

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

Volume 5

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Part 6

Retirement Age 60

By its Judgment dated 24.8.93 the Supreme Court held that the age of retirement of District Judges shall be 60. However, this has been made conditional viz. that the High Court must be satisfied about the fitness of the Judge for continuation beyond 58 years.

Chief Justice M.N. Venkatachalaiah, Justice A. M. Ahmedi and Justice P.B. Sawanth who constituted the Bench which pronounced the judgment expressed the view that the services of a District Judge cannot be compared to that of an executive post.

Humour in Courts

□ "You complain that you have had to Support your wife's family?" the Court questioned the man seeking divorce.

"Yes, Your Honour".

"How much of a family has she?"

"Four children, your Honour".

"Who is their father?"

"I am, Your Honour!"

□ A man had applied for a decree of separation from his wife on the grounds of cruelty. Asked to prove his case he replied.

"One night I dreamed I had won Rupees one Crore and in the morning my wife nearly killed me for not putting it in the Bank before I woke up".

-Kota R. Dinakar, Advocate

Miscellany

□ With effect from 16.8.93 Mr.S.K. Jagannath, Advocate, has shifted his law chamber to No. 604, II Floor, 62nd Cross, Bhashyam Circle, V Block, Rajajinagar, Bangalore-10.

National Judicial Academy

The Government has set up a National Judicial Academy under the chairmanship of Justice M.N.Venkatachalaiah, the Chief Justice of India, to suggest measures to improve the administration and management of judicial system in States and Union Territories. The other members of the Academy are Justice S.R.Pandian, and Justice S.C. Agarwal, Judges of the Supreme Court of India, Chief Justice of the Bombay High Court, a Judge of Allahabad High Court and the Secretaries to the Union Ministries of Law & Human Resources.

Judges Walkout

Justice M.N. Venkatachalaiah, Chief Justice of India, accompanied by Justice J.S.Verma, Justice M.M. Poonchchi, Justice Kuldeep Singh, Justice A.S. Anand, Judges of the Supreme Court of India, Justice S.D.Agarwala, Chief Justice of P&H High Court and other Judges of P&H High Court walked out of a function organised on 28.8.93 by the Chandigarh Bar Association amidst charges of judicial corruption and favouring of the wards of the judges of the Supreme Court and High Court by an advocate Mr. Anupam Gupta. Sri. H.R. Bharadwaj, Union Minister of State for Law, Justice and Company Affairs also joined the walkout. Surprisingly a few minutes before the walkout Justice S.D. Agarwala had described the High Court Bar as the best in the country.

New Chairman Elected

Sri G.S. Nagaraj, an Advocate from Shimoga, has been elected as the Chairman of the Karnataka State Bar Council. Patel Shankara Gowda Shivanagouda, Advocate from Bangalore, has been elected as the Vice-chairman.

New Office Bearers

In a meeting of the Directors of Bangalore Legal Practitioner's Co-operative Society Limited held on 27.8.93 a new set of office bearers have been elected. The following are the office bearers: President, Y. Yasudeva; Secretary, B.K. Sampath Kumar; Treasurer, G.C. Channaiah and Internal Auditor, D. Ravindranath.

ಲಿಟರರಿ ಯೂನಿಯನ್

□ ತಾ|| 20-8-93 ರಂದು ಸಾಹಿತ್ಯ ಕೃಷಿರಂಗದ ಅಂಗವಾಗಿ ಖ್ಯಾತ ಕನ್ನಡ ಚಲನಚಿತ್ರ ಹಸ್ತಿ ಕಾರ್ತೀನಾಥ್ ರವರೊಡನೆ ಸಂದರ್ಶನ ಏರ್ಪಡಿಸಲಾಗಿತ್ತು.

□ ತಾ|| 27 - 8 - 93 ರಂದು ಸಾಹಿತ್ಯ ಕೃಷಿರಂಗದ ಅಂಗವಾಗಿ ಕರ್ನಾಟಕ ಗೆಜೆಟಿಯರ್‌ನ ಪ್ರಧಾನ ಸಂಪಾದಕರಾದ ಡಾ|| ಸೂರ್ಯನಾಥ್ ಯು. ಕಾವಂತ ರವರು "ವಿಜಯನಗರದ ಸಾಂಸ್ಕೃತಿಕ ಕೊಡುಗೆ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

□ ತಾ|| 3 - 9 - 93 ರಂದು ಸಾಹಿತ್ಯ ಕೃಷಿರಂಗದ ಅಂಗವಾಗಿ ಅಲ್. ಸಿ. ಕಾಲೇಜಿನ ಪ್ರಾಧ್ಯಾಪಕರಾದ ವ್ಯಾಸನಕೆರೆ ಪ್ರಭಂಜನಾಚಾರ್ಯರವರು "ಮಹಾಭಾರತದಲ್ಲಿ ಭೀಷ್ಮನ ಪಾತ್ರ" ಎಂಬ ವಿಷಯದ ಬಗ್ಗೆ ಮಾತನಾಡಿದರು.

