

COMMON CAUSE

VOICE OF "COMMON CAUSE"

PERSPECTIVE

Expansion of Membership of COMMON CAUSE, and appreciation of its work from various parts of the country, are heartening and very welcome indeed. We deem it a privilege to have been able to serve various public causes.

With the assistance provided by COMMON CAUSE in taking up cudgels on their behalf the pensioners feel transformed, besides feeling grateful to the organisation. They now feel that they can no longer be taken for granted and be consigned to the scrapheap; that they count. This is evidenced by the variety of problems they are increasingly highlighting and the additional areas of social welfare work which their organisations are taking over. The pensioners of State Governments are taking to their respective High Courts the matter of removal of discriminations on the lines suggested by us where the State Governments have not yet fallen in line with the implementation of Supreme Court judgement. To all pensioners we convey our salutations and grateful thanks for the support they are providing to COMMON CAUSE by contributing one month's increase of pension. To a particular old pensioner we are as much indebted for his remitting through money order the amount of Rs. three comprising his increase of pension, as to another who has remitted Rs. five, and to another who has remitted the amount of Rs. 268 as the amount of pension increase. To the authorised organisations of pensioners we are beholden for their collecting the contributions and remitting these to us.

In this issue of the periodical we have included certain new features : a write-up on "HOW TO WRITE YOUR WILL" which will be of interest to everybody; reproduction of our Writ Petition on Family Pension which is of interest to over 50,000 pensioners; reproduction of our Writ Petition relating to Maruti Cars which will be of interest to everybody and particularly to 1,35,000 applicants who are waiting in the queue for allotments of these cars; reproduction of an article on consumer protection movement at Bombay which needs to be duplicated everywhere; and a brief outline on the Project of LOK ADALATS (People's Courts) which we propose launching

Central Budget

Lok Adalats Project

Family Pension Writ Petition

How to Write Wills

Maruti Cars Writ Petition

All are welcome to reproduce any material from this publication.

This publication is not a monthly. It is at present issued once a quarter. There is no subscription. It goes free to Members of COMMON CAUSE.

CENTRAL BUDGET AND OUR RECOMMENDATIONS

As in the previous three years. COMMON CAUSE made its recommendations to the Finance Minister well in time before the Budget, in the areas of Personal Taxation and Direct Taxes which are of importance to the middle classes. We consider it necessary that people should be aware of the *raison d'être* and justification of the recommendations so that voice of the people should continue to rise where the impositions need to be amended.

Our recommendations, and provisions made in the Finance Bill of the Budget, are given below in brief.

INCOME TAX

(i) We had recommended that the exemption limit should be raised to Rs. 25,000 and the Compulsory Deposit Scheme which was introduced as a purely temporary measure and continues to be a halter round the neck of assesseees, should be withdrawn. In the budget the exemption limit has not been increased, but the rates of tax at levels above Rs. 20,000 have been reduced by 5%.

(ii) Our recommendation was that for stimulating savings the present limit of Rs. 40,000 prescribed under Sec. 80-C should be enhanced. The budget is silent in regard to this recommendation.

(iii) We had urged that there should be no tax deduction at source in respect of holders of small shares and debentures because those who are non-assesseees generally lose the deducted tax amidst the prescribed procedures. It is gratifying that in the Budget provision has been made that where the income from dividends and debentures is less than Rs. 1,000/-, there will be no tax deduction at source. This will save the small shareholders from the bother of seeking refunds.

WEALTH TAX

(i) Our suggestion was that the prescribed minimum limit of exemption of Rs. 1.65 lakhs should be enhanced substantially and the value of one house should be totally exempt from wealth tax. In the Budget the exemption limit relating to prescribed

investments has been increased from Rs. 1.65 lakhs to Rs. 3 lakhs taking into account the provision also for Unit Trusts, and the exemption limit of residential house has been increased from Rs. 1 lakh to Rs. 2 lakhs, increasing the total exemption limit to Rs. 5 lakhs. It will apparently be an uphill task to convince the government about desirability of totally exempting the residential house from wealth tax. With the enormous escalation that has come about in the property values during the past few years, retention of exemption even at Rs. 2 lakhs of a residential house will continue to be unwelcome imposition.

(ii) We had suggested that the interest on gift made to a spouse, exempted upto Rs. 50,000/-, once in one's life time, should not be included in the wealth tax of donor. This worth-while suggestion has been disregarded.

(iii) We had urged that valuation of assets should be simplified as has been done in the case of residential premises and that appropriate rules should be framed for non-residential premises, unquoted equity shares, land and houses/flats in cooperative societies and flats in multi-storeyed buildings. We had also suggested that the valuation of jewellery should be reconsidered and brought in line with the valuation vide the recent amendment of valuation of residential house. It was also suggested that time limit for completing the wealth tax assessment should be reduced to two years to bring it in line with the income tax. These suggestions have not found favour.

