

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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Part 6

Preference to Advocates

The Department of Telecommunication has taken a policy decision to include Advocates in N-OYT/SPL category for provision of new telephone connections. However, this preference is permissible in respect of applications received from Advocates who do not have telephone facility either at office or residence on the date of application; applicants close relatives such as wife/husband, son, unmarried daughter residing in the same house are not having a telephone connection; the applicant is having more than one office/ residence phone is already existing in any one such office/residence.

Writ Admitted

A writ petition challenging the validity of the rule prescribing pre-enrolment training for Advocates has been entertained by the Karnataka High Court. The writ petition is filed by Mr. Krishan Chawan of Gulbarga. According to the petition averments the petitioner approached the State Bar Council for enrolment as an Advocate after obtaining LL.B. degree. Instead of straight away enrolling him as an Advocate the petitioner was advised to undergo one year's training under a Senior Counsel. The petitioner has contended that this is an unreasonable restriction and it would be difficult to undergo training for one year without any income. Alternately the petitioner has sought a direction to pay stipend to Advocate Trainees on the lines of medical profession where the medical graduates will have to work as House Surgeons.

Rule of Law essential to sustain Democracy

— Justice J.S. Verma

Bangalore, September 21; There is a need to develop law to fill in the gap between the requirements of situations and the spirit of law. Only rule of law can be effective guarantee against arbitrariness and a proper legal culture is needed to preserve the rule of law. The efficacy of law and jurisprudence will ultimately be tested on the anvil of justice. Where morality could influence the law highest obedience to law can be expected said Justice Jagdish Sharan Verma, Judge of the Supreme Court of India. He was delivering B.N.Datar Centenary Endowment Lecture, on the topic 'New Dimensions of Justice' organised by the Advocates Foundation, Bangalore.

It is in this background Justice Verma said that Article 142 of the Constitution gives wider power to the Supreme Court which is being used to mould the reliefs in cases to give complete justice and equitable relief. Likewise Article 226 of the Constitution provides ample power to the High Courts which can be effectively used to provide necessary reliefs to the parties. Dealing extensively with the concept of new dimensions of justice His Lordship spelt out wider areas where

the courts of law could have manoeuvrability so as to do full justice.

Justice Verma stated that the courts must lay down the guidelines within the framework of law so as to remove adhocism. While exercising the power of judicial review care must be taken to see that the objectives of the Constitution and the law are achieved rather than giving meaning to the words which would have the effect of stultifying the objective. As regards the efficacy of law he pointed out that instead of merely finding meanings of the words the courts must take into account the underlined principle of the law and use it to situations after taking into account the changes and the progress made by the society after the law was enacted. His Lordship gave the example of the case where Section 45 of the Evidence Act, 1872 had to be interpreted by the Supreme Court and for the first time the court ruled that the legal presumption available to handwriting should also include typewriting. Justice Verma also opined that the interpretation of

Constitution stands on a higher footing than the interpretation of a statute law. The courts must be guided by the basic features of the Constitution even while attempting to ensure public good. Alluding to the judicial discretion particularly in the field of interpretation of Constitution and public law, His Lordship felt that the decisions should have no scope for arbitrariness but should result in laying down sound guidelines. The learned speaker also dwelt upon the

benefit of study of conventions with greater sanctity. While so doing rules of property should be propriety adhered to so that only proper conventions are taken note of so as to achieve larger good of the society.

Justice Verma elaborately pointed out the existence of several grey areas in the Constitutions where judicial activism can be effectively used to resolve the question concerning the overlapping jurisdiction of the various wings of the state. Describing it as buffer zones the speaker appreciated the spirit behind such grey areas which have been deliberately left like that by the framers of the Constitution. He said that by following the principle "Silence is Eloquent" the grey areas are deliberately left like that with a view to prevent confusion. It was also suggested by the learned speaker that Michael Folly's book "Silence is Constitution" could be of great help to the judges for meaningful exercise of the power of judicial review.

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Around the Courts

Special Court (Trial of offences relating to transaction in securities) Act, 1992 :

A Division Bench of the Supreme Court, comprising Justices S. P. Bharucha and K. Venkataswamy, ruled on 10-9-1996 that the income generated by an accused in a stock scam case by dint of his own labour was not subject to attachment under the provisions of the Act. This ruling was delivered by the Court while allowing an Appeal filed by Mr. Tejkumar Balkrishna Ruia, a notified person under the Act, challenging the order of attachment passed by a Mumbai Special Court.