Obituary

□ On 1-9-93 K. Srinivasan, Advocate, passed away at Bangalore.

□ On 2-9-93-Dr. V. C. Narasimha, Advocate, passed away at Bangalore.

Around the Courts

□ Advocates Act, 1961, Section 36-B (1): Neither transfer of disciplinary proceedings from one committee to other nor continuation of the proceedings by the reconstituted committee will arrest the period of limitation of one year.

The disciplinary proceedings were initiated on 27.1.91 therefore the period of one year mentioned in Section 36 B (1) of the Act has to be reckoned from that date. It necessarily implies that the proceedings pending before the disciplinary committee of the State Bar Council beyond the period of one year stands transferred to the disciplinary committee of the Bar Council of India. The fact that the proceeding was transferred from one disciplinary committee to another committee within the State Bar Council and or the disciplinary committee was reconstituted does not take away the rigour of the limitation and consequent loosing of jurisdiction by the disciplinary committee of the State Bar Council.

An Advocate Vs Disciplinary Committee, 1993 (2) KLJ 318.

□ CrI. P.C Sec. 190 & IPC Sec 419-Issuance of a show cause notice to an Advocate.

Issuance of a show cause notice to a practising advocate for allegedly attesting the thumb impression of an impersonator as A-6 in CC No. 788/89 is not the proper course of action open to the Magistrate. Instead, the Magistrate could have tactfully handled

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Law is valuable not because it is law

but there is right in it

— Henry Ward Beecher

FULMINATIONS OF THE CEC

There are many grey areas in our Constitution which is open for divergent interpretations. The very fact that our Constitution required to be amended 80 times (including the 80th amendment pending before the Parliament) within 43 years speaks volumes about the changing needs of our vibrant democracy. Perhaps, before the 2nd Aug 1993 no one would have dreamt of the major Constitutional crisis created on account of an order of even date passed by the Chief Election Commissioner of India postponing all the scheduled elections till 18th December 1993.

No doubt with the benevolent intervention of the Apex Court of the land the crisis has been temporarily blown over but that in itself may not lead to a complacent situation concerning the future elections. The prevailing situation has only provided an opportunity to all the concerned to seriously ponder over the Constitutional prerogatives of the CEC vis-a-vis the Governments of the day. The substantive petition preferred by the CEC before the Supreme Court has to find answers concerning the questions of the autonomy and authority of the CEC. The view expressed by the Attorney-General of India recently before the Lok Sabha may at best be one sided. So also attempt of the political parties for the constitution of a multi member Election Commission with defined powers on a sharing basis cannot also be a panacea to the problems raised by the CEC.

Under the scheme of the Constitution the Chief Election Commissioner is an autonomous entity endowed with the power of conducting periodical elections. While Article

324 of the Constitution provides for the appointment of the CEC and such other members of the Election Commission and conducted of the elections clause (6) of Article 324 provides that the President or the Governor of a State shall, when so requested by the Election Commission, make available to the Election Commissioner or to a Regional Commissioner such staff as may be necessary for the discharge of the function conferred on the Election Commission. The crux of the dispute between the CEC and the Executive is mainly on two counts i.e. whether (a) the staff provided by the Executive for election purposes are under the supervision, control and disciplinary powers of the Election Commission or not? and (b) the Election Commission has got the authority to choose & requisition the services of any particular officer/s including the security personnel or not? Both the CEC and the Executive have taken extreme and opposite views concerning these questions.

