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JUDICIAL MISCELLANY

Justice K.N. Goyal
Retired Judge, High Court

Even Judges are human

A Bench of the Bombay High Court was approached by the Government for extending time for bringing a stay order from the Supreme Court as the latter was already closed for Dusserah vacations, The Bench did not accede to the request. During the course of hearing, the presiding Judge orally remarked that "Citizens are well aware that the doors of the Supreme Court are open at midnight even". The Government approached the Supreme Court, and Its-counsel twisted the Judge's oral observation Into "Stay orders are granted by the Supreme Court even at midnight", - which sounded even more sarcastic. The manner in which it was thus placed before the Supreme Court did, in the words of R.M. Sahai J., "have the desired effect resulting In an Interim order staying further proceedings in the High Court". When the High Court Judge's observation in its correct form was placed by the other party before the Supreme Court, the Court censured the Government for its having irresponsibly misled the Court. At the same time the High Court Judge's observation even in Its correct form was held to be avoidable "in the interest of the institution", as such remarks were “apt to be misunderstood or misconstrued". State of Maharashtra v. Admane Anita Moti, (1994) 6 SCC 109.

The stricture of the Supreme Court, expressed In dignified and restrained language, recalls to mind Lord Chancellor Bacon's dictum that "patience and gravity of hearing is an essential part of justice; and an over speaking judge is no well-tuned cymbal".

But should the Supreme Court Judges themselves have lost their judicial equanimity by the High Court judge's Indiscreet quip to the extent of passing, as Is admitted, an interim order which they won't otherwise have passed? Well, Judges are human too !

Judicial dynasties

In the context of the oft expressed criticism of political dynasties,- the Nehru-Gandhis, Bhuttos, Bandarnaikes and Zias of the Indian sub-contingent, and the Kennedys and Roosevelts of America, Khushwant Singh in his MALICE column recalls from the British Raj days: "Sometimes hereditary succession went to ludicrous extent. Sons of rich zamindars were made sessions judges, to be later elevated to the High Court. I know of four lawyers who had very modest practice being elevated to the bench where their fathers had been judges".

Less Suitable?

A SUITABLE BOY has been widely acclaimed as among the best novels written In English by an Indian writer. The young writer Vikram Seth,-who has a connection with the judiciary, in that his mother has been Chief Justice of a High Court,-has reportedly been paid by his English publishers the equivalent of Rs. six crores as the first instalment of royalty. This is a record for any Indian writer ever. Most of the action in the novel takes place in a fictional State which the author has chosen to call "Purva Pradesh", formerly "Protected Provinces". One can easily see he means Uttar Pradesh, formerly United Provinces. There Is also a Pul Mela, - he means the Kumbh Mela, - on the banks of the Ganga. Some of the characters, - the Ministers and other politicians, the zamindars, the advocates, the judges, are identifiable-though their names have been changed.

The novel is most interesting and highly readable. The young author himself was born after Independence. But he has put in a lot of research in order to place together the facts and background of many events in the political and social arenas that took place in the transitional period after the transfer of power to Indian hands. The novel took eight years in writing. Why this book Is being mentioned here is however, some remarks put In the mouths of lawyers concerning High Court judges,- particularly service judges. The book refers In passing to hearings In the Zamindari Abolition Act case decided by a five-judge full bench of the High Court,- and it could not be a coincidence that Suryapal Singh v. State of U.P. was indeed decided by a five- judge bench (AIR 1951 All 674). The leading counsel for the petitioners is named in the novel as "G.N. Bannerji" who had come from outside,-so also P.R. Das had come from Patna. The Bench did have an English judge, while its junior most member was a service judge, as mentioned in the novel. After the first day's hearing Mr. G.N. Bannerji is telling his juniors :

> 'It is all very well to state something once for our benefit or for the benefit of the other side. We have been steeped in this case for weeks. But for the Bench we must follow the prime rule of advocacy: repeat, repeat and repeat again. It is a great mistake to overestimate the judges' knowledge of the case even when they have read the affidavits of both sides. And it may oven be a mistake to assume they have any detailed knowledge of the law. The Constitution, after all, is barely a year old,- and at least one of the judges in this case probably has very little knowledge of what a Constitution is .....
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> "G.N. Bannerji was referring (fairly politely for him) to the junior most judge on the full bench trying this case, Mr. Justice Maheshwari, who had come up through the district judiciary, and who, as it happened, did not posses great intelligence to counterbalance his lack of constitutional experience. Bannerji did not suffer fools gladly, and he considered Mr. Justice Maheshwari, who, at fifty-five, was fifteen years his junior, to be a fool .....

