

# Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

VOL 4

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PART 4

## Assault on Witness Evokes Strong Reaction From the Lawyers

Perhaps with an unprecedented show of unity the lawyers in Bangalore abstained from attending the courts on 5th, 6th and the forenoon of 8th June 92. The Bangalore Advocates Association took a mass delegation to the Acting Governor and the State Home Minister and submitted memoranda demanding immediate action against the COD Circle Inspector Mr. Vasanth for his role in the episode on 5-6-92 which took place in the City Civil Court premises and transfer of Deputy Commissioner of Police (East), Bangalore Mr. Kempaiah. While boycotting the magisterial enquiry ordered by the State Government the Advocates Association resolved to call upon the lawyers all over the state to abstain from attending the Court proceedings scheduled for 22-6-1992. The response was near total.

An incident involving a prosecution witness, Mr. Nanjundaswamy, in a sessions case and the COD Circle Inspector, Mr. Vasanth, in which the latter assaulted the former while he was coming out of the court after tendering evidence on 5-6-92 triggered off the events to come. It appears that the witness turned hostile and this was not to the liking of the concerned COD Inspector which in turn prompted him to assault the prosecution witness in the presence of a large number of lawyers and litigants who were present at the scene of occurrence. When a lawyer intervened in the matter and wanted to know the reason for the brutal assault by the COD Inspector who was in plain clothes the ire of the said circle

Inspector turned against the lawyer. Instead of offering explanation for his behaviour the Circle Inspector scolded the lawyer in foul language and attempted to assault him. The lawyers who were present on the scene caught hold of the erring Police Officer and the prosecution witness who was assaulted by the Police Officer and took them into the court hall. They demanded that the Session Judge before whom the prosecution witness had tendered evidence should take immediate action against the concerned Police Officer. But the Session Judge declined. This caused lot of resentment among the lawyers and at the spur of the moment they rushed to the Principal Civil & Sessions Judge seeking his intervention. They pleaded that the erring Police Officer should tender an apology to the assaulted witness and the lawyers failing which he should be suspended.

In the meanwhile a large number of police officers under the leadership of DCP (East) Mr. Kempaiah had rushed to the spot. When he tried to pacify the agitating lawyers they in turn demanded an apology from Mr. Vasanth or his suspension. Mr. Kempaiah who rejected this demand and tried to whisk away Mr. Vasanth from the Court Complex. The lawyers present on the scene foiled this attempt and started shouting slogans against the police for their attempt to remove Mr. Vasanth from the scene. With this the situation became free for all. At this juncture the

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## Assault on Advocate

One more incident of assault on an Advocate by a police constable on 18-6-92 in the premises of Court of Munsiff at Belur in Hassan District has been reported. Mr. Jameel Ahmed, the lawyer from Belur, suffered injuries on his neck and shoulder and had to be rushed to the hospital for treatment. The local Bar boycotted the Court as a mark of protest against the police atrocity on 18-6-92. The Hassan District Bar Association passed a resolution condemning the assault on the lawyer and demanded that immediate action be taken against constable and that the Government should order an enquiry into the incident.

## Appointments

With effect from 20-5-92 T. M. Venkata Reddy, S. A. Wajid, A. Padmanabhan and Mrs. Kamala Subramaniam have been appointed as Additional Central Government Standing Counsel in the High Court of Karnataka for a period of three years.

## Transfer & Posting

H. Sathyanarayana Setty, District and Session Judge, Raichur, is transferred and posted as 12th Additional City Civil Judge Bangalore Vice M. S. Rajendra Prasad who was transferred on 18.6.92 as Additional District & Session Judge, Mandya.

## New Office Bearers

In the annual General Body meeting of the Kanakapura Advocates Association held on 11-6-92 Sri. T.R. Papanna and Sri. N. Krishnappa were elected as the President and Secretary respectively.

## Karnataka gets double

On 1.7.92 Justice S. P. Bharucha, the Chief Justice of High Court of Karnataka and Justice N. Venkatachala, Judge, High Court of Karnataka were sworn in as the Judges of the Supreme Court of India. On the eve of their departure the Advocates Association, Bangalore, had organised a farewell function in their honour.