Public interest Writ Petition Under Article 226 of the Constitution:

In a recent Judgment a Division

Bench of the Andhra Pradesh High Court, comprising Justices M.N.Rao and V. Rajagopal Reddy, directed the Respondent husband Jameeluddin to pay a compensation of Rs. 5 Lakhs for deceiving his first wife Radhika Sameena and taking a second wife. During 1992 the parties had married at Hyderabad under the provisions of the Special Marriage Act. Subsequently the husband had taken up as job in a company at Riyadh (Saudi Arabia).

By treating a complaint sent by the wife through telegram to the Chief Justice as a Public interest Writ Petition the Court passed this order. While disposing off the Writ Petition the Court has reserved liberty to the Petitioner to sue Jameeluddin for higher compensation and to prosecute him for the offence of Bigamy in case she is so advised.

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Show me the man; I shall show you the law
— Scottish proverb

Law Must Prevail

The recent judgment of the Apex Court in P.V.Narasimha Rao's case resulting in transfer of his case from the Court of Delhi's Chief Metropolitan Magistrate to that of the Addl.Chief Metropolitan Magistrate and granting of exemption from personal appearance before the Trial Court has raised many eyebrows because of its unprecedent. Simultaneously this order has raised many questions than answering the question raised by the petitioner.

It may be pertinent to notice that apart from questioning the validity of the summons ordered by the CMM after arraigning him as a co-accused in Lakhubhai Pathak's case the petitioner had also filed a petition challenging the Constitutional validity of Section 319

of Cr.P.C. Naturally a lot of interest was generated by this case and all eyes were revetted on the Apex Court about its decision.

Anti-climax was the outcome of the Apex Courts order in as much as no decision resulted about the plea of Constitutional invalidity of Section 319 Cr.P.C. On the main question of the CMM's order summoning the petitioner as a co-accused the Apex Court thought it fit to ask the Delhi High Court to nominate some other Magistrate before whom the pending proceeding would continue. Noticeably the order of the CMM for issue of summons and also the Delhi High Court's judgment confirming the correctness of the CMM's order were not set aside by the Apex Court. At the same time the Apex Court took care to certify CMM's conduct as above board.

However by implication the Apex Court's order ousted the jurisdiction of the CMM who had ordered for issue of summons to the

petitioner because of the direction to the Delhi High Court to nominate some other Magistrate who can be asked to proceed with the case. Liberty was also reserved for the petitioner to raise the question of correctness of the previous order directing the issuance of summons to him before the new Magistrate. On top of it the exemption granted to the petition from personal appearance before the Magistrate even while it was open to him to invoke 205 or Section 317 Cr.P.C. before the Magistrate has amazed everyone. Noted jurists and Advocates have already expressed their views about the implications of the Apex Court's order in this regard.

Considering the overall happenings about this case before the Apex Court one wonders as to

whether the outcome of the case would have been the same if the petitioner were to be any other person? Further the Apex Court's order appears to be based more on concessions shown to the petitioner than any sound reasoning particularly when the petitioner had not sought for transfer of the proceeding in his petition. The real test would come only when some other case of this nature filed by an ordinary citizen comes up before the Apex Court expecting the same decision from the Court.

Lahari Foundation Appeal

Lahari Foundation,
Bangalore, Seeks
donations for augmenting
its financial base. This
foundation is providing
assistance to lawyers for
health reasons.

The Donations you make
now will be of immense help
to some one who needs it.

— Trustee

COPYRIGHT

A. R. Srinivasa Rao, Advocate,

(Continued from last issue)

(2) In the case of (a) anonymous and pseudonymous works; and (b) Posthumous publication-the term will be sixty years from the year of publication.

(3) For (a) Photograph, (b) Government and Public Undertaking, and international organisations and (c) Cinematograph films and Sound Recording-the term is sixty years from publication.

Publication: Meaning of publication is different for different works: (a) In the case of literary, dramatic, musical or artistic works; and (b) for records-it means issue of copies of records in sufficient quantity, and (c) For cinematograph film, it means sale or hire or offer for sale or hire of the film or copies thereof to the public.

