THREE NEW ESTEEMED JUDGES OF TELANGANA HIGH COURT AND THEIR CONTRIBUTION

By
—K. RAMAKANTH REDDY,
Senior Advocate

Hon'ble Justice K. Lakshman

Hon'ble Justice T. Vinod Kumar

Hon'ble Justice A. Abhishek Reddy

In a significant development, the Central Government on August 24, 2019 issued orders appointing Advocates *Tadakamalla Vinod Kumar, Annireddy Abhishek Reddy* and *Kunuru Lakshman* as Judges of the Telangana High Court. The Ministry of Law and Justice issued a notification stating that the President has given his consent for the appointments. The Supreme Court Collegium recommended the appointment of above three Advocates under Bar quota and forwarded its proposal to the Centre to get President's nod. In order to ascertain suitability of the above named persons for their elevation to the Telangana High Court Bench, the Collegium consulted its colleague conversant with the affairs of this High Court for his opinion. We can certainly say this appointment is the best the Hon'ble High Court and the Hon'ble Supreme Court collegiums could deliver.

The appointment of Justice *Vinod Kumar*, Justice *Lakshman* and Justice *A. Abhishek Reddy* as Judges of the High Court of Telangana at Hyderabad, the appointments that reinforced the faith of the public and the fraternity in the collegiums system. The approach of the learned Judges in a given case, their temperament, disposal speed and handling of innumerable number of cases every day, makes me nostalgic reminding me the yester year Judges of the 80s who were totally committed to justice and speedy disposal. The following are the few recent judgements which gives us insights into their sound decision making which is somewhat shaping the Indian judiciary in drastic way.

Hon'ble Justice *K. Lakshman*, in *Mohd. Wazeed Vazeed and others v. State of Telangana and another*, 2021 (1) ALT (Crl.) 241, while dealing with an application under Section 482 Crl. Procedure Code 1973, seeking quashing of alleged offences under Sections 34, 305 and 323 of Indian Penal Code 1860 and Section 3(2)(v) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. Justice *K. Lakshman* discussed in detail when Section 482 of Criminal Procedure can be

invoked to quash the proceedings in terms of the compromise and further held that, "*to constitute offence under Section 306 of IPC, there must be an active act or direct act with mens rea to drive a person to commit suicide. While considering the compromise/settlement between victim and offender, it is required to consider the antecedents of accused, conduct of accused, namely, whether accused was absconding and why he was absconding; how he had managed with the complainant to enter into a compromise etc.*"

Justice *K. Lakshman*, in *State of Telangana through the Station House Officer, Prohibition and Excise Station, Secunderabad v. Akaram Ranjith*, 2021 (1) ALD (Crl.) 1002 (TS) = 2021 (1) ALT (Crl.) 251, while dealing with an application under Section 439(2) Criminal Procedure Code as regards alleged offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 8(c) and 20(b)(ii)(B) and 37, held, bail if obtained by misrepresentation can be cancelled. It was held that bail under Section 37 of NDPS Act can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail.

In *Agni Aviation Consultants and another v. State of Telangana rep. by Secretary AH & RSAD, Hyderabad and others*, 2020 (5) ALD 561 (TS) (DB) = 2021 (1) ALT 13 (DB) (TS), dealing with limitation period and liability of the contracts entered by the composite State of Andhra Pradesh and Section 60 of the A.P. Reorganization Act, 2014 with contracts which had been entered into by the composite State of Andhra Pradesh and the liability under such contracts to the successor States of Telangana and Andhra Pradesh. It was held that limitation is a mixed question of law and fact and limitation for Arbitration Application needs to be filed within three (3) months from the date of receipt of a copy of Arbitral Award.

In *Ayush Mahendra v. State of Telangana*, 2021 (1) ALD (Crl.) 491 (TS) = 2021 (1) ALT (Crl.) 230 (SB), Justice *Lakshman* dealing with Section 482, Sections 417 and 420 of Indian Penal Code, 1860, held that co-accused can be a surety under civil law the surety has to pay if principal debtor fails to pay under criminal law, the person, who offers surety cannot be sent to jail if the accused fails to attend the Court. In this matter, the Court has granted bail to the petitioner by imposing certain conditions. The Station House Officer has refused to receive the surety on the ground that mother of the petitioner/accused cannot stand as surety and she is also going to be included as an accused in the case as there are specific allegations against her. Generally, the surety must be a genuine person and should not be a bogus person. There is no prohibition in the Code that the co-accused cannot stand as surety to any accused. There is no provision in the Code to take any other step/action against surety except forfeiting the surety amount, and initiating the procedure. The mother of the petitioner whether she is a co-accused or not can stand as surety. The notable points provided by Justice *Lakshman* was about the types of sureties where he held that the Court cannot demand personal surety, property surety and cash surety, at a time. It is not cumulative, it is alterative. In a bailable offence under Section 436 of the Code, the police is bound to release the accused on bail. A station bail cannot be cancelled by the police. Cancellation of bail is the exclusive power of the Court. Further held that there is no provision in the Code to take any other step/action against surety except forfeiting the surety amount, and initiating the procedure. There is no prohibition in the Code that the co-accused cannot stand as surety to any accused. The surety bond is given to the Court which is a bond between the surety and the Court where the surety undertakes, assures, guarantees the appearance of the accused in the Court.

