

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 6

July 1994

Part 4

Book Released

On 1-7-94 Justice V.R. Krishna Iyer released a book titled 'Ti(e)red In Law' written by Mr. C. B. Srinivasan, Advocate, at the AAB, High Court Unit premises. The book written in the form of short stories based on six episodes and a comic interlude is priced Rs. 68. The stories provide absorbing reading of 102 pages.

Humour in Courts

The Advocate author saw a Senior Advocate purchasing his book on discount. After a couple of days when they met again the author thought the Senior Advocate must have read his book and wanted to know the latter's reaction.

Advocate / Author :

Other day I saw you purchasing my book. How do you find the book ?

Senior Advocate :

I am sorry I did not read the book since it was not accompanied by reading fee !

Vasudeva Heads BLPCS

The meeting of the newly elected Board of Directors of the Bangalore Legal Practitioners' Society Limited held on 1-7-94 unanimously decided to have the following office bearers for the year 1994-95 : Y. Vasudeva, President ; S. Srinivasa Murthy, Secretary ; Aswatha, Treasurer and M. Shantha, Internal Auditor.

News Spectrum

□ Max Burger, a Toronto lawyer, claims that he has been asked by the Canadian Government to broker peace to end Sri Lanka's bloody conflict.

Transfer Policy to Stay

Alluding to the transfer policy of the Judges of various High Courts Justice A.M. Ahmadi, Judge, Supreme Court of India, declared that it would continue in future also. Justice Ahmadi was addressing the members of the AAB, High Court Unit, on 24-6-94. Elaborating this point his lordship said that after all individuals, howsoever great they are, exist for the institution and not vice versa

While speaking on the topic 'how to eliminate delays in disposal of cases and the role of lawyers in it' Justice Ahmadi pointed out that the institution of judiciary which includes the Judges and the lawyers are under a duty to provide speedy justice to the litigants. In this background his lordship felt that lawyers can contribute a lot.

Justice Ahmadi also addressed the members of the All India Women Lawyers Forum, Karnataka Branch, in the AAB Auditorium on 27-6-94.

Miscellany

□ Mr. Dinesh Rao, Advocate, has been adjudged the best treasurer of the District 324 D-1 for the year 1993-94 in his capacity as the treasurer of the Lions Club of Bangalore Jayamahala.

□ On 26-6-94 Mr. H. S. Renuka Prasad, Advocate and Notary, was installed as the President of Lions Club of Bangalore Majestic for the year 1994-95. Mr. S. Srinivasa Murthy and Ms. M. Shantha,

(continued on page 4)

Campus Watch

□ Union Finance Minister Dr Manmohan Singh called upon legal experts to interact constructively with economists & economic administrators to design a new legal structure suited to the needs of modern India. Delivering the 2nd Convocation address of the NL-SIU, Bangalore on 3-7-1994 Mr. Singh said while the economists and economic administrators possess inadequate knowledge of legal issues the legal experts often lacked sound training in economics and Sociology and limited capabilities of public administration. The active participation of the legal fraternity in the reappraisal of economic laws currently in force in the country has become essential for the successful implementation of economic reforms. The time has also come to take a close look at laws which have become hopelessly outdated in terms of the objectives they were initially to serve and the instruments that were chosen to realise those objectives.

To derive optimum benefit from emerging international economy Dr. Singh opined that it was necessary to have first hand knowledge about the promotional and regulatory systems in other countries and updating our legal and administrative framework. He said that updating and streamlining the country's economic laws would greatly reduce the costs and uncertainties associated with investment decisions.

Dr. Singh asserted that effectiveness of any legal

(continued on page 4)

Point Blank

□ I stand before you as an accused. But I would like you to hear me out and try to understand the problems faced by the police. Every police constable stays awake through the night doing the rounds of the city. How many of you have stayed awake through the night except during Shivaratri? you will not be able to stand even one night round.

Mr. R. Ramalingam, Director general of police in Karnataka, while recently addressing the members of AAB.

□ Urgency to contain communal and fundamental forces in the country is high on our agenda. Otherwise we cannot maintain integrity of the nation and country will be torn into pieces.

Ms. Benazir Bhutto, the Prime Minister of Pakistan, while recently addressing the Lahore Bar Association.

□ Instead of appreciating the Magsaysay award winner are we to punish her ?

Chief Justice M.N. Venkataswami and Justice S. Mohan, while dropping the contempt of court proceedings against the Delhi Inspector General of Police [Tihar] Ms Kiran Bedi.

□ What the petitioner wants to do is only to convert this court into some kind of a post office to refer the complaint lodged by him by issuing a writ in that regard to be transmitted to an appropriate authority. The petitioner cannot convert this court into a police Station or a Magistrate Court.