Copyright Office: It is located in New Delhi, Registrar of Copyright is the head of it. It maintains the Register of Copyrights wherein Particulars of authors of copyrights. Particulars of works and the names and address of publishers and owners of copyright are entered.

The Copyright Board is a body under the Copyright Act for the discharge of certain Judicial functions under the Act. It consists of a Chairman who shall be of the rank of a High Court Judge and two other members.

Registration of Copyright: An application for registration of a copyright should be made to the Registrar of Copyrights New Delhi in the prescribed form.

In compliance with the Amended Section 45 regarding Artistic Works used or capable of use in relation to any goods as a trade mark, a search report from the Registrar of Trade Marks, Bombay, showing that no one else has got registered the same or similar marks, shall accompany the aforesaid application.

A trade mark label is generally registered as a copyright also. A trade mark may consist of a picture-like the "His Master's Voice" dog or of one of the "house logos" so fashionable now-a-days, and the copyright in the picture or logo might be of great value in supplementing ordinary trade mark protection.

Assignment: Copyright may be assigned wholly or partially. Copyright is a multiple right, consisting right in the same work. These rights can be assigned or licensed either as a whole or separately. Thus in the case of Library Work there is the right of re-production in hard-back and paper-back editions; the right of serial publication in magazines, the rights of dramatic and cinematographic versions; the rights of translation, adaptation, abridgement the right of public performance of play or a music work, and so on. There are also other rights than re-production like the broadcasting right and recording right.

By the Copyright [Amendment] Act. 1994 the mode of assignment has been provided. The assignment in a work should also specify the rights assigned and the duration and territorial extent of such assignment. It should also specify the amount of royalty payable, if any, to the author. Where the assignee does not exercise the rights assigned to him within one year; the assignment is deemed to have lapsed. If period of assignment not mentioned it will be deemed to be five years. If territory not mentioned it will be presumed to cover extent within India.

Licensing: An owner of a copyright who does not want to transfer it outright may license it, that is to say, may grant to someone else the right to do acts that would normally infringe the copyright. It must be in writing.

(to be continued)

Rule of Law essential to sustain Democracy

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Every judgment reflects the total personality of the judge and his understanding of the law. It is not sagacious for the judges to travel on unchartered areas apart from the constant awareness that they are always expected to be within the ambit of law. Result of the surgery conducted on a patient depends on the dexterity of the surgeon as to whether he can successfully use the scalpel. Similarly the quality of the judgment depends upon the judges understanding of the law. At the same time judgments cannot be personalised and it should be based on the well accepted principles of jurisprudence, Justice Verma maintained.

On the question of judicial activism Justice Verma pointed out that it is not confined to India alone but on the contrary it is a global

phenomenon. His Lordship narrated the 1992 judgment of the Australian High Court which held that communication is a part of true representative government and consequently struck down the restrictions imposed on the media. He also pointed out that judicial activism in India is watched worldwide with rapt attention and that in itself is a good augury.

Speaking about the concept of public interest litigation Justice Verma pointed out that in S.P.Gupta's case the question of "locus" has been widened even while keeping in mind the possibility of its abuse. This has been done by keeping in view the representative character of the litigation.

As a part of judicial activism the courts in India are taking notice of the letters received containing complaints about matters of public interest by treating them as writ petitions. Strongly defending the

current phase of judicial activism Justice Verma said that the courts have to ensure that it proceeds on the right path. When handled with utmost discipline judicial activism can provide both curative and preventive reliefs. Justice Verma contended that judicial review is not only part of judicial process but a basic feature of the Constitution.

Around The Courts

(Continued from page 1)

Restriction of jobs of candidates solely through employment exchange un constitutional:

By a judgment dated 18.9.1996 a 3 member Bench of the Supreme Court comprising Justices K. Ramaswamy, B.L.Hansaria and S.B. Majumdar held that the restriction imposed by the Central and State Governments for filling up

of Government jobs solely through employment exchange was unconstitutional. The Court observed in its 9 pages Judgment "a better course would be to adopt medium viz. of employment exchange and publication in the news paper as that would serve the public purpose".