"Two evening later, all the lawyers for the zamindars and a couple of the clients themselves met in Bannerji's hotel room .....

'Sir, I have been waiting to say how fine your argument on public purpose was this afternoon'. This was a local senior lawyer.

"The great G.N. Bannerji smiled, 'Yes, you saw how the Chief Justice appreciated the point about the connection between public purpose and public benefit'.

'Justice Maheshwari did not seem to'. This was guaranteed to provoke a response. 'Maheshwari!' The junior member of the bench was dismissed in a single word.

'But, Sir, his comment about the Land Revenue Commission will have to be answered', piped up one enthusiastic junior.

'What he says is not important, He sits *still* for two days, then asks two stupid questions, one after another'

'Quite right, Sir', said Firoz quietly, 'You addressed the second point at length in yesterday's argument',

'He's read the whole Ramayana, and still does not ~now whose father Sita is!' This twist to the standard witticism provoked laughter, some of it slightly sycophantic."

These excerpts need not provoke a notice of contempt or a defamation case, nor an agitation against the book. The dialogues are not unnatural; howsoever unpalatable they may be to us. Lawyers and litigants need not always talk in laudatory terms about judges in private informal conversation. We can surely profit from a better awareness of how we are viewed by those compelled to suffer us.

It is important for judicial officers particularly to try to learn more and more about constitutional law even though,- rather because,- it is not much involved In their work in the districts. This is the reason why this Institute has been conducting courses on constitutional law for district judges.

I was shocked when a senior district judge once wanted to know from me why it was considered necessary to make them familiar with the Constitution. After all, Sir, 'he innocently protested, ‘even If we go to the High Court we can do criminal cases of which there is hardly any dearth:' Sure enough. Being put, on the criminal bench because of your expertise is alright. But it is a different thing if you are not considered fit for any other bench. Moreover, as pointed out by Chief Justice Amitabh Banerji in his inaugural speech of the first such course, the maximum work-load In the High Court these days pertains to writ jurisdiction.

Then some district judges think they can learn constitutional law after elevation just as an advocate who had specialised practice in one branch picks up other work also after elevation. They forget that while they will normally have only four or five years on the bench an advocate judge is more likely to have at least fifteen years.

'No counter filed. Hence application allowed'

An application was made by an accused person with the allegations that the charges framed against him were a nullity having been procured by fraud. As so often happens in Government litigation, no counter affidavit was filed by the State within time. Upon this a learned single judge of the Bombay High Court allowed the application. Interestingly the accused had earlier on a writ petition failed to persuade a single judge as well as a Division Bench to quash the charges.

The Supreme Court expressed surprise not only at the entertainment of such an application after the petitioner's unsuccessful attempts earlier, but also at the procedure adopted by the judge "of granting the prayer merely for failure of the State to file any reply by way of affidavit than by recording any finding that the State was guilty of procuring the order framing the charges by fraud".

The application, the Court held, “could not be allowed unless It was found as a fact that the State by Its acts and omissions acted deceitfully or it misled the Court". After quoting the relevant paragraphs of the application their lordships (per R.M. Sahai J.) observed: “Legal submissions cannot be equated to misrepresentation". State of Maharashtra v. Budhikota Subbarao, (1993) 2 SCC 567.

Computers and Law:

How prolix statute law has become is illustrated by a learned author by pointing out that while the Ten Commandments consisted of only 120 words, the Magna Carta of 63 clauses and the American Declaration of Independence of 500 words, the Common Market Regulations concerning duck eggs run to no fewer than 12,000 words. If we contrast the length of our Constitution with the very brief American Constitution, and the astronomical figures of cases heard in our High Courts and Supreme Court with the corresponding numbers in the U.K. and U.S.A., it will appear that the position in our country could certainly not be better.

In England, for the last twenty years, computerised legal "information retrieval" (I.R.) systems are being used to solve the problem. The three main I.R. systems are named LEXIS, JUSTIS and LAWTEL. The LEXIS database, which Is the most extensive of them, Includes full case reports of all British, Irish Australian and New Zealand rulings reported since 1945, all Acts, Rules and other statutory instruments, besides extensive American materials.

