

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 5

July 1993

Part 4

Seminar on Capitation Fee

Under the auspices of the AAB a Seminar on "Implementation of Supreme Court order on Capitation Fee in Technical Colleges" was held on 29.6.93. Sri Balagangadhara Swamiji of Adichunchanagiri Mutt inaugurated the seminar. Former Judge M. Rama Jois, Dr. N.R. Madhava Menon, Director, NLSIU. Prof V.B Coutinho, Principal, University Law College, M.R. Dore-swamy, Secretary, PES Institutions, Former Minister D. Premachandra Sagar. Former Minister L.G. Havanoor spoke on the occasion. Sri K.N. Subba Reddy, President, AAB, who presided over the seminar welcomed the participants. Sri V. Manjunath, Governing Council member, AAB, proposed vote of thanks.

Seminar on ST

The Karnataka Tax Consultants Association will hold a state level Seminar on 'Relationship between Sales Tax Department, Tax Practitioners and Tax Payers' on 8-8-93. Those interested in registering their names can contact S.K.Nahar, 29, Basavanna Lane, J.N.Road Cross, Bangalore-560 002 before July 31. Phone 210838.

Debt Recovery Tribunals

During the last week of June 93 the President of India issued an Ordinance providing for setting up of Debt Recovery Tribunals throughout the country exclusively to recover debts extended by public sector financial institutions including the Banks.

Justice S.B.Majumdar is the new Chief Justice

On 2nd July 93 Justice S.B Majumdar was sworn in as the new Chief Justice of the High Court of Karnataka. Justice Majumdar hails from Gujarat and before moving to Karnataka he was functioning as the Chief Justice of the High Court of Andhra Pradesh.

Justice K.A.Swami sworn in

On 1.7.93 Justice K.A.Swami was sworn in as the new Chief Justice of the High Court of Madras.

Women Lawyers Federation

The Women Lawyers Federation has scheduled its General Body meeting, in which the election of new office bearers is to take place, on 25.7.93.

AAB Elections

The General Body meeting and election of new office bearers of AAB has been postponed to 18.7.93.

Humour in Courts

□ Judge : "You committed this theft alone?"

Accused : "Yes, Your honour. You can't trust anyone these days!"

□ A woman was charged with assaulting a Collector when he called at her house. When asked by the Magistrate why she did it? She replied : "well, he should not have called, after it was dark. I thought it was my husband"

Supreme Court

□ On Labour Law: In a recent Judgment the Supreme Court directed the management of Central Co-operative Consumers Stores Ltd., Shimla to pay backwages for 20 years to a saleswoman whose services were wrongfully terminated and "persecuted" by way of avoidable litigation. Rejecting the plea of the Management about its financial plight the court significantly gave choice to the Management to recover more than Rs.3 lakhs from the concerned officers who were responsible for wrongful termination and continued litigation against the saleswoman.

Justice R.M.Sahai and Justice N.Venkatachala in their judgment stated that this case is an example of "how statutory bodies waste public money in fruitless litigation to satisfy their misplaced ego". The Court felt that not only the termination of the services of the employee was wrongful but also the subsequent state of litigation resorted to by the Management, the obstinacy to approach the Supreme Court besides putting the blame of inordinate delay on the adjudicatory process was totally uncalled for. In their scathing remark the Judges felt that "The financial implications could only be indulged in by a public body like the store as those entrusted to look public body's affairs do not have any personal involvement and the money that they squander in such litigation is not their own".

The Central Co-operative Consumers Store Ltd. Vs.

Labour Court, Himachal Pradesh.

□ On Hindu Law: By a Judgment dated 11-6-93 a Bench consisting of Justice M.M Pundhi & Justice Yogeswar Dayal declared that the permanent maintenance of alimony for a Hindu wife u/s-24 of the Hindu Marriage Act, 1955 is available only when a marriage is under strain by virtue of a Court decree under Sec. 9 or 13 of the said Act. While clarifying the same the Court ruled that the marriage is not under such a strain when the matrimonial Court has dismissed or allowed the withdrawal of a Petition u/s 9 for restitution of conjugal rights or Sec. 13 providing judicial separation, nullity of marriage or a divorce, with or without consent.