Even according to the recent opinion expressed by the Attorney General of India before the Lok Sabha the 43rd amendment Act brought about to the Representation of the people Act, 1950, particularly Section 13 CC and 28 A gives an over all impression that the staff drafted for election duty are deemed to be on deputation and during such period be subject to the control, superintendence and discipline of the Election Commission. However, he was of the view that such staff shall not come under the "disciplinary jurisdiction" of the Election Commission. After the aggravation of the crisis created by the CEC's order dated

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THE SCAM

(Its Genesis and causes)

C.B. Srinivasan, LL.B., Advocate

(from the last issue)

government securities with the bank. As a matter of fact the customer did not avail the facility. The Managing Director of the EB who had the custody of the government securities pledged them to the Canara Bank, borrowed a loan and later discharged it. Emboldened by the success of the venture once again he ventured to pledge the securities to another bank. This time he could not discharge the debt and became a defaulter. The bank sold away the securities. When the customer applied for return of his securities he drew a blank and the fraud was revealed. The Managing Director was prosecuted for breach of trust and convicted. In appeal the Supreme Court held that dealing with the securities as though it were one's own was a clear case of breach of trust. Having assured care of securities the Managing Director had put them to his own use. Guilt of misappropriation too was held proved.

This instance illustrates the birth of government securities and their misuse. It is a contribution to man's inventive technique that what he creates for use he also finds occasions for misuse. With the passage of time the meaning of words 'government securities' underwent a change as it drew nuances of understanding. Today these words having lost its identity has come to be identified with the "security" a debtor offers. Instances are reported where the one is passed off for the other and gullible bank officials fall a prey to a stratagem. A simple example of this show the dimensions of this diversion.

There are many Public Sector Undertakings (PSUs) in our country. One such PSU feels the need to borrow privately for its expansion project. There are also financial companies and one such company comes forward for financing. Negotiations take place and the financial company agrees to pay a crore of rupees. A sale of the machinery is the device. A lease back to the PSU for a monthly rent spread over a period of time is the mode of recovery. Documentation is over. At this stage the financial company voices dis-satisfaction. What guarantee is there for repayment? There is high level involvement. It is settled that the State government will execute a deed of guarantee in favour of the financial company. It is worded as security for the repayment of the principal and the interest by the PSU.

The security having materialised the financial companies which is promised to provide a crore of rupees runs to a foreign bank with which it has developed clienthood. It pleads with the bank that it is the owner of the machinery. The document of sale stands as proof. In addition the government has executed a deed of guarantee for payment of instalments by the PSU. The government security being a valuable one the financial company offers to pledge the same with the foreign bank. With a thousand rupees in its account it overdraws a clean ninety nine lakhs ninety nine thousand Rupees from the foreign bank. This borrowed money is paid to the PSU. The deal works because the financial company charges a high rate of interest to the PSU than it becomes liable

(to be continued)

Neighbours - in - Law

L. S. Venkatakrishna, Advocate

[Prof. L. S. Venkatakrishna has penned this parody being influenced by Sir Henry Cecil, the noted British author. Though written in a lighter vein the article is quite imaginative-Editor].

Have you ever heard of the word 'Neighbours-in-law'? well, I am sure most of us are aware of and are in a way entangled with brothers-in-law, mothers-in-law, fathers-in-law and daughters-in-law. However, the English language being what it is known for its generous adaptations and evolution one day you will find the word Neighbours-in-law in its fold.

It is indeed everybody's desire to have a good neighbour and good neighbourly relationship shows the interaction and culture amongst the people. Even the definition of 'Culture' seems to have been evolved from the good neighbourly relationship as it requires 'consideration for others' feelings and suppression of one's own feelings. Good neighbourly relationship has assumed great significance and importance, be it among individuals, communities, societies, corporate bodies, federal states, and even among the comity of nations. No wonder Franklin Roosevelt declared in his inaugural address (1933) "in the field of world policy, I would dedicate this nation to the policy of good neighbour". If there is any irritant in the relationship of neighbours, it is bound to give rise to petty squabbles to prolonged litigations, battery, assault and ultimately leading to full scale war.

Of the many adages and catchwords about neighbours, one adage about a lawyer is very interesting. It is said "a good lawyer is a bad neighbour". But in reality it

is the lawyers who have shown exemplary qualities of being good neighbours and generally least harmful. A young lawyer once had occasion to call on his neighbour, who also happened to be a member of the same fraternity. When he rang the door bell a good looking lass appeared. The lawyer with a twinkle in his eyes and mischievous smile on his lips said "Madam, could I speak to Mr.....who is my brother-in-law". The young lady who was really flabbergasted said "Sir, how could you be Mr.....'s brother-in-law, when I am unmarried". The young lawyer who had by then achieved his intention of causing sweet embarrassment to the lady, in a bid to relieve her, said "Madam, Mr..... and I are practising under the same senior counsel; we address each other, for fun, as brothers-in-law". The good natured lady, though relieved of her initial discomfort, did not fail to catch the signal 'Love thy neighbour as thy self, and ultimately their first encounter blossomed into matrimony. The brothers-in-law ultimately became neighbours-in-law, once again lending credence to the adage "The crop always seems better in our neighbour's field and our neighbour's cow gives more milk".