ESTATE DUTY

There are a number of anomalies and irrationalities in the Estate Duty Act which have continued to be pointed out to the Government, but it is regrettable that the present Budget has failed to deal with any of them. The obvious anomaly arises from the exemption limits which have now been prescribed for the wealth tax and which are at variance with the provisions made in the Estate Duty Act. Property which will be exempt from wealth tax will become subject to estate duty on the passing away of the owner. This in no way can find support in the plea

that wealth tax and estate duty, as well as gift tax, are means for curbing the concentration of wealth.

Estate duty is increasingly becoming a tight noose round the necks of everybody. On any death it has become necessary to secure estate duty clearance, with all its attendant problems and areas of corruption, even though the property of the deceased may not be anywhere near eligibility for imposition of estate duty. No succession certificate or probate can be secured except after securing the estate duty clearance certificate.

We had strongly urged that one residential house must be totally exempt from estate duty, with the prescription, where necessary, of a ceiling on accommodation. Various other suggestions relating to estate duty had also been made in the context of the absurd exemption limits which were prescribed three decades ago when the legislation was enacted. It is greatly regrettable that no solution in regard to these matters has been put forth in the Budget.

MISCELLANEOUS

We had also made suggestions for removal of anomalies and irrationalities in the existing provisions of gift Tax and Capital Gains Tax. These too have been disregarded by the government.

It is necessary that people should acquaint themselves with the various problems relating to these different taxation measures and their aberrations, anomalies and irrationalities. Efforts must continue to be made at all levels for raising voice for persuading the government to remedy the shortcomings and defects. Government must not be allowed to continue to remain insensitive to the requirements which people feel to be of importance and which are appropriate in the present circumstances.

In presenting these particulars we have not considered it necessary to dilate upon other aspects and provisions of the Budget. These have already come adequately before the people.

PROJECT OF LOK ADALATS

A project of LOK ADALATS is being operated as part of operations of Legal Aid Committee in certain States which have been established under the general guide-lines of the Central Committee for Implementing Legal Aid Schemes under the Chairmanship of a Judge of the Supreme Court of India.

LOK ADALATS, as the name signifies, operate as People's Courts, But the objective of these courts is to bring about conciliation, settlement and compromise between the disputants. Success of the project of LOK ADALATS has potential of enormous benefit to the people and the country in reducing the pressure on courts, in generating climate of amity and goodwill, and saving the disputants the agony of delays in courts.

LOK ADALATS have achieved considerable success, particularly in the State of Gujarat. In the period of about six months it received about 13,000 cases and disposed of by settlement about 8,000 cases. Such Adalats are functioning also in Tamil Nadu, Maharashtra and certain other States. An experiment has recently been started in Bombay.

COMMON CAUSE in collaboration with the Legal Aid Implementation Committee is exploring the possibility of launching the LOK ADALATS project at Delhi. Preliminaries in this regard are being worked out. Initially the objective will be to start five LOK ADALATS, one each in different parts of Delhi, with their areas of jurisdiction defined. Each ADALAT will be presided over by three ADALAT MEMBERS and will be assisted by a convenor. Following are the broad guide-lines within which these ADALATS will function

(i) The types of cases that will come to the LOK ADALATS will include those of disputes relating to estate, property, matrimonial, money claims, municipal disputes, government disputes, telephone disputes, rent disputes, school management disputes, labour disputes, accidents, cooperative societies disputes, and compoundable offences under Criminal Law.

(ii) Any party to the dispute can submit application in the prescribed form to the convenor of the court. In the application he will give name and address of the opposite party, brief particulars of the dispute, indicating whether and where the dispute is already pending before a court.

(iii) The LOK ADALAT will issue letter to the opposite party requesting his presence of the fixed date. Processes of conciliation and negotiation will be undertaken in the ADALAT and the parties encouraged and persuaded to settle the dispute.

(iv) Pre-litigation disputes as well as disputes pending before any court can be brought before the LOK ADALAT. Where compromise is effected in respect of dispute pending in a court of law, the compromise will be forwarded to the concerned court for being filed. Where the compromise is in respect of pre-litigation matter, it will be reduced in writing on appropriate stamp paper and exchanged between the parties.

(v) Lawyers will be permitted to appear for the parties if they so desire.

(vi) No costs will have to be incurred by the parties

(vii) Files on all cases will be maintained, and kept for record.

For ensuring success of the project, the ADALAT MEMBERS will be selected from among persons of status, experience and reputation. They will contribute their valuable time to the project on voluntary basis; their out-of-pocket expenses and the remunerations of the officials assisting the ADALATS will be paid.