By this judgment the court was disposing off an Appeal preferred by the Excise Superintendent, Malkatnam, Krishna District (A.P) challenging an order of the Andhra Pradesh Administrative Tribunal allowing certain eligible candidates, who were not sponsored by the employment exchange, for selection to 723 posts sought to be filled up by the candidates sponsored through employment exchange



Human Rights Association

A fact finding committee of the Human Rights Association, Bangalore headed by Mr. Bhaktavachala, Advocate, visited Bangarpet Police Station on 6-8-96 to ascertain the circumstances leading to the brutal killing of one Konappa Reddy of Venugopalapura at the hands of the Bangarpet Police. The Committee has demanded the state government to immediately entrust the investigation to the CBI and to give adequate compensation to the kin of deceased Konappa Reddy.

Vasavi Youth Centre

In the election held to the Vasavi Youth Centre, Vijayanagar, Bangalore-40, on 22.9.1996 the following Advocates have been elected as office bearers:- Mr. S.Narayana Murthy, President; Mr.

G.Narayana Murthy, Secretary; Ms. Sujatha, Joint Secretary and Mr. N.S. Satyanarayana Guptha, Member of Executive Committee.

Campus Watch

On 28.9.1996 Justice A.M.Ahmadi, Chief Justice of India inaugurated International Law Library Section in NLSIU after unveiling a portrait of noted Advocate late Subroto Roy Choudhary of Calcutta. The books for this section were donated by the family members of Roy Choudhary, Chief Justice of High Court of Karnataka Justice R.P.Sethi and Ms. Nora Roy Choudhary were present on the occasion.

On 29.9.1996 Dr. A.P.J. Abdul Kalam, Scientific Adviser to the Defence Minister, inaugurated the Fourth Annual convocation of NLSIU at Bangalore. Justice A.M.Ahmadi, Chief Justice of India, who is also the visitor of the school conferred the degrees on the successful students and also distributed medals.

Efforts to Find Solution

Belgaum Bar Association has convened a meeting of all the 8 District Bar Associations of North Karnataka on October 2nd at Belgaum to crash out differences regarding the location of the proposed Bench of the Karnataka High Court in the region. The issue has become more contentious, since almost all the District Bar Associations have taken up agitational programmes demanding that the proposed Bench be located in their Districts. Mr. P.B. Patil, President of the Belgaum Bar Association, who was speaking to press persons on 24.9.1996 felt that the demand made by each of the Districts to locate the proposed Bench of the High Court had actually weakened the overall demand of the region for having a Bench of the High Court.

Office Bearers Elected

In the election held on 27.7.1996 from amongst the Directors of the Bangalore Advocates' Co-operative Society Limited, the following persons have been elected as Office Bearers: Mr. M. Lokesh, President; Mr. S. Srinivasa Murthy, Vice-President; Mr. Aswatha, Treasurer and Ms. M. Shantha, Internal Auditor.

APP Trapped

Lokayuktha sources have reported that recently Mr. M.M. Nalatwad, an APP from Mayo Hall was caught red handed for accepting Rs. 1,000/- from a litigant in a trap incident. N. Prakash of Shivajinagar whose father and brother were in judicial custody had approached the APP to help him in getting release of the detainees.

News Focus

➤ On 23-8-96 a Yakshgana play "Kartya Veerajuna" was exhibited in AAB, High Court unit by Guruprasaditha Yakshagana Mandali Saligrama.

➤ On 26-8-96 SCCH No.18 was shifted from Mayo Hall to Bangalore City Civil Court Complex.

➤ On 31-8-96 Chief Justice R.P. Sethi distributed prizes to successful lady Advocates who won prizes in the recent sports meet held by IFWL.

Literary Union

☑ On 25-8-96 an excursion to Kadiri and Puttaparti was organised. About 60 lawyers and their family members participated.

☑ On 26-8-96 Mr. Anand Kumar Gupta delivered a lecture on the topic "Usefulness of Vastushilpa"

Foreign Tours

➔ Mr & Mrs Ananth Mandgi, Advocates returned to Bangalore in the last week of May 1996 after Six weeks tour of England.

➔ Mr & Mrs K. Kasturi, Advocates attended International Law Association Conference held during the second week of August 1996 at Helsinki [Finland] apart from visiting United Kingdom and a couple of west European countries.

➔ Mr V.S. Prasad, Advocate, left Bangalore on 26-9-96 for four weeks tour of England and Europe.

