

Reddy Re-elected



Mr. K.N. Subba Reddy has been elected for the record sixth consecutive term as the president of the Advocates' Association, Bangalore during the election held on 12-7-97. Mr. K.N. Putte Gowda has been re-elected as the General Secretary for the term 1997-99. There has been a change of guard with regard to the Treasurer and Mr. B. Basavaraj has been elected as the Treasurer. The following Advocates have been elected to the Governing Council.

City Unit : C.S. Ravishankar, D.G. Chinnappa Gowda, A.N. Gangadharaiah, M.S. Venkatarama Reddy, T.S. Mahanthesh, G.C. Channaiah, I.M. Devaiah, T.N. Shiya Reddy, M. Byrappa, C. Jayalakshmi, V. Jayalakshmi and K. Prakash Rao.

High Court Unit : H.R. Renuka, B.A. Belliappa, M.H. Datar, S.C. Angadi, Ko. Vijayakumar, S.P. Mudhol and L.M. Pandurangaswamy.

Mayo Hall Unit : S. Sreevatsa, Bhaktavachala, Syed Ishtiaq Ahmed, K.T. Pemmaiah and G. Veerendra Babu.

Magistrate Court Unit : Malleshaiah, R. Rajashekar, L.S. Krishne Gowda, N. Udaya Kumar and Dhanaraj.

In the Governing Council meeting held on 25-7-97 the following Governing Councillors were

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Pressure Exerted on the SC Bench In Hawala Case

In a startling disclosure made on July 14, 97 the Chief Justice of India, Justice J.S. Verma revealed that a certain "gentleman" is trying his best to meet him and his brother Judges Justice S.P. Bharucha and Justice S.C. Sen who are monitoring the Hawala Case. He also said that pressure was being put to force the Judges to withdraw from the case. However, he ruled out the possibility of any of them monitoring the Hawala case retiring from the case and declared that the same Bench will deal with the case notwithstanding the cheap tactics adopted by vested interest.

Visibly upset by the happenings Justice Verma made this *suo-motu* statement before hearing amicus curiae Mr. Anil Diwan in the case challenging the validity of the transfer of the former CBI Director Mr. Joginder Singh. Setting forth the details of the persistent attempts to influence the Judges Justice Verma said that for quite sometime he had come under pressure to withdraw from the case. He said that he was constrained to reveal this behind the scene attempts because it is spreading to the brother Judges. Elaborating the incidents Justice Verma said that the Judges are getting all types of telephone calls apart from persistent attempts made by some persons to influence them.

Without divulging the identity of person or persons involved in this nefarious acts Justice Verma said "The case is with us and we will deal with it the way it should be dealt with. I hope this hint percolates to the person trying to influence us. This is the absolute minimum I can say about this incident."

Referring to the transfer of Mr. Singh the Judges said that they were there to ensure that all investigations being done under the supervision of the courts were done honestly and

fairly. However, they held that Mr. Singh was not part of the investigating team in the Hawala case and refused to accept the contention that removal of Mr. Singh as the Director of CBI was contrary to its earlier direction.

Move of UF Govt. Criticized

The National Executive Meeting of Lokshakti held at Bangalore on July 12, 97 has criticized the move of the UF Government to take up the responsibility of judicial appointments on the ground that it comes in the way of judicial independence. In a resolution adopted on the occasion the National Executive has rejected the proposal of the Centre to establish executive control in appointment of Judges and demanded formation of a permanent National Judicial Commission. Party's General Secretary Mr. Era Sezhiyan said that the proposed commission should deal with the appointment of not only High Court Judges but also the Judges of the Supreme Court and other important Constitutional posts like Election Commissioners, Public Service Commissioners, Lokpal and Lokayuktha.

The resolution said that an independent and impartial judiciary *war sine quo-non* in not only upholding the rule of law in a democratic system but also protecting the rights and

identities of states and the local self Governments from the aggressive invasion of the Federal Government beyond the limitation imposed by the Constitution. Any attempt to intervene and control the appointment of Judicial personnel would strike at the basic structure of the constitution and if the proposal was carried out it would demolish the entire edifice of a functioning democracy and the Federal character of the Constitution.

Around the Courts

Articles 14 and 16(1) of the Constitution of India, reservation of 20% vacancies to women not unconstitutional :

A single Judge of the Rajasthan High Court has held in a Judgement, delivered on 8-7-97, that reservation of 20% vacancies to women in Government appointments is not Un-Constitutional. Terming the women as belonging to the neglected section of the society the court has held that the state Government is fully justified in providing reservation for women aspirants seeking Government Jobs.