An online computer database called Grand Jurix has recently been established in the Bombay High Court library. It has information on about one lakh rulings. Information can be accessed either In the library or even on a user's personal computer on payment of Rs. 95 per query.

The JTRI is already equipped with computers. What are needed is some trained personnel who can start similar work 1n regard to Indian rulings and statutes. May one suggest that some judicial officers **who opt for it and** are known to be hard working and intelligent should be attached to the Institute and trained at Government expense at the local branch of some nationally reputed computer training institute for the purpose. Half-baked and lay computer programmers cannot be expected to do this work.

Some enterprising private firms could also take an Initiative in this direction.

Some Lessons for us

An unmarried mother on getting pregnant went to a hospital for abortion under an English law corresponding to our Medical Termination of Pregnancy Act. The operation was fixed for Feb. 23. Her boy friend who was responsible for the pregnancy was opposed to the proposed abortion. He filed a suit for Injunction against the lady and the hospital. The case was heard by the trial judge from 17th to 23rd Feb. and in the mean time the hospital authorities postponed the operation to Feb., 26. Even before the trial judge concluded 'his judgment the parties Informed the Court of Appeal (C.A., for short) that its verdict will also be sought. In view of the urgency the Court of Appeal agreed in advance that they would start hearing the appeal within one hour of the trial judge completing his judgment. The trial judge (Hellbron J.) as well as the C.A., which heard the case on 23 and 24 Feb., declined to grant injunction.

The hospital authorities then indicated that they would like to have" a decision of the House of Lords (H.L., for short) also before going ahead with the operation. Accordingly they applied to the C.A. for leave to appeal to H.L. The C.A. refused to grant leave and deprecated this attitude of the hospital authorities. Sir John Donaldson M.R. pointed out that "some one thousand appeals are heard by this court every year, of which about fifty go to the H.L."- which is a "tiny proportion". So in practical terms the C.A. should be treated as practically the final court in circumstances of real urgency and the parties should consider themselves free to act on its judgment. "'The purpose of any supreme court, including the H.L., is to review historically and on a broad front; it is not to decide matters of great urgency which have to be decided once and for all".

In spite of these observations the hospital did approach the H.L., but the H.L. also declined to grant special leave (the same day, i.e., on 24 Feb.)

See **C**. v. **S**., (1987) 1 All England Reports 1230, C.A.

Are there any lessons for us?

Bommai distinguished by Allahabad High Court

Recently there was a lot of controversy in U.P. about the implications of the Supreme Court nine-judge ruling in **S.R. Bomm**ai's case (1994)3 SCC 1. The question came to be raised In a petition filed during the summer vacation **(Dr. M. Ismail Farooqul v. H. E. the Governor U.P. and others**, W.P. No.1611 of 1995). It was contended that Sri Mulayam Singh Yadav could not be removed from the office of Chief Minister without a floor test. This was rejected by the High Court, holding :

"The ratio of the decision in Bommai is not applicable to the present case inasmuch as firstly, the present case does not relate to defection within a particular party, but it relates to withdrawal of support by coalition partner as a result of which the Council of Ministers lost the majority support amongst the members of the Legislative Assembly, and secondly, that the present writ petition does not relate to a proclamation issued by the President of India under Article 356 of the Constitution of india."

A similar question, which has, since been raised before the Supreme Court in another petition has been referred to the Constitution Bench.

It may be recalled in this context that in or about 1970 Sri Charan Singh headed a coalition ministry of which his party (B.K.D.) was the minor partner and the Congress (R) was the major partner. When the Congress (R) withdrew its support from the C.M. its ministers refused to resign. The idea was to force the C.M. to resign. C.M. advised the Governor to drop those ministers and to induct new ministers of the C.M.'s choice. He was fortified by the Advocate General's opinion. Governor Sri Gopala Reddy was not inclined to agree and he referred the issue to the Attorney General. Sri Niren De opined that where the coalition itself collapses the advice of the coalition C.M. was no longer binding. The Governor thereupon asked the C.M. to resign, but the latter declined. The Governor the dismissed the C. M., and as no alternative ministry could be formed, President's rule was imposed.

Point (for the Judicial Pay Commission) to ponder Justice must be cheap, but judges must be expensive.

-A.P. Herbert.

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