The Court declared that as long as the wives or untouched by a decree under Section 9 or 13 of the Hindu Marriage Act they cannot claim permanent maintenance or alimony under the said Act. They can only apply for maintenance under the Hindu Adoptions & Maintenance Act, 1956.

Smt. Chand Dhawan Vs Jawaharlal Dhawan

Miscellany

On 12-5-93 K.C. Mehta and K. M. Bharath Kumar, Advocates, opened their new chamber at 143/60, 'Radha Kunj', 1st Floor, Coconut Avenue, Malleswaram Bangalore-560 003.

*We expect legislation to conform to public opinion,
not public opinion to yield to legislation.*

-Report of Wickersham Commission

SIGNIFICANCE OF THE VERDICT

The recent decision of the Supreme Court of Pakistan declaring the dismissal of the Federal Government by the President of the Pakistan as unconstitutional and consequently the Federal Government is entitled to be reinstated has greater significance both in terms of the scope of judicial review and the democratic system of governance. The near unanimous judgment has been universally hailed, not necessarily for its political implications, on account of its valuable contribution in the sphere of the process of judicial review particularly with reference to the justiciability of the actions of the highest constitutional functionary like the President of the State of Pakistan.

Opinion regarding the justiciability of the Presidential action under the Constitution is no doubt divided. One school of thought is that such actions of the constitutional head in respect of matters having political implications cannot be judicially reviewed. In this context arguments have been advanced time and again before the various High Courts and Supreme Court in India that in respect of Presidential satisfaction preceding the proclamation of President's rule under Article 356 of the Constitution cannot be reviewed by the courts. However, this judgment of the Supreme Court of Pakistan, will have a persuasive precedent against such arguments before the Indian Courts.

It is not uncommon that even when the courts have declared certain constitutional actions as void or unsustainable but refuse to grant the consequential remedies on the grounds of expediency

or its other ramifications. But this Judgment has heralded that the highest Courts of the land cannot acquiesce with the unconstitutional exercise of power by various constitutional authorities and refuse to grant important constitutional reliefs on the assumed grounds of expediency, public interest or other political ramifications etc. This judgment has shown that the highest Courts can and must come to the rescue of aggrieved persons or institutions. It is heartening to note in this context that this judgment has drawn high inspiration from the judgment of an Indian Court for the purpose of granting the reliefs to the petitioner.

One of the important factors which induces litigants to resort to extra judicial methods in setting their disputes, including the politico-constitutional disputes is the inordinate delay involved in the adjudicatory process and the surrealistic nature of the relief they would get from the courts. This judgment shows that given the desire of the court to expeditiously dispose of the cases of greater public significance there is no reason as to why the aggrieved parties shall not approach the courts for settlement of disputes. Viewed from this context there is a lot that other Courts functioning in democratic countries including India can draw.

This judgment has shown, in more than one way, that not only the judicial remedy is effective but also it could be timely. For a long time to come in the field of judicial review, particularly matters having politico-constitutional significance, this judgment will serve as a beacon of light and hope.

Winding up of Companies

Udaya Holla, Advocate

petition on which an individual is declared insolvent is deemed to be a fraudulent and invalid transfer. Section 531A specifies that transfer of property made in good faith not being transfer for valuable consideration if made within the period of one year before the filing of the petition shall be void against liquidator. Section 532 specifies that any transfer of property by the company in favour of a trust for the benefit of the creditors shall be void.

Sections 533 to 536 also specify the circumstance under which certain other transfers are held to be void. Section 537 specifies that when a company is being wound up by or subject to the supervision of the court any attachment, distress or execution put in force without leave of the court after the commencement of the winding up proceeding and any sale held without leave of the court shall be void.

Section 478 empowers the company court to publicly examine the director or past officers of the company in relation to the company since its formation and also with regard to promotion, formation or conduct of business of the company. Any creditor or contributory may also take part in the examination either personally or through a pleader. This provision empowers the court to ascertain the true position of the company since its formation and also the assets and liabilities of the company.