Opportunity Available

Advocates interested in working with an Advocates Firm may apply with Bio-data to

M.R. Narayan & Co,
Advocates & Tax Consultant
768, 34th Cross,
9th Main, 4th Block,
Jayanagar,
Bangalore-560011.
Phone: 6635669

Ganesh Chaturthi

As usual Ganesh Chaturthi was celebrated in the Karnataka High Court Unit from 16-9-96 onwards with religious fervour and gaiety. Mr. Mahanathesh Hosmath had taken all the care to make the occasion purposeful. He needs to be complemented, Advocates' Clerks' Association of the High Court and City unit had also installed the idols of Lord Ganesh.

Clarification

It is hereby clarified that Ms. Bharathi Nagesh is also a founder member of Kechhu Foundation. This clarification is issued in respect of the news item concerning Kechhu Foundation published in the August 1996 part of Communique. Due to mistake initials of Mr. Udupa, was wrongly mentioned as A.S. it should read as B.R.

Obituary

◆ On 31-8-96 Former Union Law Minister and noted Senior Advocate of the Supreme Court A.K. Sen [83]

passed away at New Delhi.

◆ On 6-9-96 P.H. Mohammed (75), Advocate, passed away at Bangalore.

◆ On 11-9-96 Shivananjundappa, Advocate [60] passed away at Bangalore.

◆ On 19-9-96 Prahlada, Advocate & Notary, passed away at Bangalore after a prolonged illness.

News Panorama

● During the first week of September 1996 the Supreme Court of Indian Ocean Island Madagascar upheld the Constitutional validity of the impeachment of the President of the Country. It also said that the Prime Minister of the Country can hold the office of the President as an interim measure.

● Mr. Farooq Ahmed Khan Leghari, the Pakistan president, has sought for the opinion of the Supreme Court of his Country as to whether he is bound to appoint the persons recommended by the prime minister Ms. Benazir Bhutto to the post of Higher Judiciary. This incident follows the recent Supreme Court Judgement quashing the appointment of about 20 High Court Judges of Pakistan who were the nominees of Ms. Bhutto.

Profile : Danseuse Nandini K. Mehta

Nandini K. Mehta, a talented danseuse, has carved a niche for herself as a creative personality in the art circles. She has had 14 years of intensive training in 'BHARATA NATYAM' a Classical Dance Form of India under the tutelage of the renowned Gurus Smt. & Sri U.S. Krishna Rao and Smt. Narmada. She has also had a formal training in Indian Classical Music which is a prerequisite for every good dancer.



Nandini has devoted herself to the study of various dance forms. She has been trained in Abhinaya by celebrities like Padmabhushan Kalanidhi Narayan, Dr. Smt. Venkatalakshamma. She has been an active participant in the workshops on Martial Dances of Manipur, Chhau Dance of Orissa from the exponents Shri Sonar Chand and Shri Shasidhar Acharya respectively. Nandini has graduated with a Diploma in Choreography under the direction of Smt. Maya Rao, Director, Natya Institute of Kathak and Choreography, with distinction.

Endowed with a charming personality, Nandini has given successful performances of Bharatanatyam in the important Cultural Centers of India and abroad to appreciative audiences and won encomiums.

In recent years, Nandini has been undergoing intensive training in Kathak from Gurus. Smt. Maya Rao and Smt. Chitra Venugopal at Natya Institute of Kathak and

Choreography. Recently Nandini gave a delightful Kathak performance in Bangalore.

Apart from her solo performance on Bharatanatyam, Nandini has taken lead roles in the Ballets Choreography by Smt. Maya Rao namely - "The Vision of Amir Khusro", "Hoysala Vaibhava", "Vijayanagara Vaibhava", "Kamana Billu" etc. presented at many state and national festivals. Nandini has performed in some of the major Dance Festivals like "Pattadakka Festival", "Dasara Mahotsava", "Natyajali", "Soorya Festival", through NIKC. She was also a member of the cultural delegation to Maldives sponsored by ICCR and her versatile dancing in both classical and folk forms have won her laurels.

Nandini has a very impressive academic record. She is a graduate of the Bangalore University and has a Diploma in French from the Alliance Française de Bangalore to her credit. Nandini hails from the family of Advocates. Her father K.C. Mehta and brother B.K. Mehta are Advocates.