

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 4

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PART 3

H C Cool on N. Karnataka Bench

The efforts of the state Government for the establishment of the Bench of the Karnataka High Court in the Northern part of the state has not met with the success on account of the serious reservations of the High Court recording the proposal. Though Chief Minister S. Bangarappa and the State Law Minister Blasius D'Souza have declared more than once that the Centre's approval is sought for the purpose the chances of obtaining such an approval seem to be gloomy. It is learnt that the consent of the Karnataka High Court is vital for the proposal being favourably consider by the Centre since according to the States Reorganisation Act, 1956 the agreement both the state Government and High Court is necessary before the formal proposal is forwarded to the Centre. The High Court seems to have serious reservations about the proposal.

The grounds on which the judges consider the proposal as not being worthy of consenting are believed to be humorous. The judges fear that the establishment of a Bench in the Northern part of the State might create Administrative problems and opportunities to evolve consensus of judges on Administrative matters may be lost. Besides the state Government's proposal also lacks the details of the place of location of the Bench and the infrastructure available in that location.

Notwithstanding these reservations it is however learnt that instructions have

been issued to the staff to compile the number of cases pertaining to the eight Districts which will be forming the territorial jurisdiction of the proposed Bench. The indication as to the possible location of the proposed bench may go a longway before convincing the High Court to accord its consent to the proposal. Will the state Government be able to take a decision in the matter of the possible location of the proposed Bench and communicate the same to the High Court without further delay?

Demand for New Patent Law

□ India's Additional Solicitor General, Mr. K. T. Tulsi, urged the United Nation Commission on International Trade Law (UNCITRAL) to formulate world patent law instead of allowing the developed countries putting pressure on developing countries to implement the intellectual property rights (patents). He pointed out that the present system of raising these issues before the convention of General Agreement on Trade and Tariff (GATT) is not satisfactory and biased in favour of the affluent countries.

Miscellany

□ On 5-4-92 J. Subramaniam, Advocate, opened his law chambers at No. 45/1, 2nd Floor, 2nd Main, Seshadripuram Bangalore - 560 020

□ On 8-4-92, B. N. Narasa Reddy, Advocate, opened his law chamber at No. 136/137 Room No. 1, 4th Floor, The Karnataka Industrial Co-Op. Bank Bldgs, Avenue Road, Bangalore - 560 002.

U. T. I. to Pay Compensation

The Bangalore Consumers Grivances Redressal Forum has directed The Bangalore and Madras offices of the Unit Trust of India to pay a compensation of Rs. 500/-, within one month from the date of the order, [May 1992] to one Mr. Himmathlal Mehta. Mr. Mehta had lodged a complaint before the Forum alleging that inspite of his repeated requests the U.T.I. had failed to send him a reply notifying the corrections made in its register regarding his change of address. The forum also held that the U.T.I. is liable to pay interest @ 15% P-A if the amount is not paid within one month from the date of the order. The Forum observed that a responsible institution like the U.T.I. has rendered deficient service to the unit holder.

LIC Directed to Pay

The Consumer Dispute Redressal Commission, Gujarat, directed the LIC of India to pay Rs. 2 lakhs to a complainant with the running interest at 18% p. a. commencing from 3 months from the date of death of the insured till the payment is made. The commission's judgment dated 14-5-92 also directed the LIC to pay costs of Rs. 2000/- to the complainant. It was held that clause 4B which inter alia states that the woman claimant can claim the benefits of insurance policy only if the insured dies after completion of 35 years of age or at a public place or 3 years after taking the policy cannot be literally applied to a case when the claimant has no earned income or earned income which is not taxable.

S C rejects tax evaders plea

In a recent judgment a three judge Bench of the Supreme Court held that tax evaders cannot claim the constitutional privilege of having the presence of their lawyers during interrogation especially in customs and FERA violation cases.

The Court opined that there cannot be any objection to denying the tax evaders the company of those who encourage them to be non co-operative if the authorities feel it is necessary for achieving the object of the enquiry. The court rejected the contention of the Petitioners that their interrogation in the absence of lawyers was violative of Article 20 (3) of the constitution of India.

Association Inagurated

On 27-5-92 Sri M. Blacious D'Souza, State Minister for law & Justice, Inagurated the All India Muslim Advocate Association at Bangalore. Sri Azeez Sait, Minister for Transport, Presided. Sri Nazeer Ahmed State Deputy Minister was also present.

