

A WORD OF COUNSEL TO SUB-ORDINATE JUDICIARY*

Soon, on my arrival in Guwahati and having enjoyed a sumptuous lunch hosted by the Chief Justice, I am very happy to find myself amongst the judicial officers of the State of Assam and Nagaland who have been chosen for appointment in Fast Track Courts and who have undergone two-days capsule training programme, specially tailored by the Judicial Academy here to suit requirements of such officers. I must congratulate you because of your qualities as judicial officers which your Chief Justice has told me. The very fact that you have been chosen to preside over the 'fast track courts' is suggestive of certain common qualities amongst you all. You are 'fast' (and not slow) in your performance. You are on the 'right track' as judicial officers. Your presiding over the courts assigned with the task of 'fact' disposal. These qualities of yours give the expression 'fast track court' its right meaning.

When your Chief Justice spoke to me that I have to visit this Judicial Academy where this training programme is going on, I was more than happy and grabbed the opportunity of being here without any hesitation. I was not lucky enough to have ever had the benefit of undergoing such an ideal training. I thought I would also be getting an opportunity of being a part of the trainees. To be a trainee is a pleasure. It is said that one continues to be a student throughout his life. You cannot find a student better than a Judge of the Supreme Court — one like me. According to a survey conducted by a leading newspaper, a Judge of the Supreme Court is supposed to read a thousand to two thousand pages from paper books or references connected therewith. Very little time is left available for systematically studying the abstract theory and the basics of latest advancements in the field of law. Our main source of learning are the beautiful and learned judgments, written by Judges of High Courts, which come to our hands as part of paper books. Some of them are pieces of literature; some of them wealth of jurisprudential thoughts; and some of them are both. We enjoy reading such judgments. We read the judgments analytically and at times critically — with a fault finding eye — because we are sitting in appellate jurisdiction over such judgments. We feel happy when we find that in at least nine out of ten judgments which we have read, we have not been able to find any fault with. This study upgrades and updates our knowledge of law. Such reading satisfies our lust for learning and passion of searching for pearls of all that is good in law. We end by enriching ourselves. Little did I know that I would be called upon to speak before you and that too by way of a valedictory address.

Be rest assured, I am not going to inflict on you any speech and certainly not any sermons. We are all members of one family. In a very informal way, just by way of a dialogue, I would share with you very intimately a few thoughts of mine as they occur — just thinking aloud!

We are all co-travellers of a sacred path. Dispensation of justice is an attribute of God. Blessed are those on whom that Godly assignment has fallen. Still blessed are those who acquit themselves of this assignment with pride, dignity and honour. However, today we are passing through a turning point on our path. These days are testing times for judiciary. We are full of challenges staring at us. Never before, the prestige and credibility of judiciary had faced such question marks as it is facing today. I remember the days when I was a young

lawyer just having entered the profession. I hail from a small township though district headquarters. In 60s, when I started my career in law, there were just three or four judicial officers, from District Judge to Civil Judge Class-II (or a Sub-Judge) posted in my home place. In any social function where the local Judge or Judges were invited, I used to witness a very exciting scene — exciting for me as a young lad. Whenever the time for main function would arrive, somebody would announce that 'Judge saheb' has arrived. He may be the Civil Judge Class-II, the Judge occupying the lowest rung in the ladder of judicial hierarchy. No sooner the arrival of the Judge was announced the front row in the seating arrangement would be vacated, by all the persons occupying it, for the Judge saheb to be seated. No person would collect courage to sit by the side of the Judge. Then the host would request one or two out of the most respected persons of the local society to come ahead and sit by the side of the Judge to give him company during the function. The presence of 'Judge saheb' added grace and glitter to the function and was considered to be a matter of honour for the host. That was the respect and social status, commanded by a Judge, without regard to his ranking and individual status. Within about forty years of my memory look at the place to which we have reduced and landed ourselves!! Recently, a Judge of the High Court was proposed to be transferred because there were certain allegations against him and because of his having suffered a dent in his reputation as a Judge the local Bar was agitating demanding his transfer. The Chief Justice of India proposed his transfer. The information, as to the place where he was proposed to be transferred, leaked out and the Bar Association of the place, where the Judge was being considered to be sent on transfer, started agitation demanding that the Judge be not sent there. There was a day when the Judge was most welcome by the society and his arrival was a matter of prestige and honour for the host. The day has come when even a Judge can be unwelcome. The only silver lining is that such aberrations are only a few — marginal, rather negligible. Yet the tendency has set in and we have to be on our guard — individually and collectively.

Making some introspection I find there are three factors on which, if we compromise, we as Judges suffer erosion in our acceptability and become subject to avoidable criticism. The three factors are: (i) punctuality, (ii) promptness, and (iii) probity.

