

Communique

NEWS LETTER FOR PRIVATE CIRCULATION AMONG THE LEGAL FRATERNITY

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PART 7

HC Quashes GO Sanctioning Capitation based Medical/Dental Colleges

A full bench of Andhra Pradesh High Court struck down as unconstitutional Sec. 3A of A. P. Educational Institutions (Regulation of Admissions & Prohibition of Capitation Fee) Amendment Act, 1992 and consequently quashed the GO according sanction to twelve Medical and eight Dental colleges to be opened in Andhra Pradesh. The amended provision provided liberty to the managements of the colleges to admit students to the extent of 50% of its intake on the basis of collection of capitation fees. The court also directed the colleges to refund the capitation fees collected from the students within four weeks time or face the consequences of civil liability.

The judges condemned the collection of capitation fee an evil practice and against national interest the upheld the selection of candidates for all seats on the basis of entrance test. The Bench also held that "bias" by the Chief Minister in sanctioning approval for opening JES Medical College and JES Dental College, Nellore, in which the Chief Minister's brother and wife are on the governing body, has been established and thus the sanction is vitiated. Following this judgment Shri. N. Janardhana Reddy the Chief Minister of A. P. had to resign.

HC Stays

While admitting a writ petition filed by Akhila Bharatiya Vidyarthi parishat and

other writ petitions assailing the Government order sanctioning opening of 9 new Engineering Colleges in Karnataka on 25-9-92 the High Court granted interm order of stay of the GO.

AG'S Remark Draws Flak

In an unprecedented development Shri P. P. Muthanna, Advocate General, remarked that Justice G.P. Shivaprakash was disabled to hear the writ petitions challenging the sanctioning of nine new Engineering colleges in the State as his application for allotment of official quarters was pending before the Supreme Court. After hearing all the parties to the writ petition including the government pleader Shri S.R. Naik, Justice Shivaprakash was above to dictate the order staying the operation of the GO sanctioning new Engineering Colleges. At this point Mr. Muthanna entered the Court hall and immediately mentioned that justice Shiva prakash was disabled. The other lawyers including Shri B. V. Acharya, H. Subramanya Jois, K. R. D. Karanth and Prof. V. Narayanaswamy protested against the remarks of the Advocate General and requested the court to record the same. It was conceded. In a related development Shri S. R. Naik having declined to file a memo against justice Shivaprakash on the instructions of Mr. P. P. Muthanna resigned his post.

AAB to Move SC

An Emergent General Body Meeting of AAB convened on 23-9-92 decided to approach the Supreme Court to direct the centre to fill up the vacancies in the High Court. The Meeting also decided to call upon the State Government to fill up the twenty vacancies of District judges with out delay. The meeting expressed its resentment regarding the appointment of young lawyers (below 50 years) as High Court judges besides elevation of District judges to the High Court. Meeting was critical that the High Court ignored the claims of members of the Bar for appointment of District judges.

However in a resolution dated 25-9-92 the Karnataka State Judicial Officers Association described the comments made at the General Body Meeting of AAB regarding appointment of judges bordered on Contempt of High Court and denigration of legal profession. The resolution said that the present method of recruitment of High Court judges at the ratio of 50 : 50 as sound.

Munsiff Sacked

Mr. Yeshwanth Kumar, Munsiff/JMFC, Aurad, Bidar District was recently dismissed by the State Government for committing acts of judicial misconduct. The District Judge Chitradurga who conducted an enquiry held the Judicial Officer guilty after recording a finding that three charges have been proved. The High Court accepted the findings of the enquiry.

Hacked to Death

P. Gaṅgadhara Murthy, a lawyer cum journalist from Nagamangala, was hacked to death on 23-9-92 near his village off Bellur in Mandya District. According to the information the alleged supporters of the local MLA L. R. Shivaram Gowda attacked the deceased when he was riding a motorbike from his residence to Munsiff court Nagamangala. Critical write up in Lankesh Patrike of which Mr. Murthy was the local representative and conducting of cases filed against the local MLA and his supporters are said to be the causes for the murder.

On the following day Bellur and Nagamangala Towns observed bundh. Lawyers of Mysore Bar boycotted Courts on 24-9-92 and passed a resolution seeking stringent action against the culprits. Lawyers from Nagamangala and Mandya also boycotted Courts and passed similar resolutions. Members of the Bangalore Bar boycotted Courts on the afternoon of 25-9-92 and demanded a CBI inquiry.