They can apply to the Court for discharging himself from the surety bond. The Court can accept cash surety, instead of personal surety.

Interestingly, during the pandemic and the situation of Court in its hearings Justice *K. Lakshman* wisely in the matter of *Merugu Narsaiah @ Narsimha Reddy and others v. State of Telangana,* 2020 (4) ALD 510 (TS) (DB) = 2021 (1) ALT 312 (DB) (TS), held that compensation cases, issues relating to adequate payment of compensation to land losers and their Rehabilitation and Resettlement cannot be postponed when All the High Courts in the country including the Supreme Court have been doing hearing of matters mostly through Video Conferencing since 24.3.2020 and it is not as if only this High Court is adopting that mode. Dealing with a matter in deprivation of agricultural land, it was held that it is traumatic, more so, when compensation as per the Law of the land is not paid at the earliest and proper Resettlement and Rehabilitation, as per law, is not done. Further, no adjournment can be done merely because there was a change of the Bench before which these matters were listed, one cannot ask us to simply adjourn the matters to an unknown future date.

In a very recent well crafted judgment, Justice *K. Lakshman* held that Magistrate do not have power under the Code of Criminal Procedure to order deportation of foreign citizens in case of violation of Foreigners' Act or otherwise and should confine his findings with regard to acquittal or conviction of the accused under Section 248 of Cr.P.C.

In respect to Hon'ble Justice *Tadakamalla Vinod Kumar* and his notable judgements, in the matter of *K. Shailendra Moses and others v. State of Telangana*, 2021 (2) ALD 325 (TS) (DB) = 2021 (2) ALT 434 (DB) (TS), dealing with writ petition filed against the order passed in O.A., by the Central Administrative Tribunal, Hyderabad Bench. The writ petitioners seeking to include their names in the select list for being considered for promotion. It was held that it is settled proposition of law that general rules provide broadly for recruitment to services of all the departments to cover situations that are not covered by the Special Rules of any particular department. The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. That the intention of the Legislature must be found in the words used by the Legislature itself. It is not open to adopt any other hypothetical construction if an incumbent is appointed after due process of selection either to a temporary post or a permanent post and such appointment, not being either stopgap or fortuitous, could be held to be on substantive basis. But if the post itself is created only for a limited period to meet a particular contingency and appointment thereto is made not through any process of selection but on a stopgap basis then such an appointment cannot be held to be on substantive basis. The rule making authority intended to include every member of service for being eligible for the purpose of promotion to the posts of IFS, then they simply could have used the words member of service instead of using the word substantive. A plain understanding of the term *Ad-hoc* post/promotion it is an arrangement created for the purpose of carrying on with the services of the post temporarily until a permanent incumbent arrived to that post. Forest Range Officers is not a service as approved by the Central Government for the purpose of the Rules under the IFS (Recruitment) Rules or the IFS Regulations, 1966 for appointment by promotion to IFS *De-hors* the various

theories of termed *ad-hoc* service, the meaning and interpretation adopted by the Central Government prevails, and it is statutorily enabled to do so, unless it is otherwise held in an action in a Court of law.

In *G. Balasaraswati and others v. Union of India and others*, 2021 (2) ALT 214 (DB) (TS), dealing with Article 226 of the Constitution of India, 1950 and matter pertaining to disputed questions of facts. It was held that without knowing the defence of defendants in the suit it is difficult to get a complete picture to draw any conclusion in the matter. The Court is not inclined to go into the several contentions advanced in the writ petition and conduct a parallel enquiry to that which would happen in the civil suit when it would go to trial. There are several disputed questions of fact which would arise for consideration. The notable point of this matter is that the High Court cannot allow itself to be used as a private investigator by the petitioners to prove their contentions which are essentially meant to be adjudicated in the civil suit.

In *Ramky Infrastructure Limited v. State Telangana*, WP No.24495 of 2019, dealing with an issue of whether the High Court in exercise of jurisdiction under Article 226 of the Constitution of India can direct registration of an FIR on the basis of the complaint made by the petitioner. Justice *Kumar* by taking reference of *Sudhir Bhaskar Rao Tambe v. Hemant Yashwant Dhage and others*, (2016) 6 SCC 277, held that "*that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226* of the Constitution of India, but to approach the Magistrate concerned under *Section 156(3)* CrPC. If such an application under *Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere*."