(continued on page 4)

*Morality is simply another means of living ;
but the saints make it an end in itself*

— Oliver Wendell Holmes

Article 356 - Scope of Judicial Review

Justice (Retd.) **M. Rama Jois**

Morality Vs Need

Recently, a certain political party issued a Press notification calling for the needy lawyers to approach it for securing their uniform at its expense. News has it that a number of lawyers have already approached the said political party seeking supply of uniforms.

It is natural that the professional body representing the lawyers expressed deep anguish and resentment over the offer besides asserting that the lawyers cannot be reduced to such a stature. However, pat came the reply from legal cell of the political party that the offer was in the interest of the lawyers belonging to economically middle and lower classes though the richer among the lawyers had in any case could not have been the target of the offer. The reply also contained an unsavoury reference to the effect that the professional body which has resented the offer was itself, in the past, had approached the politicians to host dinners to its members and as such it should not have qualms in its members accepting the offer of uniforms.

While the whole episode makes an interesting feature what one can notice is the morality or otherwise in the offer and acceptance of the professional uniforms to be worn by lawyers. When the professional body protested against the offer perhaps it had the stature of its members upper most as its concern. The justification for the offer has been based on the economic criterion of the substantial number of the lawyers community. Both these justifications, however palatable or otherwise, cannot be brushed aside as a point of fact and realism.

Ironically, when Justice Chinnappa Reddy commission included the lawyers Community in the forward category we protested on the premises that it is unjust considering the economic condition of the substantial number of lawyers. In other words, our claim is that the commission ought to have considered the lawyers as economically backward category. Perhaps, the same logic holds good when lawyers accept the offer of uniforms by others. Perhaps, such an offer has come from a political organisation is beside the point.

The moral of the whole episode is that what importance one should attach to his professional stature vis a vis the tempting offer of uniforms which is in any case a costly affair. It may be left to the individual conscience of each members of the profession to accept the offer or not. All said and done, morality has got different connotations for different segments of the society and at different times.

Corrigendum

In the June- 94 part of Communique it has been published that Justice D. P. Hiremath has been appointed as a Member of the CAT, Cuttack. But Justice Hiremath has been appointed as the Vice-chairman of the CAT, Cuttack.

Attention Please

Mohanlal Jain and another have instituted insolvency case No. 15/92 against Manjog Textiles and others and the same is pending before CCH-II. Any interested party may file impleading application in the said case.

(from the last issue)

any observations made in the Rajasthan case on the basis of that clause cannot any longer hold good".

In the case of D.C. Wadhwa Vs State of Bihar (A.I.R. 1987 S.C. 579) the Supreme Court considered whether the Court has the power to declare invalid an ordinance repromulgated by the Governor under article 213. In that case Supreme Court held thus :

"The rule of law constitutes the core of our constitution and it is the essence of the rule of law that the exercise of the power by the state whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant & systematic violation of its constitutional limitations petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice. We must therefore reject the preliminary contention raised on behalf of the respondents challenging the locus of the petitioners to maintain these writ petitions"

X X X X X X X X

"It is settled law that a constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the constitutional provision."

The above views were followed by the Full Bench of the Karnataka High Court in the case of S.R. Bommai Vs Union of India (I.L.R. 1989 KAR-2425) and the Full Bench held that the proclamation was justiciable, though on merits the proclamation was upheld. The matter is now in appeal before the Supreme Court and is being heard by a nine judge bench.

Further, the Supreme Court of India as early in 1964, in the case of Prathap Singh Vs State of Punjab, considered the effect of exercise of a power for a collateral purpose or with an intention beyond the scope of or not justified by the instrument creating the power and held thus :

"In legal parlance it would be a case of fraud on power though no corrupt motive or bargain is imputed. In this sense, if it could be shown that an authority exercising a power has taken into account, it may even be bonafide and with the best of intentions, as a relevant factor something which it could not properly take into account, in deciding whether or not to exercise the power or the manner or extent to which it should be exercised the exercise of the power would be dead".

The above view was reiterated in the case of Ram Manohar Lohia Vs State of Bihar (A.I.R. 1966 S.C. 740 at 752) Thus :

"If a person under colour of exercising the statutory power, acts from improper or ulterior motive, he acts in bad faith. The action of the authority is capable of being viewed in two ways. Where power is misused but there is good faith the act is only ultra vires but where the misuse of power

(to be continued)

Around the Courts

□ Karnataka Rent Control Act, 1961-Section 3(a) (iii) Fittings for more beneficial enjoyment of building and otherwise : distinction-Lease of building with furniture, movables, machineries and equipments for running a Cinema Theatre : Composite lease not covered by the Act.