Centenary Celebrations

Jamkhandi Bar Association proposed to celebrate the centenary of the establishment of the Court in Jamkhandi, inauguration of the New Court Complex and Bijapur District Lawyers Conference on 10th & 11th October 1992 at Jamkhandi. A Press note has been released in this regard by Shri N.S. Devaravar, Chairman of the Reception Committee. To commemorate the occasion the Reception Committee has decided to bring out a Souvenir.

*Four things belong to a judge : to hear courteously,
to answer wisely, to consider soberly and to decide
impartially -Socrates*

Blue Print for Action

Article 38 of the Indian constitution enjoins the state to strive for promoting the welfare of the people by securing and protecting an effective social order including the dispensation of justice. However it is doubtful as to how far this objective has been achieved by the state. The institution of judiciary has not come upto the expectations of the people in as much as it has failed to provide cheaper and speedier justice. People at-large have bonafide entertained doubts about the efficacy of resorting to seek justice through the medium of Courts. Perhaps in this background the institution of Lok Adalat was conceived & put to action. However considering the limitations of the institution of Lok Adalats even it has proved to be of limited use. Then came the consumer grievances redressal forums with the objective of ensuring protection of consumers against the manufacturers and distributors of goods and services. Through this forum has been doing good service its utility has been restricted to only urban areas considering the low level of education in the rural areas.

The hierarchy of Courts commencing from the Supreme Court, the High Courts, District & Subordinate Courts have all been left with backlog of pending cases. In Karnataka also the position is not different and a large number of cases have been languishing for longer durations without being disposed off. As a result the working of the Courts has been crippled to a large extent. The litigant seeking redressal is left in the wilderness.

Quite often reasons for delay in the disposal of cases by Courts is sought to be found and infact they are named too. It is said at times that the procedural aspects cause delay. On other occasions it is said that the number of forums open to a litigant and its abuse is said to be the cause for delay. Explosion of population, attendant disputes, refusal to compromise, seeking redressal through Courts for all grievances are said to be the other causes. Failure to fill the vacancies of the judicial officers and judges, by recruitment/promotions, inefficient judiciary and dilatory tactics adapted by the lawyers are also said to be the causes for delay. While each of this factor might have contributed in an aggregate sense for causing delay in the disposal of cases the role expected of the state in minimising the delays cannot be overlooked.

There has been no ostensible data available with regard to the number of cases filed, pending, age of the litigation, cases disposed off periodically, number of unfilled posts of the judiciary as well as administrative levels before all the Courts, Tribunals, Quasi-judicial authorities and various other forums. Therefore there is the absolute need for conducting an immediate survey of these factors, scientifically analysing the causes for delay of cases pending before various forums and then to take effective remedial measures to setright the situation. On the basis of such survey it will have to be decided as to whether new appointments are required to be made, new courts will have to be

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LAW AS PROTECTION FROM POWER

Justice M. N. Venkatachalaiah

[from the last issue]

to the values of Rule of Law and social aspirations on the part of India's bureaucracy have not yet attained to meet the needs of a changing society. The civil services consist of many brilliant men; but respect and abiding faith in the Rule of Law and a determination to adhere to legal rather than pragmatic or convenient methods are yet to develop in a full measure. There were again days during the reign of Louis the XIV when public offices were sold in France and as demands increased the offices were doubled and trebled. Finer says : "...Desmarets, one of Louis XIV's Comptroller-Generals, had proposed to the king the establishment of some quite futile offices, & the latter asked who would ever consent to buy such situation?" "Your Majesty", replied Desmarets, "is forgetting one of the most splendid of the prerogatives of the Kings of France - that when the King creates a job, God immediately creates an idiot to buy it."

Finer tells us of a civil servant in America in the New Deal days : "...A story is told of the United States Department of Agriculture in the New Deal days. A public-spirited new arrival in the department thought how useful it would be if he could transfer the income from one activity to expenditure on a fresh activity. When the department's legal adviser asked what possible objection there could be to this good idea (and note that he was asked), his answer over his old fashioned pince-nez was, "They cut off King Charles' head for that"...."

Of the need for pragmatic and blunt tools Lord Roskill said : "...What direction should this development now take? I can think of several

occasions upon which we have all said to ourselves "this case requires a policy decision-what is the right policy decision?" The answer is, and I hope will hereafter be, to follow that route which is most consonant with the current needs of the society, and which will be seen to be sensible and will pragmatically thereafter be easy to apply. No doubt the Law Lords will continue to be the targets for those academic lawyers who will seek intellectual perfection rather than imperfect pragmatism. But much of the common law and virtually all criminal law, distasteful as it may be to some to have to acknowledge it, is a blunt instrument by means of which human beings, whether they like it or not, are governed and subject to which they are required to live, and blunt instruments are rarely perfect intellectually or otherwise. By definition they operate bluntly and not sharply....? This area of law is beset with ideological doubts and dilemmas. There is need to evolve proper principles for award of damages in administrative law. The principles must seek to strike a balance between the immanent need to make the administration responsive and sensitive and also provide the much needed redress to the injured persons on the one hand and the need to ensure that excessive use of the power does not impose crippling burdens on the administration on the other. The task is left to the lawyers and judges whose judgment is yet uncommitted.

