 19-6-94 to the National Co-operative Bank Ltd., Bangalore, Mr. K. S. Subbarao, Advocate, has been elected as a Director.

Campus Watch

Legal education is poised for a major change with the Centre deciding to offer law degrees through correspondence Course. An expert Committee headed by the Director of NLSIU Dr. Madhava Menon has been set up to work out the modalities. The Committee is expected to give its report to Indira Gandhi National Open University which in turn will formulate an under graduate legal education programme. Ultimately the Bar Council of India will have to take a final decision on whether such graduates can be permitted to practice law.

The bold initiative being first in the country has one of its objects viz. to cater to the needs of persons who are not interested in becoming lawyers but acquiring a law degree. NLSUI, Bangalore has already introduced a correspondence Course leading to the degree of Master of Business law. However, this Post-Graduate degree aims at use of law for economic development does not enable the degree holders to practice in Courts. The popularity of this course has sent encouraging signals to those evolving the under graduate Correspondence Course.

The proposed Correspondence Course is also aimed at relieving congestion in law Colleges which are forced to entertain a large number of admission seekers gradually leading to abolition of 3years LL.B. Course.

Late News

In the election held to the BLPCS on 20-6-94 the following Advocates have been elected as the Directors and their term of office will be for 3 years :

M.Lokesh, L.B. Gangadhariah Y. Vasudeva, K.L. Manjunath M.S. Mandanna, S. Srinivasa Murthy, G. Papi Reddy, Aswatha and M. Shantha.

ಲಿಟರರಿ ಯೂನಿಯನ್

ತಾ. 3-6-94 ರಂದು ಲಿಟರರಿ ಯೂನಿಯನ್ ಆಶ್ರಯದಲ್ಲಿ ಡಾ||ಎಸ್. ಭಾಸ್ಕರ್, ರೀಡರ್, ಶಿಕ್ಷಣ ವಿಭಾಗ, ಆರ್. ವಿ. ಟೀಚರ್ಸ್ ಕಾಲೇಜು, ಇವರು "ಮಕ್ಕಳಲ್ಲಿ ಸೃಜನಶೀಲತೆ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಉಪನ್ಯಾಸ ಮಾಡಿದರು.

Obituary

On 3-5-94 B. V Krishna-swamy Rao, High Court Advocate, passed away at Bangalore after a brief illness.

On 27-5-94 H. S. Shankaranarayana, Advocate & Rtd. Deputy Director of Prosecutions, passed away at Bangalore.

On 4-6-94 B. T. Chhabria, Advocate, passed away at Bangalore

On 8-6-94 V. K. Govindarajulu, Advocate, passed away at Hyderabad, Funeral was held at Bangalore on 10-5-94.

Boycot of Courts

On 15.6.94 Advocates of Gudibande, Kolar District, abstained from Courts in protest against the police firing in Kolar on the peaceful demonstrators of Milk Societies. The Bar Association President Mr. G. Mallikarjuna announced that the local Bar Association has resolved condemning the police firing & expressing sympathy towards the injured. It was also resolved by the Association urging the Chief Minister to institute an enquiry into the firing incident and to resolve the demand for paying higher prices for Milk Producers.

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