Justice *Kumar* opined that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, it was held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under *Section 156(3)* CrPC and if he does so, the Magistrate will ensure, if *prima facie* he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

In *Allu Srinivasa Rao v. State of Telangana*, 2020 (4) ALD 479 (TS) = 2020 (2) ALD (Crl.) 839 (TS) = 2021 (1) ALT 429 (TS), dealing with registration of FIR and concept of 0 (Zero) FIR. Justice *Kumar* held that it is only from the 4th December, 2019, the 0 (Zero) FIR concept was introduced in the State of Telangana, where a complaint can be lodged in any police station even if the offence takes place outside the territorial jurisdiction of the said police station. 0 (Zero) FIR was introduced only in respect of offences against women such as women missing cases and not in relation to other cases. It was further held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is

extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

In *M. Naveen Kumar v. State of Telangana*, 2020 (3) ALD 248 (TS) = 2021 (1) ALT 112 (TS), Justice *Tadakamalla Vinod Kumar* dealing with Advocates Act, 1961 and Section 19(2)(b) A.P. LAWCET Rules, 2004, Rule 3 Legal Education Rules, Rules 7 and 8 Admission to Law Course, a writ petition was filed under Article 226 of the Constitution of India for issuing a writ of *mandamus* to declare the action of not approving/ratifying the admission of the petitioner into three year LLB Course under convenor quota. It was held by the Hon'ble Justice that mere fact that the petitioner took a longer time to qualify at such examination would not convert the otherwise a single sitting course into a regular course where the candidate would be undergoing the studies by attending to classes on regular basis. The claim of petitioner possessing degree equivalent to degree obtained through regular three year duration is misplaced. Bar Council of India has been entrusted with the function of laying down the standard of legal education and recognition of degree in law for the admission as an Advocate. The claim of the petitioner that the condition relating to candidate requiring to have qualifying degree examination through three year regular course as having been introduced subsequent to the conduct of LAWCET 2019, is without basis and is liable to be rejected. The enforceability of Rules of Legal Education, 2008 under Part 4 of BCI Rules insofar as it relates to standards relating to legal education is concerned, the same is no longer *res integra*. The notable point of this judgement is that recognition of degree in Law Bar Council of India has been entrusted with the function of laying down the standard of legal education and recognition of degree in law for the admission as an Advocate.

In respect to Hon'ble Justice *Abhishek Reddy*, there are noteworthy judgements which can be discussed to enlighten his mettle in the legal fraternity. For instance, in *I.N. Agrovet Products, Nalgonda District rep. by its Managing Partner Eddulu Illaiah Yadav and another v. State of Telangana*, 2019 (3) ALT (Crl.) 169 (DB), dealing with a matter under Sections 133, 138 and 254 of Criminal Procedure Code, 1973 pertaining to closure of factory without following Procedure under Section 133 Cr.P.C., it was held that either a District Magistrate, or a Sub-Divisional Magistrate, or any other Executive Magistrate, can pass a conditional order to remove the obstruction or the nuisance before such an order can be passed, the Magistrate is required to record the evidence in the manner as in a summons case. Prior to passing an order under Section 133 Cr.P.C., the Sub-Divisional Magistrate is required to follow the procedure established under Section 138 read with Section 254 Cr.P.C. The notable point of this case pointed by Justice *Reddy* is that before such an order can be passed, the Magistrate is required to record the evidence in the manner as in a summons case.

In *V. Chakradhar Reddy v. G. Raveen Kumar*, LPA No.1 of 2020, questions that arose before Justice *Reddy* were : (1) whether a person, who is not bound by a direction issued by the Court could be held guilty for committing contempt of Court for his conduct in either directly aiding and abetting

violation on part of the person who is bound by such direction; and (2) what is the extent of liability of such person. Justice *Reddy* while discussing the power of High Court held that "*it emerges that the High Court, as a Court of Record, has undoubtedly inherent power as enshrined in Article 215 of the Constitution of India to punish for its contempt and to have all the powers of such a Court of record to pass orders in exercise of its inherent power to help the administration of justice, and Rule 27 of the Contempt of Court Rules framed by this Court by virtue of the powers conferred under Section 23 read with Article 215 of the Constitution only reiterates what is enshrined in Article 215 and is in conformity with the ratio laid down by the Courts in the above mentioned cases.*" Further held that if in a given case the Court comes to the conclusion that change in the circumstances is such that no relief can be granted while exercising its inherent jurisdiction, then the Court may refrain from passing any order and simply dispose of the contempt application. But, on the other hand, if the Court, after examination of the facts and circumstances, finds that interests of justice warrant to give relief and if it is possible to give such relief, nothing prevents the Court from passing appropriate orders giving such relief.