## LAWISC Inaugurated

On 6.6.92 Justice M. H. Kania, the Chief Justice of India, inaugurated the Law Information Service Centre in a formal function held at the Bangalore City Civil Court Complex. Justice S. P. Bharucha, the Acting Governor of Karnataka, presided over the function. Justice M. N. Venkatachalaiah was the Chief guest. Justice N. Venkatachala welcomed the guests.

## Portrait Unveiled

On 5-6-92 Justice M. H. Kania, the Chief Justice of India, unveiled the portrait of Justice K. S. Hegde in the Advocates Association premises of the High Court. Justice N. Venkatachala, the Acting Chief Justice of High Court of Karnataka presided.

## STOCK SCAM

Under the Presidential Ordinance of 1992 providing for setting up of a Special Court to try all cases pertaining to the recent security scam Justice S.N. Variara, a Judge of the Bombay High Court, was nominated on 10-6-92 as the designated Judge of the Special Court.

*The best way to get a bad law repealed is to enforce it strictly.*

—Abraham Lincoln

## Who is to be blamed ?

There might be any number of causes for addition of pending cases. The persons and agencies who may cause such delays are well known though they differ from case to case. However if the institution which is primarily responsible for disposal of all disputes pending before it is itself responsible for causing delay in the disposal of cases then it becomes a serious matter.

In Karnataka litigants pay the highest court fee in the country when compared to other states. It is natural that the litigant who has paid the prescribed court fee expects that his case to be decided within a reasonable time. However the experience being otherwise it gives an impression to the litigant as though the courts of law are doing some favour to him by deciding the case after several years and in some cases over decades. It will be a bad day for the institution when majority of the litigants get an impression that approaching the courts is an exercise in futility.

Several courts, which includes the courts of all denominations, including the Family Court have remained non-functional for pretty longer periods. In a few cases the courts have remained without transacting any business for more than an year for want of the presiding officers. The litigant seems to have no remedy against this intolerable and atrocious situation. Surprisingly he has reconciled himself to this situation perhaps on the assumption that it is his fate. After all our countrymen are the true believers of "fate"!

Filling up of vacancies in judiciary is an executive task. No doubt the judiciary is to be consulted in this task. Lawyers, Advocates Associations and the Bar Council have

a role to play when this responsibility is not duly discharged by the executive / judiciary. How far each of these organs have played their roles in this regard is a matter for one's own judgement. In the event of all these organs failing to exercise their responsibility what should the litigant do ?

Filling up of vacancies in the judicial department is done by direct recruitment as well as by promotion. The agencies which are concerned with the task of recruitment / promotions should have a perspective planning in this regard and they are expected to take advance measures for the selection, recruitment and promotion of persons to function as judicial officers. Many a times it is seen that the executive will be accusing the judiciary for not extending the required co-operation in this regard and vice-versa. The lawyers and their professional organs have almost remained silent spectators when the authorities have not filled up the vacancies in the judicial department for longer durations as though they have no role to play. The purpose of this write up is not to find fault with any of these organs but to highlight the effects of keeping the vacancies unreasonably vacant.

### Conman Active

It has been reported that a person calling himself to be "Mr. Khanna" and the brother of an advocate is visiting lawyers chambers and collecting money from them on the pretext that there is some emergent situation like the car he was driving had suddenly developed problems etc. It appears, he is also in the habit of giving the reference of several advocates. Next time you come across the said person you should know what you are expected to do.

## LAW AS PROTECTION FROM POWER

Justice M. N. Venkatachalaiah

(from the last issue)

of statutory powers was sustained. On further appeal to the privy Council by the Minister, the Privy Council restored the trial judge's dismissal of the suit. The Privy Council characterised the claim as "novel" and observed that it had never previously been held that where a Minister or other governmental agency mistakes to the extent of its powers and makes a decision which is later quashed on the ground of excess of statutory powers or of an irrelevant matter having been taken into account, an aggrieved party had a remedy in damages. The Privy Council referred to *Dunlop Vs. Woollahra Municipal Council* (1982 AC 158) where Lord Diplock had expressed doubts as to whether a duty of care could exist in such circumstances, but found it unnecessary to decide the issue. The Privy Council expressed its reservations on Anns principles.