A troublesome neighbour is always a source of irritation and prone to cause unnecessary embarrassment, harm, eventually leading to inevitable quarrel. It may not be wrong to say that bad neighbours have greatly contributed for the development of law by their indiscreet and sadist acts. In the legal parlance, a dominant owner dictates terms to the servient owner even though he has

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Portraits Unveiled

Bangalore, Aug 21 : Former Chief Justice of India Justice E.S. Venkataramaiah wondered whether it would be proper to haul up professionals like doctors before Consumer Forums when they are regulated by the Medical Council. He felt that if the trend continues even lawyers can be summoned before the Consumer Forums even while they are amenable to the Bar Council Regulations. He cautioned that such a situation may lead to conflict of Laws governing the professionals vis-a-vis the Consumer Protection Act. He was speaking at a function organised by the Karnataka State Bar Council in Bangalore after unveiling the portraits of s/s G.R. Ethirajulu Naidu, T. Krishna Rao A.C. Byrappa, Manohar Rao Jagirdar, R.N. Byrareddy, M. S. Bhujanga Rao, B.V. Acharya, N. Thippanna, M. Gopala Krishna Shetty, H.R. Patil, N.Y. Hanumanthappa, P. Vishwanatha Shetty and Smt. Pramila M. Nesargi, all former Chairpersons of the State Bar Council.

State Law Minister Harnahalli Ramaswamy, who was the chief guest of the function, expressed his happiness over the prevailing cordial relationship between the Bar Associations and the Government. Additional Solicitor-General of India and former, Chairman of the Bar Council of India, Sri V.R. Reddy, who presided over the function, in his speech referred to various criticisms made against the Bar regarding the falling standards of legal education, non co-operation of lawyers in providing legal aid to the poor and called upon the members of the fraternity to overcome such criticism by their good work.

Obituary

On 28-8-1993 Arudi Ramachandraiah (93), Advocate from Doddaballapur, passed away.

Felicitation Function

Bangalore, August 14 : Hon'ble Justice Ranganath Mishra, the former Chief Justice of India, was felicitated in Bangalore on the occasion of his appointment as a permanent member of the World Court of Arbitration at the Hague by a Committee of hosts. A large number of the members of judiciary and political figures participated in the function.

Fulminations of the CEC

(from page No. 2)

28.9.93 the Supreme Court has expressed the view that it is only the Election Commission which has the right to conduct the election and announce results but it will not give the Election Commission unbridled power to put off the scheduled elections. Though, these views are expressed at a preliminary stage requires to be confirmed by the Supreme Court at the time of disposal of the substantive petition presented by the CEC.

The choice of the Election Commission to choose particular security forces including the para-military organs to be drafted for election purpose requires to be examined in the light of the federal structure of the Union and the State Government. Infact, this question has wider ramifications on the federal polity of the country. This is a ticklish issue requiring a firm answer. There might be more than one opinion as regards the correctness of the unilateral decision of the Chief Election Commissioner and putting off bye-elections and biennial elections and the subsequent back tracking by him in the light of the Supreme Court observations but his action has undoubtedly raised important Constitutional questions requiring permanent solutions.

Neighbours - in - Law

(from page No. 3)

every thing to gain and nothing to lose. The creation of the easementary rights over the property of the absolute owner is but a species of bad neighbourly relationship having the sanction of law and the servient owner is made to suffer silently.

The acute accommodation problem in the fastest growing metropolis of Bangalore has brought with it innumerable problems including good and bad neighbourly relationship. The growing need for accommodating by the teaming millions, has led to the construction of twin houses with a common wall in between clothing the neighbours equal rights over the user of the wall. This common wall, in fact, becomes the bone of contention between the neighbours each vying with the other to usurp the right unto himself, lending credence to the adage "when your neighbour's house is on fire, your own property is at stake". As a consequence flood gates of litigations open up between the neighbours to become neighbours-in-law.