In the course of the winding up, if it appears to the court, that the company has been conducted with an intent to defraud the creditors or other persons, the court on an application made to it by the official liquidator or the liqui-

idator, as the case may be, can without any limit fasten the liability on the director or the officer who has caused loss to the company as a result of his fraudulent act. Sec. 543 specifies that if any director, manager or officer has misapplied or retained or has been guilty of breach of trust in relation to the company, the court may examine such person and direct him to pay any monies or return the properties with such interest as the court deems fit by way of compensation in respect of misapplication and the court has the power under Section 545 to prosecute such delinquent officers.

Winding up proceedings are similar to insolvency proceedings. Elaborate procedure is provided in the Companies Act, 1956 regarding winding up of companies. Winding up of a company ultimately culminates in the dissolution of the company after which the company ceases to exist as an entity. (concluded)

CLARIFICATION

Apropos to the news item "silver plate a silver lining" under caption Periscope published in the issue of April 93 Barrister H.K. Vasudeva Reddy has clarified that during 1987 when Justice S. Sharvananda, the then Chief Justice of Supreme Court of Sri Lanka, visited AAB to deliver the Fifteenth Endowment Lecture his Lordship presented a silver plate to him in his capacity of the president of the AAB. In turn he left the presentation to the custody of AAB and that is how AAB acquired the silver plate.Editor.

OBITUARY

□ On 22-6-93 S. L. Simha, an Advocate from Bangalore, passed away in the United States of America.

Unitary Nature of our Constitution

R. B. Guttal, Advocate

(from the last issue)

show that it is more a unitary constitution than a federal constitution.

In the I part of the constitution itself it is stated that India shall be a union of states. Parliament is empowered to admit or establish new states by making law to that effect. Similarly parliament can alter the areas, boundaries and even the names of the existing states. All these provisions clearly establish the fact that it was the intention of the framers of the constitution to make the union all powerful and the states are given only limited power to make laws in respect of those items mentioned in the state list attached to the seventh schedule.

At this stage it is necessary to mention one important aspect of the constitution i.e., that our constitution recognises single citizenship all over the country. Here also the parliament alone is empowered to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Citizenship does not depend upon the residence of the person concerned. In order to become a citizen it is sufficient that he was born in the territory of India or his parents were born in India. Even if he is residing in a foreign country if he has registered his name with the diplomatic representative of India he will be recognised as citizen of India. This single citizenship is in consonance with the 42nd amendment of the constitution which incorporated the words "Unity and Integrity" in the preamble to the constitution.

Unity and integrity of the Nation is very much needed

in the present context. After winning the independence in the year 1947, we have made a small beginning to avoid communalism and regionalism. At the same time we are very backward and we are one of the under developed nations. In order to make progress the most essential thing is that we must make our people educated. Now the subject of education is at item 25 of the concurrent list of the seventh schedule of the constitution. So both the Central Government as well as State Government educationists can hold a conference with regard to the type of education that can be imparted to our people so that the moral values and patriotic sense can be sown in to the minds of the people. In this context it may be necessary to implement Article 45 of the Constitution which states as follows "The state shall endeavour to provide within a period of ten years from the commencement of this constitution free and compulsory education for all children until they complete the age of fourteen years". Unfortunately this Article has been totally neglected and the Government has not considered seriously about the kind of education that is suited to our people in the modern context.

In order to make our people united good education is most essential. The moral values of humanity and the sense of patriotism can be inculcated only by enlightening the people and not by keeping them in darkness. At present in our country there is lot of superstition, ignorance and illiteracy. People have no discriminatory power of making the distinction between good and the bad. Political equality has compelled us to give voting power

(continued on page 4)

Jurisdiction of CMM Courts

The CMM Courts in Bangalore have been assigned the following territorial jurisdiction with effect from 1-1-91.

CMM Court : (Yeshwanthpur Division) Yeshwanthpur, Jalahalli, Yeshwanthapura Market Yard, Peenya, Gangammanagudi, J. C. Nagar, Hebbal, Yelahanka, R. T. Nagar.

I ACMM Court : (Central Police Division) Central, Shankaraparam, Tharagupet, Victoria Hospital, Chamarajpet, Hanumanthanagar, Kempegowdanagar, Girinagar, and Cases filed by C.O.D., C.B.I., & C.C.B.