From the definition of the 'building' referred to in Section 3 (a) (iii) the fittings referred to therein are of two types (1) being the fittings which are for the more beneficial enjoyment of the building and the other (2) being the fittings which are not for more beneficial enjoyment of the building..... The machinery needed for running a factory or the equipments needed to run a Cinema Theatre Viz. screens number of chairs, sofas, dynamos and other movables mentioned in the lease deed cannot be stated as the fittings fixed to the building for more beneficial enjoyment of that building. Such fittings like, air-conditioners, fans, domestic appliances, solar heaters etc. are for more beneficial enjoyment of the building.

In fact, a lease of the building with furniture, movables, machineries and equipments meant for running a Cinema Theatre is a composite lease and the same does not come under the provisions of the Karnataka Rent Control Act, 1961.

Kumaravelu Vs Kanakarathnam Chetty ILR 1994 Kar.1477(DB)

□ Constitution of India, Art. 226, Writ of Mandamus to Public Authorities :

It is high time that the authorities take serious note of growing tendency of "Passing on the responsibility" adopted by decision making officers at every level. One notices that the relief claimed in substantial number of Writ

Petitions is in the nature of writ of mandamus. This can hardly be described as a healthy attitude in the larger interest of the society. The direct result is the substantial erosion of funds of the public sector undertakings in defending litigations and causing untold harassment & privation to citizens. If justice can be done to an individual in a given case without recourse to a court of law it is cruel to drive him to court and make him wait to get lost in the docket explosion. The public sector undertakings derive their source of power for their existence to Art. 398 of the Constitution. If so, it is mandatory that they act fairly and not arbitrarily. Equally, it cannot spend its precious resources in prosecuting unnecessary litigations.

It is strange that a PSU like the KSRTC would be goaded to act only if the Court issues directions. These days, when the cry is for quicker justice, it is unfortunate that a PSU like the KSRTC is driving a poor citizen from pillar to post. When once the court has declared that persons included in a list are entitled to be appointed KSRTC should have extended similar relief to persons similarly situated and included in the list. After all, KSRTC is a trustee of public funds and it should uphold just claims and avoid unnecessary litigation resulting in spending public funds. The fact that it has managerial independence does not clothe it with power to allow its independence to run haywire. One cannot wink at the fact that crores of Rupees is invested in PSUs and it is necessary to ensure that it is properly utilised and the objective of the PSU is achieved to the best possible extent. Unfortunately, these do not seem to be the considerations that govern KSRTC.

(continued on page 4)

Parity in fee sought

Proceedings of the Rajiv Gandhi assassination case had to be adjourned on 4-7-94 with all the ten defense lawyers withdrawing from the case demanding payment of fees & allowances on par with the Special Public Prosecutors appearing in the case. These defense lawyers are appointed by the Legal Aid Board since the accused have not appointed their own counsel. In a joint letter to the designated judge S. M. Siddick the defense lawyers have demanded uniform treatment vis-a-vis the Special Public Prosecutors. They have also complained that even the paltry fee of Rs. 50/- per day fixed by the Legal Aid Board has not been paid to them since their engagement in May 1993. The presiding officer forwarded the letter to the High Court along with his recommendations. In turn the High Court forwarded the joint letter to the Tamilnadu government in November 1993 and ultimately the government summarily rejected this demand in March 1994.

One of the defense counsel N. Chandrashekar has moved the Madras High Court for a direction to the state government to pay fees and allowances in par with the Special Public Prosecutors after quashing the government order rejecting such a plea.

Foundation Laid

On 2-7-94 Justice N. Venkatchala, Judge, Supreme Court of India laid foundation stone for the proposed court building of the Munsiff & JM-FC, Mulabagal in Kolar District. Harnahalli Ramaswamy, Minister for Law & Parliamentary Affairs presided over the function, Justice M. M. Mirdhe, K. H. Muniyappa, MP & M. V. Venkatappa, MLC were the guests of honour in the function.

**Read Communique
for
Latest News**

Justice Saldanha Sworn In

On 1-7-94 Justice M. F. Saldanha, on transfer from the High Court of Bombay, was sworn to as a Judge of the High Court of Karnataka by Justice S. B. Majumdar, the Chief Justice of Karnataka High Court.