In recent days the extension of the relationship of neighbours-in-law has affected the friendly relationship of federal states like Karnataka and Tamilnadu over the sharing of Cauvery waters. The setting up of a Tribunal for amicable settlement and quick succession of events following the Interim Award saw the worst kind of vandalism leading to death and destruction of people and properties on both sides of the border. The age old relationship between the two states was strained beyond redemption causing distrust and discomfiture among the people

It is said that "nobody wants to have poor cousin". But a cousin who turns hostile across the border (Pakistan) causes serious concern between the bi-lateral relationship of the two neighbouring countries. A poor consin across the border, has over the years, grown from strength to strength and has recently threatened to explode a Nuclear Bomb with a religious fervour (flavour).

It is high time the government considered passing a comprehensive legislation with a view to delink the neighbours and the law on similar lines with the proposed legislation of delinking religion from politics. It has been averred by Thomas Fuller that "We can live without friends but not our neighbours".

Around the Courts

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the matter on the administrative side. The consequences of the show cause notice is that the Advocate has to appear before the Magistrate in open Court by standing in the position of an accused.

M. Shankaraiah Vs State of Karnataka, 1993 (2) KLJ 307.

□ **Karnataka Civil Rules of Practice, 1967, Rule 230 :**

If a suit is based on any document and that document forms part of the suit document and therefore the record, the party applying for grant of certified copy of such documents, whether marked in evidence or not, is entitled for the copy. The Courts are obliged to furnish the copies sought for.

J.R.R. Naidu Vs Registrar, City Civil Court, Bangalore 1993 (2) KLJ 309

News Focus

□ On 19.8.93 Sri Nithyananda Shenoy, Pranthiya Sanchalak of Rashtrothana Parishat and Prof. Ejassuddin, Head of the Dept. of Hindi, RC College of Commerce, Bangalore, addressed the members of AAB on the topic "Need of Unity to maintain National Integration".

□ On 26.8.93 Mayo Hall Unit of AAB had organised a get together in honour of the judicial officers viz. Padmanabha Kedilaya, K. Govindarajulu, Narayan and I.S. Antin, who were transferred out of that Unit.

□ On 27.8.93 a send off function was organised by the AAB in honour of Sri K.N. Subba Reddy on the eve of departure to USA to participate in Parliament of the World Religions.

□ On 27.8.93 Sri L. Agnihotri, District & Sessions Judge, Tumkur, held a discourse on "the Role of Lord Krishna in Kurukshetra" under the auspices of the AAB.

□ On 28.8.93 Sri S. Ramanna, Karnataka pranthiya Pracharak of RSS, addressed the members of AAB on the subject 'Dharma & Politics'.

□ On 29.8.93 3rd State Level Conference of the Karnataka Judicial Department Employees Association was held at Bangalore.

□ On 2.9.93 Sri Kuldip Nayyar, the noted journalist and former High Commissioner of India in England, addressed the members of the High Court Unit of AAB on the topic "Save Secularism or Perish."

□ On 4.9.93 Sri Y.N. Krishna Murthy, Editor, Kannada Prabha, inaugurated a lecture programme organised by the

Self Realisation Society, Bangalore in the AAB Auditorium. Justice N.Y. Hanumanthappa was the chief guest. Sri Sriram koundinya delivered the lecture on the topic "Inner Space-Chidakasha".

Miscellany

□ On 27.8.93 there was an explosion of a crude device in the toilet of the Delhi High Court.

□ On 29.8.93 the Principal Sessions Judge of Delhi remanded Sri P.C. Agarwal, a former judge of Delhi, to police custody who was earlier arrested by the police under TADA.

□ During the last week of August 93 suspected members of the outlawed Peoples War Group exploded a new Munsiff Court building in Andhra Pradesh even before it was occupied.

Age Limit for Enrolment

Mr. V.C. Mishra, Chairman, Bar Council of India, announced in a press conference held in New Delhi on 4-9-93 that enrolment of law graduates over 45 years of age has been prohibited by the BCI. He also announced that the BCI is opposed to the frequent strikes resorted to by the Advocates' Associations throughout the country. According to Mr. Mishra the BCI has adopted a resolution on 22-8-93 requesting the Chief Justice of India to approve of the resolution, within a fortnight, to desist from addressing the judges as "My Lord". He said that instead the judges may be addressed as "Sir", "Your Honour", "Your Judgeship" or "Shriman".

Obituary

On 6-9-93 A.C. Neal, Advocate, passed away at Bangalore.