In matter of *Sultan Quaan v. State of Telangana*, 2020 (2) ALD 304 (TS) (DB) = 2020 (3) ALT 284 (DB) (TS), dealing with Sections 14 and 15 of Wakf Act, 1955 relating to appointment of member of Wakf Board, the appellant-petitioner has challenged the legality of orders passed by a learned Single Judge wherein he challenged the continuation of the respondent as Member of the Wakf Board. Justice *Reddy* held that State Government is empowered to elect one and not more than two members from the Muslim Members of the State Legislature to be a Member of the Wakf Board. In its wisdom, the Parliament has restricted the deeming provision only to the Members of the Legislative Assembly, and has not extended it to the Members of the Legislative Council. Since the respondent was a Member of the Legislative Council, even if his term has come to an end, even then he cannot be deemed to have vacated his membership of the Board. In fact, he shall continue to serve as a Member of the Board till the end of his tenure as a Member of the Board in terms of Section 15 of the Act. The noteworthy points of this judgement provided by Justice *Reddy* is *Wakf Board State Government* is empowered to elect one and not more than two members from the Muslim Members of the State Legislature to be a member of the Wakf Board. Further, the Parliament has restricted the deeming provision only to the Members of the Legislative Assembly, and has not extended it to the Members of the Legislative Council.

In a leading judgement of *T. Jeevan Reddy v. The State of Telangana*, WP (PIL) Nos.136, 142 and 145 of 2016 and 66 and 71 of 2019, 2020 (6) ALD 323 (TS) (DB), wherein two different sets of writ petitions, in the nature of Public Interest Litigation, have been filed before the High Court. Initially, in 2016, three writ petitions were filed, namely WP (PIL) Nos.136, 142 and 145 of 2016, challenging the Cabinet decision dated 31.1.2015, whereby the Council of Ministers had resolved to construct a new Secretariat building complex in the same campus where the Secretariat buildings were existing. Justice *Reddy* resolving all the qualms and confusion about this held that the responsibility of Governor is to protect residents of common capital of Hyderabad for these issues: (1) On and from the appointed day, for the purposes of administration of the common capital, the Governor shall have special responsibility for the security of life, liberty and property of all those who reside in such area. (2) In particular, the responsibility of the Governor shall extend to matters such as law and order, internal security and security

of vital installations, and management and allocation of Government buildings in the common capital area. (3) In discharge of the functions, the Governor shall, after consulting the Council of Ministers of the State of Telangana, exercise his individual judgment as to the action to be taken. While dealing with "allocation of Government buildings" it was held in his words that "*it would be relevant as long as Hyderabad continue to be a common capital for the twin States of Andhra Pradesh and Telangana. However, as presently, Hyderabad is no longer a common capital of the twin States, the very question of "allocation of Government buildings" would no longer be alive. Therefore, it is unjustified in claiming that the power to allocate a building rests only with the Governor, and could not be exercised by the Cabinet. Since the buildings of the Secretariat no longer need to be allocated between the State of Telangana, and the State of Andhra Pradesh, the Governor invoking his power would not even arise. In conclusion, this Court does not find the impugned Cabinet decision either unreasonable, or arbitrary, or contrary to any provision of law.*"

In *R. Ashmita v. Narendra Prasad Jaiswal and others*, 2020 (6) ALD 459 (TS) (DB) = 2020 (1) ALT 369 (DB) (TS), dealing with a matter under Section 455-A of Greater Hyderabad Municipal Corporation Act, 1955 pertaining to regularisation of Building constructed without sanctioned plan, Justice *Reddy* held that once an explanation/ representation has been filed by the Party the GHMC is legally bound to consider the same prior to passing the demolition order. The GHMC is required to consider, and to pass a reasoned order on the explanation/ representation. Therefore, the quotable point of this decision was before any order is passed by the GHMC, which may adversely affect the interest of the respondent and the interest of the appellant, both the parties have necessarily to be heard by the GHMC.

Perusal to the above mentioned noteworthy judgements of three Hon'ble Justices, we can certainly say that the Supreme Court has chosen the best of the best Judges in the lot in terms of preserving the sanctity of the Collegium system and its appointment process. The Collegium system has given us these three esteemed Judges who have not just proved their mettle in their advocacy during their practise but also leading the judicial fraternity with the same rationality and diligence which has so far contributed a lot. In the coming years, these Judges will shape the dynamics of the judiciary in a major way with the intellect and determination shown by these Hon'ble Justices while sitting on the chair of such great responsibility. The manner in which they have delivered the judgements so far is nothing but the result of their practical outlook gained by them during their bar practise years which is tremendously helping the judiciary in giving sound and speedy justice which is completely fulfilling the expectations for which these three learned Judges have been appointed.