Justice Michael Francis Saldanha, an alumnus of St. Aloysius College, Mangalore, was a topper all through his educational career besides being a champion athlete. He is a recipient of Gold Medal from Karnatak University for having secured First Class First in BA Degree. He secured LL.B. degree in First class as a student of Govt. Law College, Bombay. He also has won many trophies in debating competitions at the University level. He is a recipient of the President's Gold Medal in journalism. He enrolled as an Advocate in Bombay in 1964.

In an impromptu chat with the Editor of Communique Justice Saldanha expressed happiness over the publication of this news letter and volunteered to consider the possibility of giving some write ups to Communique since he is in the habit of writing on various contemporary topics. Communique expresses happiness over this gesture.

Bar Council Opposes the Boycott

The Karnataka State Bar Council has asserted that it is not a party to the call given by the AAB to boycott Courts on 4-7-94 on the basis of inclusion of lawyers in the forward category by the Chinnappa Reddy Commission. In a press release dated 1-7-94 Mr. S. T. Patil, chairman of the Bar Council asserted that there is no need to boycott courts at this juncture. He urged Advocates not to boycott courts.

News Focus

□ On 23-6-94 the General Body meeting of the AAB discussed the subject "Justice O. Chinnappa Reddy Commission classifying lawyers in the forward group" and unanimously resolved to boycott court work on 4-7-94.

□ On 2-7-94 Mr. L. G. Havanur, Advocate & Former Chairman of the Karnataka State Backward Classes Commission, spoke on the topic "Backward Classes Vs Judiciary". The function was organised by the AAB at the Senate Hall of Bangalore University.

□ On 4-7-94 Advocates of Bangalore, boycotted Court work, went in a procession & submitted a memorandum to the Governor seeking classification of lawyers in the backward group. Reports of such boycott from centres like Hubli Dharwad, Hassan, Hoskote, Harihara, Haveri, Belgaum, Gokak, Gulburga, KGF, Kolligala, Koratagere, Maddur, Manvi, Shiggaon, Lakshmeshwar, Yadgir, Madikeri, Channapatna, Savnur, Sindgi, Soraba, and other centres in the state have also been received

□ On 11-7-94 under the orientation programme sponsored by the AAB for the benefit of young lawyers Justice B. N. Krishnan spoke on the topic "Law of Pleadings".

□ On 13-7-94 Sri. K.B. Krishna Murthy, Chairman, Lidkar inaugurated an Exhibition Cum Sale of Lidkar products in the AAB High Court Unit

□ On 14-7-94 Sri. Chowda Reddy, the State Home Minister, inaugurated a symposium "Relationship between Police and Public" organised by AAB. Sri. R. Ramalingam, Karnataka DG of Police addressed the members of AAB among others.

□ On 15-7-94 the former Chief Minister of Karnataka and President of KCP Sri. S. Bangarappa addressed the members of AAB, Magistrate Court Unit

Miscellany

(from the 1st page)

Advocates, were also installed as Treasurer and Director, respectively.

□ In the election held on 27-6-94 Mr. M. Ramakrishna, Advocate, has been elected as the Executive Committee Member of the Bangalore Golf Club.

□ On 3-7-64 T. S. Mahantesh, Advocate opened his new Law Chamber at No. 56, Silver Jubilee Park Road, Bangalore-2

□ In the election held on 3-7-94 by the Board of Directors of the National Co-operative Bank, Bangalore Mr. K. S. Subba Rao, Advocate has been reelected as the Chairman.

□ Mr. K. M. Manamohan, Advocate & Notary, has been nominated as the Chairman of the KPCC Legal Cell Mr. M. Lokesh Advocate, has been named as the Convenor.

Point Blank

(from the 1st page)

Justice S. Rajendra Babu, while dismissing a public interest writ petition filed by Sri. H. N. Nanje Gowda, former Congress M.P. Seeking a direction to Union and State governments to investigate acquisition of huge property by the Union Railway Minister Mr. C. K. Jaffer Sharief and his family members.

Obituary

□ On 24-6-94 K. Nagaraja Rao, (70) Advocate, passed away at Bangalore after a brief illness.

□ On 27-6-94 Alur Hanumantappa, (72) Advocate, of Bangalore, passed away at his native village Alur, Nelamangala Taluk.

□ On 11-7-94 H.F.M. Reddy (75), Advocate, passed away at Bangalore.

Bar Council chief to face Contempt proceedings

On 15-7-94 a Division Bench of the Supreme Court initiated contempt proceedings against the All India Bar Council chairman Mr. V. C. Mishra for his alleged derogatory statements against a Judge of the Allahabad High Court. Notice of the proceedings has been ordered to Mr. V. C. Mishra returnable in two weeks.