Gentlemen, the ultimate and effective source for protection from abuse and improper use of power as well as non-use of power is of the Courts and the Bar. It is only with the assistance of the Bar that the Courts can discharge

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Around the Courts

□ Hindu Marriage Act, 1955, Sections 13 & 23 (2) : Application for dissolution of marriage - Application for interim alimony by wife under Sec - 24 of the Act - Petitioner / husband directed to pay the maintenance and litigation expenses pendente lite-non compliance - Respondent / wife did not participate in further proceedings-decree for judicial separation - judgment of the court invalid.

The very purpose of directing payment of interim maintenance and litigation expenses to a party to the proceeding under the Act in a petition for dissolution of marriage is to enable the party to participate in the proceeding.... The trial Court was required to satisfy itself before it proceeded with the trial of the case as to whether the amount ordered had been paid to the Respondent or not. On the contrary the trial court after recording the evidence and hearing the arguments posted the case to find out about the payment of interim maintenance. It adopted a reverse procedure.... As the litigation expenses and interim maintenance were not paid to the Respondent she could not participate in the proceeding. For this situation the trial Court has to be blamed for not ensuring that the amount ordered had been paid to the Respondent well within the time. Therefore the finding recorded by the trial Court on the basis of the evidence recorded in the absence of the Respondent cannot be held to be valid.

Smt. Bharati Bhau @ P. Chundankar Vs Bhau @ P.V. Chundankar 1992 (2) Kar LJ 655 (DB).

□ Penal code, 1860 (Central Act No. 45 of 1860) Section 361 Explanation - Purport : 'lawful guardian' includes person entrusted with care & custody of minor-'father' not within scope of Section - Right of guardianship of father not divested, father not guilty of offence under Section.

The Explanation is not intended to limit the protection which the Section gives to a guardian viz, the father or the mother. It is intended to extend that protection by including the term 'lawful guardian' to any person who has been lawfully entrusted with the care or custody of a minor.... A father of the child is a person who is entitled to the lawful custody of the child and he will not come within the scope of Section 361 IPC, even if he takes away the child from the keeping of the mother. She may be a lawful guardian as against any others except the father or any other person who has been appointed as the legal guardian by virtue of an order of a competent court. So long as there is no divestment of the right of the guardianship of father, a father cannot be guilty of an offence under Section 361 IPC.

Capt. Vipin Menon Vs State of Karnataka ILR 1992 KAR 2622.

Blue Print for Action

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established, any procedural/administrative streamlining is needed, keeping in mind the extent of pendency, present level of litigation and the potential level of litigation that may come into courts in the near future. In other words a blue print for action, both short term and long term, requires to be prepared at once to save the institution of judiciary as an effective instrument of dispensing justice.

At present there seems to be no effort made in this direction and the sign of complacency prevails as though nothing requires to be done. This attitude is certainly not in the interest of the people and the institution of judiciary as well. Therefore will the state government, the High Court and the state Bar Council look at the problem seriously and find a solution to the vexed problem?

Appeals Lie Before Payment

□ On 3-9-92 a Division Bench of the Supreme Court consisting of Justices S. Ranganathan, V. Ramaswami and Yogeswar Dayal held that an appeal against the levy of Tax on house property can be filed before the District Judge without first depositing the disputed tax. Reversing the decision of the Delhi High Court that under Section 170 (B) of the Delhi Municipal Corporation Act under which depositing the tax amount was necessary before an appeal can be filed the Supreme Court held that pre-deposit of the disputed tax will only be an absolute condition before the appeal against the disputed tax is heard on merits and disposed off. It was held that when the appeal comes up for hearing the District Judge can adjourn the hearing and grant time to the Appellant to pay the disputed tax before it was actually heard. The judgement was delivered in the case of Mr. Shyam Kishore Vs Municipal Corporation of Delhi.

□ Recently the Supreme Court reversed a judgment of the Madhya Pradesh Administrative Tribunal (State of MP vs Shir. Srikant Chapekar) which had ruled that being "lazy" or a "late comer" or both was not a valid ground for denying promotion to a worker. The Bench consisting of Justices Kuldeep Singh and N. M. Kasliwal ruled that it was open to the employer to deny promotion to a worker on the ground of his being lazy or a late comer even if such an entry is found for only one year in his CR.