Initially it is proposed to hold the sessions of the LOK ADALATS twice every week, preferably on Saturdays and Sundays (from 10 A. M. to 1 P. M.) when accommodation for the purpose may be available in community centres, colleges, schools etc. In each of the five centres, two ADALATS will initially operate, each of them given the jurisdiction in respect of the types of cases which will go before them from the list of types of disputes mentioned above.

Cooperation of the municipal body and concerned government department, which may be parties to certain types of cases, will be sought for successful operation of LOK ADALATS

Publicity to the project will be given through the utilisation of media of press conference, TV and radio, for reaching out to the parties who would thereby be encouraged to take their matters to LOK ADALATS.

FAMILY PENSIONS WRIT PETITION

Pensioners and their organisations keep making enquiries about the position regarding our Writ Petitions on Pension Commutations and Family Pension. The Pension Commutations Petition is expected to come up for hearing in the coming weeks. We are again making submission to the Chief Justice of India for an early hearing. The Family Pension Petition stands admitted in the Supreme Court. The Government is delaying submission of its reply. On receiving the reply we will submit our rejoinder, and thereafter the Supreme Court will fix a date for its hearing.

Meanwhile, on the request of a number of pensioners and their organisations we reproduce below the main contents of the Family Pensions Writ Petition so that the pensioners should be aware of the main thrust of this Petition.

The Pension Commutation Petition has already featured in a previous issue of this periodical.

In the Family Pension Petition the Petitioners comprise COMMON CAUSE and five very old pensioners in their 70's and 80's and a widow. Their names and particulars have not been given in this reproduction of the Petition

MAIN CONTENTS OF THE WRIT PETITION

1. There are glaring anomalies and discriminations in the matter of grant of family pensions to the widows and other beneficiaries of Central Government pensioners. These are caused by the operation of the existing relevant Rules embodied in the Central Civil Services Pension Rules of 1972 and the corresponding Rules applicable to pensioners of Defence Services. The mentioned discriminations are violative of Article 14 of the Constitution of India, besides constituting a serious lapse in the discharge of the obligations imposed by Article 41 of the Constitution which enjoins the State inter alia to make effective provision for providing public assistance in cases of old age, sickness and disablement, and in other cases of un-deserved want.

2. The particular terms and conditions relating to family pension are embodied in Rules 54 and 55 of the pension Rules, 1972, and corresponding regulations concerning the Defence Services. In substance, the following points emerge from these Rules and other related rules, which lead to the anomalies and discriminations :-

(i) Family pension is deprived to the widows and beneficiaries of those persons who retired prior to 1.1.1964 and who have since died. Their widows are not entitled to pension. These include widows of pensioners who retired after requisite qualifying service or who were entitled to disability pension.

(ii) Family pension will also be deprived to the families of those pensioners, who retired after requisite qualifying service or were given disability pension prior to 1.1.1964 and who are still alive. On their demise, their widows will not be entitled to pension.

(iii) The quantum of Family Pension is restricted to the maximum of Rs. 150/- p.m. in the case of pensioners who were in service prior to 1.1.1964 and who were governed by the Pension Scheme

in force before the commencement of the revised Pension Rules which came into effect from 1.1.1964.

(iv) In the cases of all other pensioners whether they were in service prior to 1.1.1964 or came into service later, but who are governed by the Liberalised Family Pension Rules with effect from 1.1.1964, the maximum limit of quantum of Family Pension is Rs. 250/- p.m.

(v) When the present Family Pension Scheme was promulgated, for coming into force with effect from 1.1.1964, it was prescribed that a contribution of an amount equal to two months' emoluments, or Rs. 5,000/-, whichever was less, would be recovered from the Death-cum-Retirement Gratuity of the pensioners, for entitling them to come within the terms of this Family Pension Scheme, which is now known by the name of Contributory Family Pension Scheme (Rules 54 of the Pension Rules 1972). Those who opted to remain within the terms of the previous Pension Scheme did not have to make this contribution of two months' emoluments from Death-cum-Retirement Gratuity, and the family pension in the case of such Pensioners is now termed as Non-Contributory Family Pension Scheme (Rule 55 of Pension Rules, 1972). The benefits of Non-Contributory Family Pension Scheme were restricted to the Families of (a) government servants who died while in service after completion of not less than 20 years' service and (b) government servants who had rendered qualifying service of not less than 20 years and who died within five years of the date of retirement. The quantum of Family Pension admissible in either of the cases under (a) and (b) was specified. In the case of a government servant who has rendered qualifying service of more than 20 years, and who has outlived the period of five years from the date

of retirement, but who is considered to be governed by the Non-Contributory Family Pension Scheme, (Rule 55), the operative restriction of the maximum of Rs. 150/- p.m. on the family pension is palpably discriminative.