In a related development a Division Bench of the Allahabad High Court has held five U.P. Lawyers guilty of committing contempt of court and sentenced them to undergo simple imprisonment of one month and a fine of Rs. 1000/- each. On their failure to pay the fine they have been directed to undergo simple imprisonment for a further period of one month.

Around the Courts

(continued from page 3)

Venkataswamy V/s State of Karnataka & Anr. ILR 1994 Kar 1559.

ವಿಚಾರ ಸಂಕರಣ

ತಾ|| 6-7-94 ರಂದು ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಕನ್ನಡ ಮತ್ತು ಸಂಸ್ಕೃತಿ ನಿರ್ದೇಶನಾಲಯ ಹಾಗೂ ಬೆಂಗಳೂರು ವಕೀಲರ ಸಂಘದ ಸಂಯುಕ್ತ ಆಶ್ರಯದಲ್ಲಿ "ನ್ಯಾಯಾಲಯಗಳಲ್ಲಿ ಕನ್ನಡ ಬಳಕೆ ಹಾಗೂ ವಕೀಲರ ಪಾತ್ರ" ಎಂಬ ವಿಚಾರ ಸಂಕರಣ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು. ನಿವೃತ್ತ ಮುಖ್ಯ ನ್ಯಾಯಾಧೀಶ(ಪಂಜಾಬ್) ಮತ್ತು ಪರ್ಮಾಣಿ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ) ನ್ಯಾಯ ಮೂರ್ತಿ ಎಂ. ರಾಮಾಜೋಯಿಸ್ ರವರು ವಿಚಾರ ಸಂಕರಣವನ್ನು ಉದ್ಘಾಟಿಸಿ ಭಾಷಣ ಮಾಡಿದರು. ಕನ್ನಡ ಅಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರದ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ಜಿ. ನಾರಾಯಣರವರು ವಿಚಾರ ಸಂಕರಣದ ಬಗ್ಗೆ ಪ್ರಾಸ್ತಾವಿಕ ಭಾಷಣ ಮಾಡಿದರು. ಬೆಂಗಳೂರು ವಕೀಲರ ಸಂಘದ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ಕೆ.ಎನ್. ಸುಬ್ಬಾರ್ಜುನಯ್ಯರವರು ಅಧ್ಯಕ್ಷತೆ ವಹಿಸಿದ್ದರು. ವಕೀಲರುಗಳಾದ ಶ್ರೀ ಎಂ. ತಿಮ್ಮೇಶ ಪ್ರಭು, ಶ್ರೀ ಬಿ. ಕೆ. ರಾಮಯ್ಯ ಹಾಗೂ ಶ್ರೀ ಜಿ. ಕರಿಸಿದ್ದ ದೇವರು ಕನ್ನಡದ ಬಳಕೆ ಕುರಿತು ಮಾತನಾಡಿದರು.

Campus Watch

(continued from page 1)

system depended on the speed in which disputes could be settled and remedial measures enforced. He was of the view that our system of criminal justice, settlement of property disputes, tax matters and labour disputes take an unusually long period and therefore streamlining of the legal system to increase its effectiveness is very much needed. He also suggested a two fold strategy to deal with the situation i.e rewrite our laws to plug loopholes thereby minimise scope for disputes and overhauling of the administration of justice by taking in to account the technological advances.

Justice M. N. Venkatachaliah, CJI, Presided over the Convocation in which 57 graduates received law degrees. While Ramanand Mundkur received 7 Gold Medals Shilpa Mammen won 2 Gold Medals. Ram Doreswamy, Rashika Gupta and Mahalaxmi Nerale received a Gold Medal each. A city police officer S Krishna Murthy received Doctorate in law.

□ On 1.6.94 prof. V. Narayanaswamy assumed the charge of the Principal of B M S Law College.

ಲಿಟರರಿ ಯೂನಿಯನ್

ತಾ|| 9-7-94 ರಂದು ಬೆಂಗಳೂರು ಲಿಟರರಿ ಯೂನಿಯನ್ ಆಶ್ರಯದಲ್ಲಿ ದೇವರಾಯನ ದುರ್ಗ ಹಾಗೂ ಗೋರವನ ಹಳ್ಳಿ (ತುಮಕೂರು ಜಿಲ್ಲೆ)ಗೆ ವಕೀಲರ ಪ್ರವಾಸ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು. 53 ವಕೀಲರು ಪ್ರವಾಸದಲ್ಲಿ ಪಾಲ್ಗೊಂಡಿದ್ದರು.

For Your Requirement of Any Law Books Contact :

M. V. Prabhakara,
Law Books Seller,
No. 196, Link Road,
Malleswaram,
Bangalore-560 003.

Phone : 3311441