II ACMM Court : (Basavanagudi Police Division) Basavanagudi, Siddapura, Tilaknagar, Thygarajanagar, Jayanagar, Subramanyapura, Banashankari, J.P. Nagar.

III ACMM Court : (Kengerigate Police Division) Kengerigate, Magadi Road, J.J. Nagar, Byatarayanapura, Vijayanagar, Kengeri, Jnanabharathi, Kamakshi Palya, Basaveswaranagar.

IV ACMM Court : (A) Cases filed under sections 403 to 409 IPC filed by all the ACP Divisions (B) ICP Cases filed by the following P-Ss : S.B.C. Railway P.S., B.N.C. Railway P.S., R.P.F.P.S., Bangalore Rural Railway P.S.

V ACMM Court : Traffic offences u/s 279, 337, 338 and 304 (A) IPC filed by all the Traffic Zones in the Bangalore City.

VI ACMM Court : (Ulsoor-gate Police Division) Ulsoor-gate, S.R. Nagar, S. J. Park, Ashoknagar, Wilson Garden, Koramangala, Adugodi, Mico Layout, Madiwala.

VII ACMM Court : (Malleswaram Police Division) Malleswaram, Sadashivanagar, Srirampuram, Rajajinagar, Subramanyanagar, Mahalaxmi Layout, Rajagopalanagar and

Cases field by the BCC, Bangalore.

VIII ACMM Court : (Seshadripuram Police Division) Seshadripuram, Vyalikaval, Cubbonpark, Vidhana Soudha, High Grounds

IX ACMM Court : (Chickpet Police Division) Chickpet, Upparpet, Market, Kalasipalya.

X ACMM Court, Mayo Hall : (Ulsoor Police Division) Ulsoor, Vivekanagar, H.A.L., Airport, Jeevanbhimanagar, Indiranagar, Byappanahalli, Krishnarajapuram, Mahadevapura.

XI ACMM Court, Mayo Hall : (Frazer Town Police Division) Frazer Town, Kadugondanahalli, Banasawadi, Devarajeevanahalli, Commercial Street, Shivajinagar, Bharathinagar, Bowring Hospital.

News Spectrum

Naik Subedar Lala joined British - Indian Army in 1901. He became the first Indian soldier to be decorated with the Victoria Cross after he participated in World War-I in 1916. In 1924 he was discharged from the army on medical grounds and died in Mar 1927. Then British - Indian administration sanctioned Family Pension and Victoria Cross allowance in favour of his first wife Kaulan Devi. Even before she could receive the pension and the allowance she breathed her last in 1928.

Subsequently Lala's second wife Gurdai claimed the benefit of Family Pension & VC allowance as Kaulan Devi had no issues. The same was kept pending for long. After Independence the Indian Defence Minister rejected her claim on the ground that the second wife of a Hindu soldier was not entitled for the same. Gurdai approached the Himachal Pradesh High Court

(continued on page 4)

Reaching to Himalayan Heights



L To R: Venkatachala, C R. Lakshmana Murthy S. Mahesh, T. S. Mahanthesh, Jagadeesh Mundargi, S. B. Pavin & Z. A. Khureshi (Not in the picture)

Report by: S. B. Pavin, Advocate

It was a day of achievement for a group of seven Advocates, the members of AAB (Adventure Wing) who successfully climbed Mukthinath Peak (altitude 18,000 ft) on 8.5.93 after passing through Thorung Pass (altitude 12,000 ft). Nature's bounty, idyllic landscape, serene atmosphere of the Himalayas brought satisfaction to all the group members. The sense of accomplishment made them to forget all the rigours of their preparation in accomplishing this feat. The period of expedition from 24.4.93 to 21.5.93 remains an unforgettable period in the lives of each of the group members.

Lady Mountaineer

Till recently Ms. Kokila Sudha was a member of the Mysore Bar. Recently she has shifted to Bangalore. Infact, she is the first Advocate-lady Mountaineer who has secured 'A' Grade in the Basic Mountaineering Course from the Himalayan Mountaineering Institute, Darjeeling during the recent summer vacation for Courts. It is heartening to note that she has been selected for undergoing Advanced Course in Mountaineering.