News Focus

□ Shri K. Vijayabhaskar Reddy, Union Minister for law and Justice, announced in the Rajyasabha on 11-5-92 that the Centre has decided to setup benches of the Guwhati High Court in Arunachal pradesh, Meghalaya and Tripura.

□ The Govt. of Madya Pradesh has decided to setup a Special Court to adjudicate upon all the cases concerning the violation of the environmental laws. There are 126 pending cases throughout the state and all of them will be transferred to the Special Court.

[continued on page 4]

*If the laws could speak for themselves
they would complain of the Lawyers.*

—George Savice

Towards Purposeful Conference

Any conference of a professional organisation should be an occasion to take stock of the happenings preceding the said conference and to draw a blue print for the future direction in which the profession should proceed. Without this purpose being achieved if a conference is concluded it is bound to be dubbed an exercise in futility. A conglomeration of assorted professionals, called the delegates, meeting at a place, at a regular interval and conducting of certain ritualistic programmes does not necessarily result in a purposeful conference. On the other hand there must be a thorough scrutiny of the past performance of the professional body, perhaps in the form of stocktaking of the previously adopted resolutions and to find out the causes, if any, for their non implementation before formulating the new resolutions to be adopted by the conference as its charter for the future. It is needless to state that if the professional organisation conducting such a conference is that of lawyers it should be more meticulous in its purpose so that it can serve as a model to other professional organisations.

Before any working papers are taken up for discussion and debate by the conference a report of the past events and the extent to which the previously adopted resolutions have found success should be presented to the delegates & there should be indepth debate on such report. Remedial measures for achieving the implementation of any resolutions, if any, which are not so far implemented must be considered and adopted.

There must be a thorough scrutiny of all draft resolutions received by the confere-

nce, keeping in view the past experience and the feasibility of such draft resolutions being implemented, before they are recommended for adoption by the conference. This will enable a continuity being maintained by the professional body from conference to conference. As otherwise any other method adopted will only result in Ad-hocism. In this regard the responsibility of the State Bar Council is of a higher nature. Since different Bar Associations will be hosting each conference it is too much to expect the host Association to keep a track of these things. It is also to be noted that there is no separate body other than the State Bar Council which can maintain continuity of happenings from conference to conference. In other words a report of the State Bar Council must be presented in each conference, by incorporating the same in the souvenir, as and when they are published or in other form.

Care must also be taken in deciding the working papers to be presented and the persons to give keynote addresses sufficiently in advance and the working papers must be furnished to the delegates quite in advance so as to have a meaningful discussion. Even with regard to this the State Bar Council should bear the major responsibility.

Apart from inviting the dignitaries to participate in the conference possibility of inviting select judicial officers and the Judges at the higher levels to all the conferences should be considered so that there is an effective co-ordination and creation of goodwill between the judiciary and the Bar is achieved.

Since lawyers constitute a single segment of the noble
(continued on page 3)

LAW AS PROTECTION FROM POWER

Justice M. N. Venkatachalaiah

(from the last issue)

produced no liability and that, therefore, there could equally be no liability for careless inspection. This contention was rejected. It was held that the Council was under a duty to give proper consideration as to whether they should inspect or not. If they did not so consider the matter they would be acting ultra-vires. The action in negligence would be available if it was shown that the council had failed to exercise reasonable care in its acts & omissions to secure that the bye-laws were complied with.

The establishment of liability for nonfeasance though limited to the operational-level and not policy level is an important development in the area of protection from power. There are innumerable situations where even within the framework of "policy-operation" dichotomy, nonfeasance cases can be considered at the operational-level.