Once you have accepted the office of a Judge your time is no more your own; it becomes a national property which you are holding in trust. If you waste time you are committing breach of trust. Any deviation from punctuality is disrespect to the trust reposed by the community in you. You must sit in the Court on time and also rise from the Court on time. It is no excuse for deviation from punctuality to say that if I sit half an hour late then I rise also half an hour late. You may feel happy that you have spent the required number of hours on duty but you should not forget that on account of your sitting late by half an hour and rising late by half an hour you are guilty of wasting one hour's time of others. Multiply this one hour by the number of litigants and lawyers whose day's schedule was disrupted on account of your deviation from punctuality. Late Justice Hidayatullah, the former Chief Justice of India, used to say that one who does not believe in punctuality of time does not believe in rule of law. Can you call him a Judge who does not believe in rule of law? A Judge is supposed to administer law and secure enforcement of rule of law. Can a Judge be believed to be administering the rule of law if he does not himself believe in rule of law?

The pronouncement of decision must promptly follow the conclusion of hearing. Ordinarily, a judgment must be pronounced on the day following the day of closure of

hearing. An ordinary working rule which can be adopted is that faced with judgment involving decision of certain complex issues of fact or law and which demands a longer sitting to construct a judgment, such judgment, if reserved, should in no case be allowed to cross one weekend. Your experience will tell you that a judgment needs, in terms of time, the same amount of investment whether you write it today or tomorrow; rather a delayed judgment needs more time for writing the same as the human memory is fallible and trying to recollect adversely tells upon time as also on the quality of the judgment. The lapse of time results in confusion and embellishment of facts. Though it is the natural urge of every Judge to produce a quality judgment as best as he can yet if there is an option between a poorly written but a prompt judgment and a well written but a delayed judgment, I would prefer the former. Delay gives rise to suspicion and rumours — both destructive of the reputation of a Judge. So far as the litigant is concerned, he is interested by and large in the operative part of the judgment; the quality of the contents are not of much relevance for him at least.

Probity ought to be top priority of a Judge. Once having occupied the seat of justice, a Judge remains a Judge for 24 hours. He is a Judge whether in the Court or in his personal chambers, whether inside or outside the home and whether discharging a judicial function or just shopping in a marketing complex. He is always under public gaze. Wherever he is recognized, it is because of his being a Judge. His every movement and every action is watched and judged by those around, applying the same standards as would be applied to a Judge discharging his judicial functions. Anyone who claims to be a Judge from 10 a.m. to 5 p.m. and a free man from 5 p.m. to 10 a.m. is just deceiving himself. The job of a Judge is too sacrosanct to permit the existence of two-in-one personality.

Very cursorily, I would like to give you few tips on the point of writing judgments. Though, you must tirelessly strive for achieving excellence yet in order to meet the constraints on time you cannot afford to write every judgment which would be a model one. Upto the level of District Court, you will certainly come across a good number of cases wherein a working judgment would do and meet the ends of justice, also satisfy your conscience that nothing more was needed to be done. Be precise but, brevity is the soul of any good drafting. Prolixity and verbosity ought to be avoided. Use plain, simple but chaste language. The advantage of using chaste and most appropriate expression is that it conveys to the reader the same meaning which the author had in its mind while wielding the pen. Do not start writing a judgment unless you have made up your mind on the line of treatment to be given to the subject and reasoning which you are going to adopt and the end which you propose to achieve. Divide your judgment in suitable paragraphs. The rules and orders framed by your High Court for the guidance of the subordinate judiciary would be containing guidelines on writing judgments. Learn them by heart. If such guidelines be not available then refer to any standard book on the art of writing judgments. Do not burden your judgment by multiplying the authorities. Follow the doctrine of precedents. For example, if a point of law is covered by a decision of Supreme Court, you need not refer to judgments by any High Court. Similarly, if a point of law is covered by a pronouncement of your own High Court then reference to authorities from other High Courts is uncalled for. A point covered by a precedent rendered by a Bench of larger coram need not be supplemented by reference to authorities rendered by a lesser coram. The mode of citing ruling is standardised. Every law journal prints next to its title cover the mode of citation.

Follow it. Be very careful in constructing the operative part of the judgment which should be very artistically and meticulously drafted. In civil cases, the operative part of the judgment is the decree of the Court and any omission or carelessness in constructing the operative part of the judgment may either render your decree incapable of execution or raise several questions and complication at the execution stage depriving the decreeholder of the fruits of success.

Every Judge is answerable only to his own conscience. So long as you have been true to your conscience do not mind if your decision is reversed, modified or confirmed in appeal. You do your job and let the Higher Court do its job. Do not take such reversals or modifications to your heart. These are the normal thing which will happen in the game which now you are destined to play every day. Take hints and learn for future. Needless to say the decision of the superior Court supersedes your decision and it is final and binding not only on the parties but on you as well. Do not fear anyone excepting the one who watches everyone. Of course do not violate the rules of discipline. Respect and abide by the authority of superior forum.