Section 22 of the Air [prevention and control of pollution] Act, 1981, liability to maintain standards laid down by the Board :

By a Judgment dated 9-7-97 a Division Bench of High Court of Andhra Pradesh has directed 76 Industrial units functioning in the outskirts of Hyderabad to forthwith stop functioning till such time the emission standards laid down by the State Board for the prevention and control of Air pollution are complied with to the satisfaction of the Board. However, the court has clarified that the liability of the managements of the Industrial units towards its employees including the payment of wages shall not cease to operate and the Industrial Units cannot claim immunity on account of the closure. These directions were issued by the High Court on the basis of a public interest writ petition filed by a student.

The passing of an unjust law is the suicide of authority

-Pastoral letter

Advantage politician

Politicians belong to the breed "Never say die." Hardly they can imagine accepting defeat. They can never think of allowing primacy being grabbed by others. Judiciary cannot be an exception to this.

With the decision of the Constitution Bench of the Apex Court in SC Advocates-on-Record Association Vs. Union of India (AIR 1994 SC268) case one could reasonably expect that finality has been reached in the matter of appointment and transfer of Judges. For the first time Judiciary has asserted against the political creed and insulated the appointment of Judges to the higher Judiciary from the political bosses. Judiciary, being the ultimate arbiter of the gamut of the litigation, is naturally expected to be free from outside influences. This could be best ensured with the Judiciary itself having the right of scrutiny of the new entrants into its fold. In this light the decision of the Apex Court was a welcome step.

It was evident since this decision of the Apex Court the politicians have not reconciled themselves and time and again views were expressed to restore the decision rendered in the case of S.P. Gupta Vs. Union of India. The recent meeting of the State Law Ministers considered this aspect and broadly suggested to restore the primacy of the political Executive with regard to the appointment of Judges to the higher Judiciary. Infact the Union Law Minister Ramakant Khalap went to the extent of suggesting the introduction of the Judges Appointment Bill in the parliament. No doubt the BJP and the CPI(M) publicly aired their reservations about the Bill as a result of which the UF Government was unable to have its say in the matter. But how far these checks could act as deterrent and how much committed the political parties to the concept of Independent Judiciary is a moot question. Unless the people of the country are eternally vigilant and they are assisted by the Judiciary itself the machinations of the politicians to weaken the judicial system cannot be prevented.

The 121st report of the Law commission proposed setting up of a

broad based National Judicial Service Commission which could act as a permanent body in the selection, appointment, transfer and other service conditions of the Judges as an alternative. Most of the political parties seem to have no ostensible objection for this proposal. Perhaps the proposal, which could serve as a basis for reconciliation, requires a close examination. It may be that suitable modifications to the original proposal might be essential before a consensus is arrived at with regard to this proposal.

In any case the paramount consideration should be the independence of Judiciary against all possible intrusions by outside forces and particularly the politicians. Except to the detriment of the people's interest politicians cannot be entrusted with the onerous task of the appointment of Judges to the higher Judiciary. International community should also feel that Indian Judiciary is free from interference and such opinion would go a long way in the Indian Judiciary being held in high esteem.

Point Blank

I have already said that the Constitution does not provide for resignation on moral grounds

Mr. Laloo Prasad Yadav answering a press person in Patna on the question as to whether the former would resign in the light of the CBI chargesheet against him.

Unbeaten Ton

Hundred months ago maiden issue of Communique was released. This is the Hundredth issue. An important milestone has been crossed. During this period remarkable improvements have been achieved in the presentation of the newsletter. Discerning readers have appreciated from time to time about our efforts in bringing qualitative improvements apart from giving valuable suggestions. Above all they have sustained the newsletter. On our part we pledge to serve the readers with renewed vigour so as to score double century.

-Editor.

The Ultimate Saving Factor

Shri D.B. Thengadi

From the last Issue

Dr. Ambedkar remarks on this question: "The idea of making gift of fundamental rights to every individual is no doubt very laudable. The question is how to make them effective? The prevalent view is that once rights are enacted in a law then they are safeguarded. This again is an unwarranted assumption. As experience proves, rights are protected not by law but by the social and moral conscience of society. If social conscience is such that it is prepared to recognise the rights which law chooses to enact, rights will be safe and secure. But if the fundamental rights are opposed by the community, no law, no Parliament, no judiciary can guarantee them in the real sense of the word."