The discussion on the cases of Home Office v/s. Dorset Yacht Club and Anns v/s. Marton London Borough Council would, perhaps, be somewhat incomplete without making a reference to two cases of the Privy Council viz., Yuen Kun Yeu v/s. Attorney General of Hong Kong (1988 (1) AC 175) and Rowling v/s. Takaro Properties Ltd. (1988 (1) AC 473). Rowling's is a later case and we may take a brief look at it. In that case a certain Richard Stockton Rush Junior a citizen of the United States of America came to New Zealand in 1968 with the idea of establishing in a remote part of New Zealand "a high class tourist lodge which would attract wealthy visitors interested in fishing and other sporting activities". The Government of New Zealand gave on sale 2591 acres of land in the Upukerora Valley. He incorporated a company

called Takaro Properties Ltd for the purpose. The venture ran into problems. Therefore, some arrangements for financial reconstruction were entered into with a Japanese Company called Mitsubishi Rayon Co. Ltd which required the consent of the Minister of Finance in terms of the Overseas Takeover Regulations, 1964. As such the consent was refused, Mr. Rush in consultation with and on the advice of a Development Advisory Agency contemplated a different arrangement. This involved the said Mitsubishi Rayon Co. Ltd., and some creditors of the company envisaging the purchase by Mitsubishi Rayon Co. Ltd., of certain equity & non-cumulative preference shares etc. which again required the consent of the Minister of Finance under the Capital Issues Overseas Regulations, 1965.

The Minister again refused permission for capital issue. Both the development consultants and Mitsubishi Rayon Co. Ltd., who were parties to the arrangements, withdrew from the scheme. As a result the whole scheme for the rescue of the company fell to the ground. The venture was a disaster. Takaro and Mr. Rush brought a suit against the Minister and the Attorney General for New Zealand for damages alleging negligence on the part of the Minister in the exercise of the power, knowingly acting in excess of powers and maliciously exercising them. The suit was dismissed. The trial judge held that the Minister was under a prima facie duty of care but no breach of duty had been established and no malicious exercise of statutory powers was also established. But in appeal, Takaro and Mr. Rush succeeded in their claim based on negligence and got substantial relief of damages though the Trial Judge's view negating malicious exercise

(to be continued)

LAW MADE EASY

Q: For winding up of a company where is the petition to be filed?

A: It has to be filed before the High Court. Section 10 of the Companies Act, specifies that the High Court shall have jurisdiction to entertain a petition for winding up.

Q: If a company is registered in Bombay and a cause of action for a share holder or creditor arises in Bangalore can he file a winding up petition in Karnataka High Court?

A: It is only that High Court within whose jurisdiction the registered office of the company is situated has the jurisdiction to entertain the petition for winding up.

Q: What is the Court fee stamp payable on winding up petition?

A: Rs. 100/-

Q: What format is to be used for filing winding up petition?

A: From No. 45 to 47 of the Company Court Rules, 1959, prescribe the format of winding up petition.

Q: Can a suit be filed for recovery of money instead of filing a company petition against the company?

A: A creditor has the choice of filing either a suit or winding up petition and at times he can resort to both.

Humour in Courts

□ The witness, an aged lady, had been examined in chief and the court was waiting for the counsel for the Defendant to cross examine her after returning from the High Court. The Defendants Counsel who had a hefty body and gruff voice entered the court hall and before cross examining adjusted his voice by making authoritative voice. The witness in the box collapsed after hearing the gruff voice. The counsel told the court that his cross examination was over!

□ A Lawyer filed a memo seeking adjournment of the case. Judge: A memo will not do? you have to file an IA.

Lawyer: Then your honour may adjourn the case to file an IA.

News Spectrum

□ By its ruling dated 14-4-92 the International Court of Justice rejected the prayer of Libya to restrain the UN Security Council from implementing the sanctions imposed against that country for its refusal to hand over two suspects involved in the Panam air disaster which took place during 1988 over Lockerbie.

□ During April 1992 a Russian citizen is put on trial for killing 53 persons in southern parts of Russia. As per the charge sheet the Accused is not only a man slaughterer but also eater of human flesh. The Russians have nicknamed the Accused as a serial killer.

□ An employee of Indian origin was considered to be fit to be appointed as the Manager of an American company in Baltimore. However the appointment did not come about as the employee was unwilling to remove his beard even after cautioning. The aggrieved had to approach the court. The woman judge who decided the case in favour of the employee found that there is no rational nexus between the work the employee had to perform and the ground on which the appointment was refused.

□ A house wife was raped by a criminal in Guna District of Madhya Pradesh. Her husband who attempted to rescue her was slain by the criminal. While awarding the sentence of life imprisonment the court also directed the state to pay Rs. 25,000/- as compensation to the lady, provide free education for her five children, give Government appointment to one of her sons besides paying the lady a monthly allowance of Rs. 250/-. Mr. Shambu Singh, the judge, held that when a person / his dependents involved in an air crash or a victim of terrorist attack can get compensation the same yard stick should apply in a case where the state fails to provide protection to a person.