The role of a Judge in modern times is significantly different from the role of a traditional Judge. The globe is shrinking and science and technology are invading every walk of life and every segment of society. A Judge cannot afford to lag behind. A traditional Judge used to be on the back seat of a litigation. The conduct of the case was left by and large in the hands of the litigants and their lawyers. The modern Judge is a front-seat-driver. He holds the steering, controls the speed, applies the brakes and tactfully changes the gears regulating the speed and direction of the litigation for achieving the goal of justice — correctly and quickly. He assumes this role from day one, i.e. the date on which a plaint or complaint is presented to the Court. The traditional Judge used to be an adjudicator and interpreter of law. A modern Judge not only discharges the traditional duties but he is also creator of law and a social reformer. Look at the recent judgment pronounced by the Supreme Court, making it mandatory for the candidates at election of Parliament or Legislative Assembly to declare their assets, to make known their educational qualifications and to disclose their antecedents without which the fundamental right of a voter to seek information about the candidates, one of whom he is going to elect would be violated. This judgment would go a long way in cleansing the politics of the country and revolutionising the working of India as a democratic republic. The pronouncement of a Judge, once it achieves finality, is the law governing the parties. The decision of a Judge of the High Court is a binding precedent and a decision by a Judge of the Supreme Court is the law of the land. By his personal philosophy, expressed through his dicta, a Judge can create an atmosphere and influence the social order. Hence, the Judge is a creator of law and a social reformer.

A modern Judge must be possessed of robust common sense and ought to have knowledge of worldly affairs. But for these, the dispensation of justice by a Judge would be theoretical and not practical; it may be learned but may also be devoid of wisdom and utility. A Judge has to acquaint himself with the latest socio-economic trends, developing science and technology, including computers.

A Judge has to be kind and quick-witted. Justice divorced of mercy is half-justice. I would like to share two anecdotes with you.

Akbar, the great emperor, was enjoying juicy mangoes in his garden. He was surrounded by courtiers. The little son of the gardener came to have a glimpse of the King

and seeing him eating the mangoes, he could not resist his own temptation for having a mango or two for himself. He pelted a stone at the mango tree aiming at ripe mangoes hoping that a mango or two would fall down which he will be able to enjoy. As the luck would have it, the stone missed its aim and instead landed on the head of Akbar. The courtiers rushed and caught hold of the child and brought him to Akbar for being punished. Akbar looked at the child and sought for the counsel of his learned advisor Birbal and then pronounced his judgment — “Let a basket full of mangoes be given to the child.” The courtiers were surprised. Is it a punishment? Birbal explained to the inquisitive courtiers that the child deserved only that punishment. First, the question of *mens rea*. The child did not have any criminal intention. He wanted to have mangoes for himself and it is an accident — unintended indeed, that the stone hit the King. Secondly, the nature and quantum of sentence must befit the nature of the crime and justice cannot be divorced from mercy.

As to quick-wittedness, yet another anecdote from Akbar and Birbal. It so happened that at one time, the citizens of a place believed that a person was un auspicious even by appearance and anyone who would see the face of that man in the morning would meet with a misfortune during the course of the day. The courtiers demanded such a bad omen being expelled or administered a severe punishment. Akbar wanted to test the truth of the allegation. He directed the man to be brought in the *darbar* (court). When the arrival of the person was announced, Akbar thought if the person was brought in the centre of the court, the misfortune may befall the entire court if there is truth in the popular belief. He came down to the doorsteps. As the luck would have it, while talking to the ‘bad man’, Akbar slipped on the footsteps and fell down. Akbar felt convinced that the very glimpse of this bad man told the misfortune. Akbar sentenced the person to death by the following day. The wife of this man went to Birbal. The next morning Birbal asked Akbar of what had happened during the proceedings of the previous day’s Court as he was not present there. Akbar apprised him of the incident and the punishment given by him to the bad man. Birbal said — “My Lord, if I can show to you a person more un auspicious than that man would you pardon him?” Akbar said, “Yes. But you will have to prove what you say. Now bring that man to me.” Birbal said that the man was present there and then. Akbar asked who he was? Birbal said, “My Lord, I may be pardoned but then that person is you.” Birbal explained, — “By having a look at the face of the person you slipped on the steps and fell down but look at that man; by looking at your face he got a death sentence. Now think for yourself, Oh King, who is more un auspicious?” Akbar realised his mistake and withdrew the sentence passed by him. The morale of the story is that one who decides must be quick-witted. Sitting as a Judge and presiding over a court, you may come across situations which need to be handled tactfully and with wits. You must sharpen your wits.

Every case brought to you is a real story of a misery, misfortune or mishappening. Do not get involved. Be an onlooker and dispense justice with a firm and even hand. At the end of the day, leaving the court room and returning home, you must not carry the burden of those tales with you. Instead you must return a happy man with the feeling of satisfaction that you have discharged your duties — and discharged well — for the day. Next morning rise with a prayer that the God bless you with wisdom, courage and ability to dispense justice and end that day also too well.

You cannot change the whole world. Yet you have to strive for doing the people good. You have to fight against evil. God has bestowed that power on you. Do your best and do

not be bothered by the results. Recite a prayer every morning which I call the prayer of a Judge:—

“Oh God! Grant me courage
To change the things I can change;
Grant me serenity
To accept the things I cannot change;
And the Wisdom
To know the difference.”

* Valedictory speech delivered at Training Programme for Fast Track Court Judges on 16th March, 2003, at Guwahati.