The considerations that militated against certain policy considerations were put into the scales by the Privy Council to sustain its reluctance to impose liability in such cases. The consideration that weighed with the Privy Council may be summarised thus : a) First, the only effect of a negligent decision would be delay, in as much as the error of law could properly be corrected in judicial review and the decision will absurdly be quashed by a process which, in New Zealand as in the United Kingdom, will normally be carried out with promptitude. b) Second, it will be rare indeed that an error of law of this kind by a Minister or other public authority can properly be categorised as negligent. As is well known anybody, even a judge, can be capable of misconstruing

a statute; and such misconstruction when it occurs can be severely criticised without attracting the epithet 'negligent'. c) Third, there is always the danger of 'over-kill'. Imposition of liability in negligence will even lead to harmful consequences. The cure may be worse than the disease. Where liability is imposed upon local authorities whose building inspectors have been negligent in relation to the inspection of foundations because there is a danger that the building inspectors of some local authorities may react to that decision by simply increasing, unnecessarily, the requisite depth of foundations, thereby imposing a very substantial and unnecessary financial burden upon members of the community. (This was an allusion to Ann's case). d) Fourth, it is very difficult to identify any particular case in which it can properly be said that a minister is under a duty to seek legal advice.

Upon these considerations the Privy Council concluded. "...In all the circumstances, it must be a serious question for consideration whether it would be appropriate to impose liability in negligence in those cases or whether it would not rather be in the public interest that citizens should be confined to their remedy, as at present, in those cases where the minister or public authority has acted in bad faith". These are serious questions which require a judicious and delicate balancing of apparently conflicting social interests. Takaro is important as it poses the rival considerations. But what direction should the development take in India? There is a great need for disciplining public power from delays and indifference in its

(to be continued)

### Assault on Witness Evokes Strong Reaction From the Lawyers

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Principal City Civil & Sessions Judge intervened and asked both parties to go to his chamber for talks. However 6-7 hours of mediation and the direct talks between the lawyers and the police did not bear any fruits.

Surprisingly some of the police officers Associations, particularly the COD wing, also observed protest meetings, wore black badges against the alleged assault of the Advocates on one of their colleague and attempted to persuade the Government that the lawyers are entirely at fault. Besides a case was registered by the police against the lawyers and F I R was filed by them in this connection. Perhaps the present tactics adopted by the police had its effect on the Government. Without conceding any of the demands of the lawyers the Government seemed to be content with the ordering of a Magisterial enquiry.

Obviously the lawyers were dissatisfied with the ordering of the Magisterial enquiry and they decided to boycott the enquiry proceedings. At the time of going to the press there was no other apparent action from the Government. The Special General Body Meeting of the AAB convened on 30.6.92, therefore, resolved to observe hunger strike and other methods of peaceful action commencing from 9.7.92 with a view to achieve their demands.

In the meanwhile a Division Bench of the High Court having suo moto registered a contempt proceeding ordered issuance of Notice to the COD Circle inspector Mr. Vasanth and the Advocate General. At the time of going to the press the said contempt proceeding remained at that stage.

## Around the Courts

□ Civil Procedure Code, 1908 (5 of 1908) - Order 41 Rule 3A (1) & 2 - Filing of application for condonation of delay with time barred appeal Mandatory - Sub Rule (1) Procedural non-compliance procedural defect - Does not attract penalty of dismissal of appeal - Court to afford reasonable opportunity for compliance to remedy the defect - upon compliance appeal to be regarded as properly presented.

- State of Karnataka V/s Nagappa : ILR 1985 (3) KANT 2374. (DB)

□ Civil Procedure Code, 1908 (5 of 1908) - Order 6 Rule 2 - pleadings are not statutes and legalism is not verbalism, common sense should not be kept in cold storage when pleadings are constructed. Parties win or lose on substantial questions not "technical tortures" and court cannot abettors. (Para 6). - S. B. Noronah V/s Prem Kumari : AIR 1980 SC 193 (195).

□ Civil Procedure Code, (5 of 1908), Order 17. Rr. 2,3 (as amended by Act 104 of 1976) and Order 9, R.13 - Absence of parties to the suit - On the date fixed one of the parties Viz., defendant remaining absent and for him no evidence had been examined up to that date - Or. 17, R. 2 and not R. 3 thereof applies and court can proceed ex parte under order 9, Civil Procedure Code.