Around the Courts

□ Sec. 200. Cr. P.C. r/w Sec. 138 of the Negotiable Instruments Act:

The complaint which was filed on 21-8-90 was dismissed under Sec. 203 Cr. P.C. by holding that it was beyond the period of one month of arising of the cause of action under Sec. 138 (c) of the Act. On revision the High Court found it to be wrong. The relevant facts of the case are that the Respondent issued the cheque on 15-6-90. It was dishonoured on 7-7-90. The Petitioner issued demand Notice on 9-7-90 and the same was received by the Respondent on 14-7-90. The fifteen days time provided under Sec. 138 (c) expired on 30-7-90. Thus the cause of action to prefer the complaint arose on 30-7-90 and thereafter the Petitioner had one month time to prefer the complaint under the clause (b) of Sec. 142 of the Act. Hence the complaint was in time.

Venu v/s Krishnappa, Cr. R.P. 130 of 1991 DD 4-9-91.

□ Advocates Act, 1961 (Central Act No 25 of 1961), Section 36B (1): Bar Council of India Rules, Chapter 1, part VII Rule 17 (1) - Limitation: Commences on date on which case is referred to Disciplinary Committee.

The disposal of the complaint is to be by the Disciplinary Committee; the mandate of the provisions of Section 36B (1) is clearly directed to the Disciplinary Committee requiring it to dispose of the complaint.... A plain reading of Section 36B (1) Conveys the meaning that the period of one year, is the period provided to conclude the proceedings by the Disciplinary Committee and therefore, such a period would commence only when the proceedings of the Disciplinary Committee initiated and not earlier.... Rule 17 (2) actually identifies the relevant date. It points out in the case of a complaint, the date of its receipt is not the actual date when the bar

council received it, but it is the date on which the case is referred to the Disciplinary Committee for disposal.

Karnataka State Bar Council v/s An Advocate: ILR 1992 Kar 1377DB.

□ Karnataka Rent Control Act, 1961 (Karnataka Act No. 22 of 1961)-Section 21 (1)-object: Not to enlarge rights of landlord but restrictive of right to recover possession-Even after expiry of lease period in term lease, eviction only on grounds in clauses (a) to (p) providing cause of action to seek possession - No right to evict tenant even before expiry of lease period by resort to provisions of Act, resultant mischief being irreparable - even where lease deed provides determination of lease, recovery of possession only be recourse to Section 21 (1).

Sri Ramakrishna Theatres Ltd. v/s General Investments & Commercial Corporation Ltd: ILR 1992 Kar. 1296 FB.

Towards Purposeful Conference

(continued from page 2)

profession any attempt to segment them on the lines of age, gender, economic status and other such factors should be discouraged as matters for discussion and particularly adoption of resolutions by the conference. Segregating the lawyers community in to factions, whatever might be the basis for such segmentation and projection of sectional interest as dominant over the group interests is bound to create fissures within the fraternity in the long run. Therefore care must be taken to maintain solidarity among the lawyers rather than dividing them on the basis of age, sex, economic status, language and region etc.

If the future conferences serve these objectives they will go longway in serving as meaningful and purposeful exercises rather than being Ad-hoc measures. The lawyers expect that care and caution is adopted by the concerned in achieving these objectives.

Justice Bharucha made the Governor

On 30-5-92 Justice N. Venkatachala, the acting Chief Justice of High Court of Karnataka, administered the oath of office and secrecy to justice S.P. Bharucha who was sworn in as the acting Governor of Karnataka for three weeks during the absence of Sri Khurshid Alam Khan who has gone as the leader of the Haj delegation. During the same period Justice N. Venkatachala functions as the acting Chief Justice of the High Court of Karnataka.

Lokayukta Lacks Jurisdiction

In a recent decision the Central Administrative Tribunal up held the contention of the former Chief Secretary M. Shankaranarayanan that the Government action in appointing the Lokayukta to conduct an enquiry into charges of indiscipline against him was illegal. The Applicant had contended that the Lokayukta can only enquire into corruption charges against officials and not into charges of indiscipline.