In their far reaching pronouncement the Judges held it is not the function of the Administrative Tribunals to "assess the Service Record of a government servant and order his promotion on that

basis." The judges held that the function of evaluating a annual confidential report and that of making a recommendation for promotion belong to DPC. As such the Tribunal made an error of substituting itself for the DPC and thus over stepped its jurisdiction.

□ In a majority judgment (2:1) delivered on 15-9-92 the Supreme Court held that a mere filing of the charge sheet against the accused of murder beyond 90 days of the arrest of the accused does not automatically cancel the bail granted to the accused. The court also held that this proposition will also apply to those accused of offences punishable with a jail sentence of at least ten years.

Justices A.M. Ahmadi and K. Ramaswamy held that "Permitting the prosecution to have the bail cancelled on the mere filing of the chargesheet is to permit the police to trifle with individual liberty at its sweet will and set at naught the purpose and object of the legislative mandate in Section 167(2) of the Criminal Procedure Code".

In his dissenting judgment Justice M. M. Punchhi stated that "it cannot be overlooked that a bail order under section 167(2) of the code could even be managed through a convenient investigating officer, however heinous the crime".

Endowment Lecture

On 12-9-92 under the auspices of the Modern Education Society and the Sirsi Bar Association Justice K.A. Swami, the acting Chief Justice of Karnataka High Court delivered the Fifth G. N. Vaidya Endowment Lecture at Sirsi. The topic of the Lecture was "Life, Liberty and Property under the Constitution". Mr. Mahabaleswar N. Morge, Advocate from Bombay presided.

ಲಿಟರರಿ ಯೂನಿಯನ್

ತಾ|| 23-9-1992 ರಂದು ಕನ್ನಡ ಸಾಹಿತ್ಯ ಪರಿಷತ್ತಿನ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ಗೊ. ರು. ಚನ್ನಬಸಪ್ಪನವರು ಯೂನಿಯನ್ನಿನ ಸದಸ್ಯರನ್ನುದ್ದೇಶಿಸಿ ಮಾತನಾಡುತ್ತಾ ಎಲ್ಲಾ ಹಂತಗಳಲ್ಲೂ ಕನ್ನಡ ಭಾಷೆ ತನ್ನ ಪ್ರಾಧಾನ್ಯತೆಯನ್ನು ಪಡೆಯಬೇಕೆಂದರು. ಇದಕ್ಕಾಗಿ ಕನ್ನಡ ಸಾಹಿತ್ಯ ಪರಿಷತ್ತನ್ನು ಬಲಗೊಳಿಸುವ ಅವಶ್ಯಕತೆ ಇದೆ ಎಂಬುದಾಗಿ ಅವರು ತಿಳಿಸಿದರು. ಇತ್ತೀಚಿನ ದಿನಗಳಲ್ಲಿ ಸಾಹಿತ್ಯ ಪರಿಷತ್ತು ಹಮ್ಮಿಕೊಂಡಿರುವ ಅನೇಕ ಯೋಜನೆಗಳ ವಿವರಗಳನ್ನು ನೀಡಿ ಅದ್ದಿರಲೂ ವಕೀಲರು ಪ್ರಮುಖ ಪಾತ್ರ ವಹಿಸಬೇಕೆಂದು ಕರೆ ನೀಡಿದರು. ಪ್ರಾರಂಭದಲ್ಲಿ ಯೂನಿಯನ್ನಿನ ಅಧ್ಯಕ್ಷರಾದ ತಿಮ್ಮರಾಯ ಸ್ವಾಮಿಯವರು ಅತಿಥಿಗಳನ್ನು ಸ್ವಾಗತಿಸಿದರು. ಕೊನೆಯಲ್ಲಿ ಯೂನಿಯನ್ನಿನ ಕಾರ್ಯಕಾರಿ ಸಮಿತಿಯ ಸದಸ್ಯರಾದ ಕೃಷ್ಣ ಮೂರ್ತಿಯವರು ನಂದಿಸಿದರು.

Chess Championship

A Chess Tournament conducted by the AAB was concluded during the 1st week of September 92. Mr. Ponnanna emerged the champion of the tournament with 4 points. Mr. Raviprakash emerged the runner with 3 points.

Bar Council Meet

On 27-9-92 a joint conference of the State Bar Council and the Presidents & Secretaries of all Bar Associations in the State discussed a] the guidelines to be formulated in respect of boycotting of courts by lawyers; b] the problems faced by the Bar Associations in the State and c] non payment of stipend by the Government to young lawyers.