Also, subsequently defendant can file an application under Order 9, Rule 13 for setting aside of ex parte decree. Decision of Delhi High Court, Reversed. - Prakash Chander Manchanda & Anr. V/s Smt. Janki Manchanda : AIR 1987 SC 42.

□ Income Tax Act 1961. Sec.56: The assessee company utilised its business funds which were lying temporarily in surplus for making fixed deposits in banks. It earned

interest from the fixed deposits. This was assessed as income from other sources. The Tribunal found that the assessee had utilised its commercial assets which were lying in the form of surplus case for earning interest. The Tribunal opined that the income derived from business.

Held, that on the facts as found by the Tribunal, the conclusion is inevitable that the interest income from fixed deposits was assessable under the head "Business". The Tribunal was justified in holding that the interest income should be assessed under the head "Business". - CIT V/s. Tirupati woolen Mills Ltd., (1992) 193 ITR 252 (CAL).

### Humour in Courts

A judge was known for being harsh to lawyers besides being very strict regarding admission of the cases. One day a lawyer who emerged from the said court along with his client was seen laughing. The other lawyer who noticed this was curious to know the reasons for the laughter of the lawyer who was emerging from the court.

Other Lawyer: You seem to be in a good mood. Is it that your case was admitted by the court?

The First Lawyer: No, My case was not dismissed!

### News Spectrum

□ On 26.5.92 the Netherlands Parliament revoked a law prohibiting hiring and organising women for prostitution or pimping. Previously individual prostitutes could sell sex but running of brothels was illegal. With the change in law the Government proposes to receive an estimated tax of \$ 830 million a year by the sale of sex which is almost the same as the amount of revenue the Government receives by levying tax on the sale of tulips.

□ In a decision rendered during the third week of June 1992 the U. S. Supreme Court ruled that there is nothing illegal about the US secret forces abducting any person from a foreign country to make him face the charges levelled against him in any US Court. The Court upheld the forcible abduction of a Panamanian Doctor from Panama by the US secret forces and set aside the orders of the two U.S. subordinate courts.

□ On 25-6-92 the South-African Government announced that an enquiry into the recent massacre of non-whites in Boipatong, near Johannesburg, by a three men committee to be headed by a South African Judge, a professor in criminology from Britain and Justice P.N. Bhagawathi, the retired Chief Justice of India.

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6. Persons not winning the lottery shall also get the law books worth Rs. 1700/- at the close of ten months if they have paid all monthly contributions.
7. All disputes shall be settled in the district of Bangalore.

## NEWS FOCUS

□ On 19-6-92 the Union Cabinet gave its approval to the Bill to be introduced in the monsoon session of the Parliament containing a model Rent Control legislation.

□ On 24-6-92 Union Finance Minister Dr. Manmohan Singh informed the Consultative Committee attached to his Ministry that the proposal sent by the Ministry for setting up of Special Tribunals for recovery of loans exceeding Rs. 10 lakhs has been approved by the Union Cabinet Committee.

□ On 25-6-92 Justice N. Venkatachala, Acting Chief Justice Karnataka High Court, distributed reading tables to the Courts in Bangalore in a function organised by the Bangalore legal Practitioners Co-operative Society. K.N. Subba Reddy, President, AAB, presided over the function.

## MISCELLANY

□ Mr. B. Anjaneyalu, an Advocate from Bangalore, has been nominated as President of the Karnataka unit of the All India Nehru Brigade.

□ On 7.6.92 Mr. Deshraj & Chengalaraya Reddy, Advocates, opened their new Chamber at No. 113-7, 5th Floor, Central Chambers, II Main Road, Gandhinagar, Bangalore 560 009.

□ In the recent elections to the Legislative Council Mr. B. R. Krishna Murthy, an Advocate from Hassan has been declared elected from South Graduates Constituency.

□ With effect from 28.6.92 K.R. Anantha Murthy, Advocate, shifted his Chamber to No.40, S. P. Road, Bangalore 560 002.

□ In the election to the Bangalore University senate on 24-6-92 Mr. B. L. Lakke Gowda, an Advocate from Bangalore, was elected from the Law Graduates Constituency.