OBITUARY

□ On 30-5-92 Justice R. C. Patnaik, a serving judge of the Supreme Court, died near Bhubaneswar in a road accident. He was 57.

□ On 30-5-92 K. P. Nagaraj, a young Advocate from Bangalore, died.

News Focus

(from page No. 1)

□ On an Application filed by the Special Investigation Team (SIT) the Presiding Judge S. M. Siddick of the Designated Court at Madras passed an order dated 20-5-92 prohibiting publication of the proceedings in the Rajiv Gandhi assassination case on the ground of "Public Interest". He also further ordered that the identity of 179 of the 1044 witnesses, to be examined in the case, be kept secret.

K G I D asked to pay the insured

By a decision rendered during May 92 Bangalore Consumer Grievances Redressal Forum directed the Karnataka Government Insurance Department to pay Rs. 600/- to Mr. Y. N. Naganna who had insured his car with it. The Forum pulled up K G I D for "deficiency of service" towards the claimant who had claimed reimbursement of Rs. 600/- the amount spent by him to replace the windscreen of his car on 8-9-91 while going to St. John's Hospital. He could not inform the same to the K G I D since it was a Sunday. The forum held that "the terms of such policies are meant not only to safeguard the interest of KGID but also to help the insured to have his just claim settled."

AAB Elections

The adjourned Annual General Body Meeting of the Advocate's Association, Bangalore and the election of office bearers for the year 1992-93 is scheduled to be held at 9-00 a.m. on Sunday the 5th July 1992. Sri G. Lingappa, Advocate, has been appointed to be the Returning Officer.

Functioning of ILR

Even though we are in the month of June 1992 the index of ILR for the period from September 91 to December 91 & January 92 to March 92 has not so far been received by the subscribers. They are finding it difficult to retain individual parts without being bound within a reasonable time. Will the concerned take immediate steps to despatch the indices?

Law Lectures

The first volume of the Lahari Law Lectures containing ten lectures is being released shortly. Ensure the receipt of your copy by placing order in advance.

Periscope

□ **Spirited Appeal :** On the last day of the recently concluded Lawyers Conference at Mysore the hosts had arranged to provide some small dose of the holy water. After all how can the Lawyers Conference can be complete without it. A delegate who had already taken the drink went on to the stage and started appealing to the hosts through public address system that the quantity already supplied is not enough and therefore some more quantity should be supplied. What a spirited Appeal!

□ **History or Histrionics :** Who said that historical personalities are referred to by only politicians. Even it is of great use for judges to compare a Union Minister with a historical personality. In a recently held function at Bangalore a learned judge referred a Union Minister to Sardar Vallabhai Patel while praising the former. What might be the compelling reason for this comparison is another thing.

□ **Afterall English is alien :** A lawyer - cum - legislator was one of the invitees in a recently held function at the Advocates Association, Bangalore. His English speech was a prepared one from which the speaker was reading. While reading the word Government he read it as "Govt" (pronounced as Gaut). Afterall the speech was written by some one and the speaker could not help reading it in the manner it was written!

□ **Elephant and the Ant :** When the Elephant majestically walks it doesn't bother about the Ants which might be moving in its way. This cannot be considered unnatural. If the sale of judicial / non judicial stamps can fetch fat profits why should the Lawyers Co-operative Society bother about the non availability of minor stationery items and or its quality even when it is available for sale to lawyers.

□ **No longer a safe haven :** All along the impression was that the city unit of the AAB premises was a safe haven for playing cards. Under this impression playing of cards was resorted to during the substantial portion of the day. If it is a vacation hardly any difference can be there as to whether it is day or night. But with the experience of the entry of police during the midnight of 15-5-92 and apprehending one of the participants the AAB premises seems to be no longer a safe haven for unlimited gambling.

□ **Problem of Location :** The demand of the members of the legal fraternity from the northern part of the state to establish a bench of the Karnataka High Court was recently conceded by the State Bar Council and the Government. If one has carefully considered the decisions of the above bodies he would notice that no specific place is suggested for the location of the bench. Here comes the interesting reason for it. It is no longer a secret that pressure groups have been claiming that the proposed bench should be established in their own place and there appears to be no unanimity with regard to the place.

—Insider