

Extraordinary situations call for extraordinary measures
By Justice D V Shylendra Kumar

*High Court of Karnataka,
Circuit Bench,
Gulbarga- 585 103
17-12-2009*

NETIZENS AND CITIZENS

I had never imagined that I will be getting back to you so soon. But we are not living in normal times and even high court judges like me are driven to a state of despair and helplessness and are being compelled to approach the masters in our constitutional scheme ie the citizens of our country, time and again.

Extraordinary situations call for extraordinary remedies and I am testing one such remedial measure.

The judicial system in our country has been shrouded in mystery, and secrecy as is perhaps the position elsewhere in the world and judges are expected to maintain distance, aloofness and should be inaccessible to the common people outside their office and outside normal course of judicial function, which is performed only in the court halls.

Well, I am a little different, I am not averse to take issues to the people of this country, I am not averse for inviting the people of this country to express their reactions and opinions to the happenings even within judiciary and particularly when, in-house corrective measures fail and I have a very strong feeling that things are going radically wrong even within the judicial system.

I am now confronted with such an extraordinary situation and as a judge of the High Court of Karnataka, I feel morally and constitutionally compelled to take certain steps and measures which can better the situation, improve the situation and at any rate at least arrest the negative developments.

In the wake of the news that the chief justice of Karnataka High Court is not sitting on the Bench and will not be discharging judicial function until notified otherwise having been very extensively covered in the press and other media today morning, I naturally expected that the chief justice will gracefully proceed on leave and will henceforth desist from exercising any functions which are part of the duties and responsibilities of a chief justice of the high court and even if one should not proceed on leave, I expected the chief justice not to exercise any authority and act on the administrative side of the high court which power and authority is a very important incidental function of the chief justice of the high court.

While it may not be necessary to go into all the details of the powers and functions exercised by the chief justice of a high court on the administrative side, for the present purpose it is suffice to inform you that the chief justice, exercises vast and important powers on the administrative side also. If a person exercising such vast powers on the administrative side is a suspect person, is a person under cloud, is a person whose past conduct and exploits does not inspire the confidence of the people and can possibly misuse and abuse the powers of a chief justice on the administrative side also, then it is highly desirable that the chief justice of the high court is prevented from exercising and using his powers on the administrative side also.

Administration

After I read the news items which had been prominently covered by the press, that the chief justice of our high court, will not henceforth exercise any judicial functions till notified

otherwise, I was curious to know as to whether the chief justice is exercising powers on the administrative side and to learn about the same, I had called R B Budihal, registrar general of the High Court of Karnataka at Bangalore over the phone, to ascertain the position. I was shocked and surprised to know that the chief justice has continued to exercise his power and authority on the administrative side, though he is not, now discharging his duties on the judicial side.

I immediately felt this is a strange and extraordinary situation and unless corrected immediately things may continue to deteriorate.

To work out the modalities, I was of the sincere opinion that all judges of the high court, should sit together, discuss the matter and take a collective decision to prevail upon the chief justice to refrain from discharging any administrative duties also, and for such purpose sent a communication to Budihal, to circulate a letter amongst my colleagues apprising them of the meeting of the judges to take place at 11 am on Saturday, Dec 19, to take a decision in this regard.

I learnt on the evening of Dec 17, from Budihal, that the chief justice before whom the matter was placed for orders, has declined permission for the meeting to take place on Saturday.

Now, this development is the cause for my present communication. This kind of response from the chief justice, to a proposal to hold a meeting of all judges of the high court to discuss an issue involving the conduct of the chief justice himself and is definitely not a matter over which the chief justice should take a decision by himself, has only confirmed my worst fears that the chief justice may even now continue to abuse and misuse his powers (including the power to recommend the names of persons to be appointed as judges of the high court after eliciting the views of his colleagues in the collegium) even when he is no more discharging his duties as chief justice of the high court.

In fact, grace and propriety require that a file containing a proposal of this nature, should have been directed to be placed before any other judge of the high court for orders, if at all an order is needed.

Well grace, propriety and good conduct are definitely not the strong points of our chief justice. Well, I will work out a way. But the point here is, that the people of the state and the country should be aware of such developments and also react to the same. It is for this purpose, I am posting this communication on the net.

Your response may be aired in public and also sent to justdvskumar@gmail.com. I may get back to you as and when further developments take place and as and when the situation so warrants.

No one can and should sit as a judge in his own cause — even the chief justice of a high court.

*With regards and good wishes for the present,
Justice D.V. Shylendrakumar,
Judge, High Court of Karnataka,
Bangalore, INDIA-560 001
Camp: Gulbarga Circuit
Bench 585 103*

<http://sites.google.com/site/justdvskumar/extraordinary-measures>