The conference was inaugurated by Justice M. Rama-Krishna. Sri P.P. Muthanna, Advocate General Presided. The valedictory address was delivered by Justice K.A. Swami, Acting Chief Justice of Karnataka High Court. Sri H. R. Bharadwaj, Union Minister of State for Law was the chief guest.

Stay of Emission Test

On 23-9-92 Karnataka High Court granted an interim order in a writ petition filed by Mr. A. S. Bopanna, a local advocate, staying criminal proceedings against him before the Chief Metropolitan Magistrate, Bangalore. The Court observed in its order that the owners of vehicles who have valid emission test certificates issued by approved agencies should not be insisted to have the vehicles tested for emission purposes once again. It is pertinent to state here that Mr. Bopanna had a emission test certificate valid for one year when he was compelled to undergo another emission test by the police on 4-9-92.

Law as protection from power

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duties. The highest traditions of the Bar consist of their concern for the protection of the citizens from abuse of authority. The record of the legal profession in its fight against tyranny and against abuse of Government is a profound one. In all moments of crises society has looked up to the legal profession for help and the unrealised visions of the Constitution can be realised only through the creative role of the legal profession. [concluded]

Law Lecture

On 19-9-92 under the auspices of Lahari, 20th Law Lecture was delivered by Dr. V.N. Lalithkumar Rao, Commissioner of Income Tax, Appeals, Bangalore. The topic of his lecture was "Emerging Trends in Judicial Attitudes on Tax Planning". Justice K. Shivashankar Bhat presided over the function.

Obituary

On 18-9-22 Md. Hidayathulla former Vice-President of India and former Chief Justice of India died of heart attack at Bombay.

News Focus

On 18-9-92 under the joint auspices of Lions Club of Bangalore Jalahalli and AAB a blood donation camp was organised at the High Court Bar Room. Justice K. Jagannatha Shetty inaugurated the camp. Justice M. Rama-Krishna graced the occasion and also addressed the gathering. Lion T. M. Belliappa, District Cabinet Secretary and K.N. Subba Reddy, President, AAB were the chief guests. Lion K. M. Gupta, District Chairman, handed over the blood bottles to the authorities of Kidwai Hospital.

On 19-9-92 Bangalore Rural District Legal Aid Board held V Lok Adalath at Doddaballapur concerning the settlement of cases pending before Courts at Doddaballapur, Devanahalli & Nelamangala. Justice B.N. Krishnan was the Chief guest. Justice M. Rama-Krishna presided. Justice Shivaraj Patil graced the occasion. Mr. Shankar Babu, Advocate, welcomed the guests & Mr. Krishna Murthy, Advocate proposed vote of thanks.

On 22-9-92 Azeez Sait, Minister for Transport, addressed the members of AAB on the topic "What ails Karnataka Government and how to improve it". K. N. Subba-Reddy, President, AAB Presided.

Humour in Courts

The Teary eyed widow asked the Attorney about her Late husband's will.

"I'm sorry" he said, "but your husband left all he had to The Contented Home for Poor Widows"

"But what about me?" she asked.

"You were all he had".

Collection :

K. R. Dinakar, Advocate.

Miscellany

With effect from 9-9-92 J. Vijaya Raghavan, Advocate, No. 7/1, II Floor, Chinnappa Mansions, 8th Cross, Malle-swaram, Bangalore-3, shifted his office to No. 88, III Floor, M.D.P. Market, 1/2, Bettappa Lane, Chowdeswari Temple Street Cross, Bangalore-2.

On 21-9-92 B.P. Putta-Siddaiah, Advocate, opened his Law Chamber at No. 6, 'Kamadhenu' 1st Floor, Nagappa Street, Seshadripuram, Bangalore-20.

NEWS SPECTRUM

The practice of judges & Barristers wearing wig and the black gowns started in Great Britain during the 14th Century. Currently a debate is on in the Country as to whether there is need for continuing with the practice of wearing the wigs and black gowns. The opinion is divided in the matter. Whatever may be merits and demerits of the practice there is unanimity in both camps that cost of procuring the wigs and the black gowns is so high and therefore they should be dispensed with.

A winnipeg judge from Canada recently ruled as unconstitutional the last provincial law that required the Lord's prayer to be recited in class rooms. Justice Michel Mounin observed that he saw no valid reason for favouring one religion over others in schools. He ruled that the law violated the charter of Rights and Freedoms.

Recently a twelve year boy in the United States won a legal battle against his mother. His case was that his mother had left him to his fate after admitting him to a hostel. The court divested mother of her guardianship & accepted that his father parents to be his guardians.