Dr. Ambedkar had found out that the democratic set-up in Great Britain depended for its safety more on the spirit of constitutional morality among the British people, rather than upon the Constitution itself. He agreed with Abraham Lincoln who said: "He who moulds public sentiments goes deeper than he who enacts a statute or pronounces decision. He makes statutes and decisions possible or impossible to be executed." On another occasion Dr. Ambedkar said: "Laws are made by man for man. Law had not created man, but man had created law for his own happiness" Shri Kuber, one of his intimates, conveys that "In his (i.e., Dr. Ambedkar's) conception of law it is implied that law should be enforced not only by punishment but also by education, by an appeal to the mind of man and the spirit of society."

Thus the real guarantee lies in the "social and moral conscience of society", which he termed as "Constitutional morality", Dr. Ambedkar said: "However good Constitution may be it is sure to turn out to be bad because those who are called on to work it, happen to be a bad lot. However bad, a constitution may be it may turn out to be good, if those who are called to work it happen to be a good lot."

Only the laws in keeping with the spirit of *Dharma*, the eternal, universal, natural law and equity can extend protection and cater justice to such sections of "The wretched on the Earth" who need such protection and justice most, like the Shah Banos; victims of dowry, murders and other atrocities; the unfortunate women forced to become prostitutes, *devdasis*, women workers, working housewives; the divorcees, the eunuchs, the orphans, the innocent children working under callous employers; children kidnapped, maimed and used by professional *goondas* for begging, and the children of divorced persons; the *Vanavasi* deprived of their traditional rights in forest areas, victims of the conspiracy of contractors, conservators and politicians, and displaced on large scale in the name of developmental projects like dams; the denotified communities or ex-criminal tribes and all the nomadic and semi-nomadic tribes; the bonded labour, the *dalits* and the backward classes; those affected by natural calamities, such as floods, fire, droughts, earthquakes, epidemics, or by extraneous factors, such as, terrorism, riots, wars, accidents, violence, sabotage, etc. families of military personnel or members police and other forces killed while discharging their duties; rural artisans, and handicraftsmen; millions of illiterate unemployed and underemployed. The educated unemployed; workers retrenched on account of high technology; victims of occupational hazards and occupational diseases, as also of the violation of environmental laws and safety measures, as well as of the laws relating to cruelty towards animals; the homeless and the slum-dwellers. The unsuspecting, illiterate consumers, the destitutes; the disabled; the handicapped, the crippled; the mentally retarded, the juvenile delinquents and the lunatics; the blind, the deaf and the dumb; the beggars and the victims of dreadful diseases, refugees as distinct from infiltrators; prisoners who become victims of the lust or the sadism of jail authorities.

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SLSA Inaugurated

The Karnataka State Legal Service Department could not function as a parallel court but supplement the work done by the Judiciary. Alleviating the misconception that the newly constituted body would be a parallel court it was officially clarified that the Authority would be an arm of the Judiciary to supplement its work. This clarification was given by the Chief Justice of the Karnataka High Court in the function held on 5-7-97 at the Bangalore City Civil Court premises to mark the inauguration of the newly constituted State Legal Services Authority. Mr. M.C. Nanaiah, Minister for Law presided over the function. Justice A.J. Sadashiva has taken over as the first Chairman of the Authority. Synchronising with the inauguration of the Authority the First Lok Adalat Camp was held on the same day under the newly created Authority to settle family disputes and MVC cases.

News Panorama

Noted Environment Lawyer Mr. M.C. Mehta from India has been named as the recipient of the prestigious Ramon Magasaysay Award for his contribution in the field of public service and environment. Mr. Mehta is the 34th Indian who has been awarded this honour. He will be receiving the award, citation and the cash prize of \$ 50,000 on 31-8-97 at Manila [Philippines].

The Ultimate Saving Factor From Page 2

To sum up checks and balances provided by Constitution and legal system can be effective only if they are preceded and accompanied by checks and balances in human, social mind as a result of appropriate 'Sanskaras' of Dharma. Narada has said : When people give good bye to Dharma, disputes arise. Dharma is the only guarantee for constitutional morality and necessary checks and balances.

Concluded

Book Released

On 25-7-97 Third Edition of the digest on code of Civil procedure, 1908 compiled by Prof. V. Narayana Swamy was released. Justice M. Rama Jois has written the foreword to this edition. The updated Edition is published by M/s. Ameya Publication, Bangalore and priced Rs. 360/-.

Contempt Case Initiated

The Division Bench of Karnataka High Court comprising Chief Justice R.P. Sethi and Justice S.R. Bannurmath, has recently ordered initiation of Contempt of Court proceedings against one Imtiaz pasha for impleading one of the sitting Judges of the High Court as a Respondent in a Criminal Appeal. Their Lordships held that the Appeal was not only misconceived but also malafide and mischievous in nature with regard to the impleading of the Judge. An opportunity was given to the Appellant to delete the name of the Judge and or to withdraw the Appeal. But the Appellant refused to avail this concession.