Mr. Subba Reddy  
Re - Elected

In the Annual General Body Meeting held on 5-7-92, the following office bearers were elected to the Advocates Association, Bangalore, for the year 1992-93:

President : K. N. Subba Reddy;  
General Secretary : G. Vijaya Kumar ;  
Governing Council:

**High Court Unit :** M.B. Prabhakar; M. Narayana Reddy; H.C. Shivaramu ; Satish R. Girji; Smt. Suman Hegde; Smt. Leela Rachayya Swami Hiremath; N. P. Amruthesh.

**City Unit :** M. K. Jagadish ; Eshwar M. Gollalli ; K. V. Keshava ; Smt. B. V. Nalini ; Puttegowda ; V. Manjunath ; Smt. M. Shantha ; V. S. Shivaramu ; S. Mahesh ; Y. Hariprasad ; H.R. Viswanath ; B.S. Rangappa.

**Mayohall Unit :** Shakeel Abdul Rahman ; Irshad Ahmed ; K. T. Pemmaiah ; D. Viswanatha Naidu ; V. Prabhakar.

**Magistrate Court Unit :** R. Rajashekar ; H. N. C. Kumaregowda ; S. Murthyath ; T. Subramanya ; C. Benjamin.

## KTCA Symposium

During the last week of July 92 Karnataka Tax Consultants Association proposes to organise a state level symposium on the topic "Uniform Sales Tax Structure Merging Entry Tax". All persons / institutions desiring to participate in the symposium may contact Mr. S. K. Nahar, President, KTCA, No. 29, Basavanna lane, J.M. Road Cross, Bangalore-2.

## Munsiff Suspended

It is reported that with effect from 1-7-92 the Munsiff and JMFC, Mulbagal, is placed under suspension following complaints from public and Bar. Munsiff/JMFC, from Kolar B.C. Pattar was shifted to Mulbagal with immediate effect.

## Periscope

□ **Justice Hammurabi Style :** During the Babylonian civilization emperor Hammurabi used to follow the law "an eye for an eye and a tooth for a tooth". Who said that this law has become irrelevant in the light of the Indian Penal Code? Recently when an I. O. assaulted a prosecution witness after the latter came out of the court for not co-operating with the prosecution, few lawyers got agitated over the incident. The result was that the witness was made to assault the I. O. in the presence of the onlookers.

□ **Mystery about missing Parts :** Commonly complaints are heard from the individual lawyers that a certain part of the ILR was not received by him. If all such individual complaints are pooled together and examined the result may be astonishing. There is a method in which the individual lawyers not getting single parts of the ILR. There appears to be no control on the despatch of ILR parts giving room for mischief.

□ **Survival of the Fittest :** The heirs of deceased go before the Administrator General seeking letters of Administration in respect of the estate left behind by the deceased. Experience tells that in the past such certificates were granted within days/weeks. However it is complained that even after months such certificates are not ordered to be issued by the Administrator General. It is also reported that this delay can be overcome by the meeting of the applicants and the staff member connected with the issue of the Letters of Administration.

□ **Labouring by the Labour :** If the Labourers seek redress they have to approach the Special Forum of the Labour Court. No doubt this is a laudable object. However the Labour Courts remained unfilled for longer durations & or mostly the disinterested Judges (who are on the verge of retirement) are posted as the presiding officers. Where should the Labourer go? It is reported that both the Labour Courts in Mysore remain nonfunctional for want of the Presiding Officers.

□ **Which is the better way of enticing the voters?** For the past many years the candidates for AAB office bearership have been hosting private luncheon / dinners with all the attendant paraphernalia. This year it occurred to one of the candidates as to why a luncheon should not be provided in public. Accordingly the new experiment was implemented. Now a dilemma has been created as to which is the better method of enticing the voter viz the private luncheon or public luncheon?

—Insider

## OBITUARY

□ On 5-6-92 Justice C. Honniah, expired at Bangalore.

□ On 7-6-92 Prof B.K. Kemparajiah, Advocate, died at Bangalore.

□ On 19-6-92 K. Jagadish Alva, Advocate, died at Bangalore.

□ On 26-6-92 S.B. Shankarappa, Advocate, died at Bangalore.