Felicitation

In a simple function sponsored by Lahari the Himalayan Trekkers were felicitated on

9.7.93. Mementoes were presented to the team members by the President of Lahari Mr. P.G.C. Chengappa.

Complaint against Jethmalani

A complaint has been lodged before the Maharashtra State Bar Council seeking removal of Ram Jethmalani, a senior counsel, from the Rolls of Advocates for "soliciting" publicity against the professional standards. One Mr. Ali Siddiqui, claiming to be the President of All India Urdu Morcha, has lodged this complaint on the ground that Jethmalani appeared in a recently held press conference alongwith his client Harshad Mehta.

Contempt proceedings against Muthanna dropped

On the advise of the Attorney General of India and "in public interest" the Supreme Court by its order dated 12.7.93 dropped contempt proceedings against the former Advocate General of Karnataka Sri P.P. Muthanna initiated by and pending before the High Court of Karnataka. The Bench consisting of Justice S.C. Agarwal recorded the statement of R.K. Garg, Counsel for P.P. Muthanna that his client has highest regard for the Judges of the High Court.

NEWS FOCUS

□ On 7-6-93 Mr. Kapil Sibbal, Advocate, Supreme Court, addressed the members of AAB concerning Justice V. Ramaswamy's impeachment motion.

□ On 9-6-93 Justice S. Mohan, Judge, Supreme Court of India, addressed the members of AAB at the High Court Unit on the topic "Menace of pending cases before various Courts in India."

□ On 18-6-93 Mr. S. N. S. Murthy, Director General of Police in Karnataka, addressed the members of AAB on the subject "Police, Lawyers & the Public".

□ On 18-6-93 Prof. M. L. Sondhi, National Executive Committee member of B. J. P., addressed the members of AAB on the topic "India-Israel diplomatic relations".

□ On 18-6-93, under the auspices of AAB, BJP President elect Sri L. K. Advani addressed the members. Other speakers included Rajamata Vijayaraje Scindia, Sri K. R. Malkani and Sri P. Upendra.

□ On 24-6-93 Sri Sitaram Yechuri, Member, CPI(M) Politbureau, addressed the members of AAB on the topic Equality under the Constitution and under the Dharmasamsad. On the same day he participated in the seminar on "Sangh parivar and its Bunch of Lies" under the auspices of Forum for Secularism and Rule of Law. Other speakers included former Judge P. P. Bopanna, prof. Basheer Hussain, Ko. Channabasappa, and A.K. Subbaiah.

□ On 8-7-93 Sri M.S. Ramachandran, General Manager, Bangalore Telephones, inaugurated a seminar on "Protection of environment and pollution problem in Karnataka with particular reference to Bangalore" held under the

auspices of AAB. Sri K. N. Subba Reddy presided over the seminar. The speakers included Sri Chandulal, Commissioner of Police, Bangalore, Sri K. M. Anees-ul-haq, Director, Doordarshan Kendra, Bangalore, Sri M. N. Reddy, Deputy Commissioner of police (Traffic), Bangalore.

News Spectrum

(from page No. 3)

contending that bigamy was accepted among Hindus before the codified laws came into effect in 1956. Recently a Division Bench consisting of the Acting Chief Justice Bhawani Singh and Justice L. S. Panta accepted Guardai's contention & allowed the reliefs claimed by her. A direction is issued to the Union Government to pay Gurdai (95) arrears of family pension and V C allowance with interest from 1929.

Unitary Nature of our Constitution

(from page No. 3)

even to the most ignorant & most of these ignorant people elect only an unenlightened person as their leader. The result would be sacrifice of the interest of the General Public & encouragement of parochialism, communalism & regionalism. Thus it becomes very difficult to achieve unity and integrity of the nation.

Democracy and Rule of Law are the hallmarks of the civilised nations. If at all we want to remain as civilised nation we should care more for education & health of the people. The Government must be for the people & it must be of the people. The people of this country must feel that they belong to one nation. Then only we can think of maintaining unity and integrity of the nation.

(concluded)