Interference Flayed

The Supreme Court Bar Association has adopted a resolution condemning the attempted pressure on the Judges constituting the Bench of the Supreme Court hearing the Jain Hawala case. The meeting of the Association held on 21-7-97 under the presidentship of Mr. Kapil Sibal also resolved to request the Chief Justice of India to initiate contempt proceedings against the persons involved in the incident.

Education System Disturbing

Chief Justice of the Supreme Court of India Justice Jagdish Sharan Verma recently lamented about the disturbing trends in the Higher Education System forcing more and more students to seek help from courts. Speaking as the Chief Guest at the 141 Foundation Day Celebration of the Mumbai University Fort Campus on 19-7-97 Justice Verma observed that going by the number of litigations filed in courts today a student starts his career not in class rooms, but in Court Rooms and by the time one litigation ends an academic session is already over. In the context of legal education Justice Verma pointed out that apprenticeship was needed before the Law Graduates are enrolled so that they would have had the necessary training and exposure.

Literary Union

On 3-7-97 Sri K.V. Srinivasa Murthy and Party presented Carnatic Classical Music programme in AAB, City Unit premises.

On 23-7-97 under the joint auspices of the Literary Union and the Department of Kannada and Culture, Government of Karnataka, Ms. Malathi Sharma and her group provided a programme of Light Music.

Lahari Advocates Forum

On 8-7-97 Sri Prabhanjanacharya, Department of Sanskrit, Government Arts College, Bangalore, delivered a lecture on the subject "Character of Karna in Mahabharatha".

Humour in Courts

Two Advocates were in conversation after the announcement of the results of the Advocates Association Election :

I Advocate : How many votes you secured?

II Advocate : 150 solid votes.

I Advocate : How many votes the winning candidate secured?

II Advocate : 350 "liquid" votes!

Revenue officials had come for election work of the Advocates Association. An employee of the Association was carrying stamp pads.

Election official : Why are you carrying the stamp pads there?

Employee : This is meant for marking on the ballot paper.

Election official : Give one stamp pad here.

Employee : Why do you require the stamp pad?

Election Official : To obtain LTM of the voters on the electoral roll!

Communique Classifieds

Newly enrolled Advocate needing placement may apply with Bio-data to Mr. P.A. Kulkarni, Advocate, 48, 57th 'A' Cross, (Near Ramamandira), 4th Block, Rajajinagar, Bangalore-560 010.

Office Bearers Elected

In the General Body Meeting held on 10-6-97 the following office bearers have been elected to the District Bar Association, Raichur.

President : Mr. N. Bhanuraj;
Secretary : Mr. Mallappa Kurahatti;
Executive Committee Members : Ms. G. Nirmala, Mr. G. Eshwarappa, Mr. T. Chandrashekar Reddy, Mr. I. Vishwanath Reddy, Mr. Jagannath Kulkarni, Mr. Shivanandayya Swamy; Mr. Ramaswamy, Mr. S.A. Krishnamurthy and Mr. Vijay Kumar S. Patil.

Mock-Court Competition

Lahari Advocates Forum will be holding a Mock-Court Competition during September 97. Final year Law students [Both 3 years and 5 years course] and Trainee Advocates can participate in the Competition. Eligible candidates may convey their desire to participate in the Competition before 23-8-97 to Mr. Jagadish Mundaragi, Advocate, with entry fee of Rs. 50/- per participant.

Elocution Competition

Lahari Advocates Forum will be hosting an Elocution Competition shortly. It is open to all Advocates having experience of less than five years at the Bar and Trainee Advocates. Candidates desirous of participating in the Competition may convey their willingness to Mr. K.R. Dinakar, Advocate, on or before 16-8-97 together with entry fee of Rs. 25/- The participants will be required to speak in English on the subject of their choice.

Obituary

- On 8-7-97 A Kishore Kumar, Trainee Advocate, died in a road accident in Bangalore.
- On 10-7-97 R.A. Kalburgi, Advocate, passed away at Bangalore.
- On 20-7-97 M.N. Gurulingappa, Advocate and retired District Judge, passed away at Bangalore.
- On 27-7-97 P. Sampathraj Dugar, Advocate, Passed away at Bangalore.
- On 31-7-97 M.A. Saleem Sab, Advocate, passed away at Bangalore.

News Focus

- On 1-7-97 Justice Kuldip Singh, retired Judge of the Supreme Court, addressed the members of AAB, High Court Unit.
- On 9-7-97 36 saplings were planted before the High Court Annexe Building by the Chief Justice and other High Court Judges as a part of the project to beautify the surroundings.
- On 19-7-97 Justice R.P. Sethi, the Chief Justice of High Court of Karnataka made a surprise visit to the Court of Civil Judge (Junior Division), Devanahalli. He was accompanied by the Registrar, Vigilance, High Court of Karnataka. After noticing certain defects the Chief Justice asked for submission of a report from the presiding officer. It is understood that the follow-up report has been received by the High Court.
- The Special General Body Meeting of the AAB held on 21-7-97 at the High Court Unit passed a resolution condemning the attempts of certain persons in pressurising the Chief Justice of India and two of his companion Judges to withdraw themselves from the Division Bench hearing the Hawala case. The resolution also urged the CJ to initiate contempt proceedings against the persons who have attempted to pressurise the Judges.

□ On 26-7-97 Justice V.S. Malimath released the booklet titled "Justice - When, How, At what Cost" in a function held at the AAB Auditorium. Justice M. Rama Jois was the Chief Guest. Justice M.F. Saldanha presided over the function. The function was jointly organised by the AAB and Surya Foundation. New Delhi.

Read
Communique

Bandhs Illegal

A Full Bench of the Kerala High Court declared on 28-7-97 that the calling of a bandh by an Association, Organisation or Political Party and enforcing the same is illegal and Un-Constitutional. The Court Directed the State Government and its officers including the law enforcing agencies to do all that are necessary to give effect to its declaration.

The Court also held that Political Parties and other Organisations which call for bandhs and enforce them are liable to compensate the Government, the public and private entrepreneurs for any loss they may suffer on account of destruction of properties in connection with the bandh. The court also held that the Political Parties and other Organised Bodies and Associations by their act of calling bandhs and enforcing them trespass upon the Fundamental Rights of citizen which are guaranteed by the Constitution.

The Bench said it could not ignore the destruction of public and private property when bandhs are enforced by Political Parties and other organisations. It said that the State cannot shirk its responsibility to take steps to recoup its loss from the organisers of the bandh. Peeved by the decision of the Court the State Government has decided to move the Supreme Court. This Judgment has also caused lot of flutter among the Political Parties who feel that they have a Fundamental Right to organise and enforce bandh.

Communique Classifieds

An Advocate with three years experience with ability to independently conduct cases in Trial Court is required. Contact Phone: 3347649 or 3441169

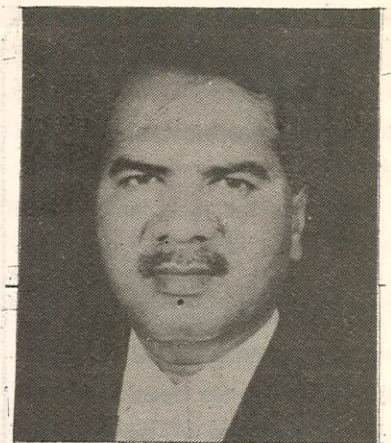
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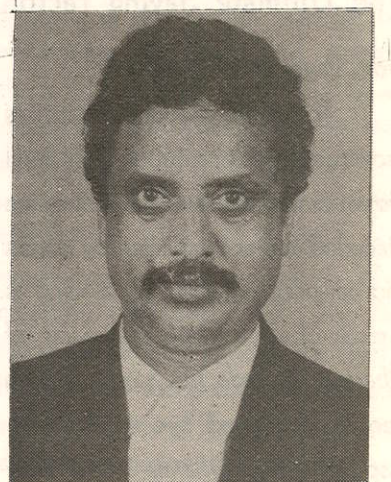
elected as Vice-presidents and Joint Secretaries of the Units :

City Unit : D.G. Chinnappa Gowda, Vice President, C. Jayalakshmi Joint Secretary; High Court Unit; L.M. Panduranga Swamy, Vice President, S.C. Angadi, Joint Secretary ; Magistrate Court Unit : Malleshiah, Vice President; R. Rajashekar, Joint Secretary; Election to Mayo Hall unit was postponed. Following Governing Council members have been made the Chairmen of Committees:

Library Committee : Bhaktavachala; Canteen Committee : L.S. Krishne Gowda; Sports Committee : I.M. Devaiah; Cultural Committee : T.N. Shiva Reddy.



K.N. Puttegowda
General Secretary



B. Basavaraj
Treasurer