(vi) The provision of contribution of two months' emoluments, subject to the maximum of Rs. 5,000/- which was embodied in the Rule 54 of Contributory Family Pension Scheme, was subsequently, with effect from 22.9.1977, deleted with the result that no contribution was expected subsequent to this date from the pensioners for entitling them to the benefits of the Contributory Family Pension Scheme. Thus, in effect, the basis of differentiation between the Contributory and Non-Contributory Family Pension Schemes was done away with, but the differentiation between the pensioners, who retired after rendering more than 20 years' qualifying service, still continues, inasmuch as the family pension in respect of pensioners governed by the Non-Contributory Family Pension Scheme is still subject to the maximum limit of Rs. 150/- p.m., whereas the maximum limit for the pensioners governed by the Contributory Family Pension Scheme is Rs. 250/- p.m.

3. The anomalies and discriminations arising from the operation of these Rules of family Pension will be exemplified by taking the case of any official of the level of Clerk, Assistant or Subedar etc., but for facilitating consideration of the anomalies, it would be appropriate to take the case of a Section Officer or Under Secretary on the civil side and a Captain or Major on the Defence side, as their widows would become entitled to the maximum provided under the respective Family Pensions Rules.

4. If the Section Officer, Under Secretary, Captain or Major, taken as example, retired or was given disability pension prior to 1.1.1964, and has since died, no pension is payable to his widow or to any minor child. If the concerned officer, who retired or was given disability pension prior to 1.1.1964, is still alive, when he dies, his widow or minor child will not be entitled to any family pension. On the other hand, if the officer of similar status and responsibility retires or is given disability pension in any year subsequent to 1.1.1964, his

widow or minor child becomes entitled to family pension on his demise whether it has taken place already or when it takes place. If the same official, of the rank of Section Officer/Under Secretary/Captain/Major, at the time of retirement or disablement has come within the purview of Contributory Family Pension Scheme on having agreed to contribute two months' remuneration from his Death-Cum-Retirement Gratuity, his widow will be entitled to the family pension of Rs. 250/- p.m. throughout her life. If, on the other hand, an official of same status did not come within the purview of Contributory Family Pension Scheme, and chose to remain in the Non-Contributory Family Pension Scheme, his widow would be entitled to the pension of Rs. 150/- p.m. If an official of same status and responsibility retired after 22.9.1977, he was under no obligation to contribute two months' remuneration from his Death-Cum-Retirement Gratuity, and on his demise, his widow would get the family pension of Rs. 250/- p.m. throughout her life.

5. The Petitioners state that they have taken the example of Section Officer/Under Secretary/Captain/Major for exemplification of the discriminatory operation of the Family Pension Scheme. Some anomalies and discriminations would be evident in the cases of all levels of officials down to peons/sepoys and ratings. It is a matter of serious concern that the widows of pre-1.1.1964 pensioners are totally deprived of any family pension benefits; the widows of those post - 1.1.1964 and pre - 22.9.1977 pensioners who came to be categorised in the Non-Contributory Family Pension Scheme are entitled to quantum of family pension the maximum of which is limited to Rs. 150/- p.m.; the widows of those post 1.1.1964 and pre-22.9.1977 pensioners who, on payment of two months' remuneration from their Death-Cum-Retirement Gratuity, came within the category of Contributory Family Pension Scheme, as well as the widows of those pensioners who retired after 22.9.1977 and did not have to contribute the two months' remuneration from their Death-cum-Retirement Gratuity, are entitled to the quantum of family pension the maximum of which is limited to Rs. 250/- p.m.

6. The deprivation of family pension to the widows of pre 1.1.1964 pensioners, who have since died or those who are still alive and on their demise, is a matter of serious concern, driving the widows of

such pensioners to extreme want and penury, It is discriminatory against them and the Scheme which causes them this deprivation is ultra vires of Article 14 of the Constitution of India.

Differentiation against widows of pre-1-1-1964 pensioners is on the basis of a classification between post-1-1-1964 and pre-1-1-1964 pensioners which has no reasonable nexus to the object sought to be achieved. This contention applies to civil as well as Defence personnel, and to the retirement/disablement pensioners. The choice of date 1-1-1964 has no co-relation whatsoever with the objective of the grant of pension to the widows of retirement pensioners as well as disability pensioners. It is a date arbitrarily fixed, and its fixation has caused unjustifiable discrimination against the widows of pre-1-1-1964 retirement or disablement pensioners, both of civil and Defence personnel.

7. Similarly, the discrimination between beneficiaries of Contributory and Non-Contributory Family Pension Schemes, where the pensioners have rendered more than 20 years qualifying service and have out-lived the period of five years after retirement, in the light particularly of the fact that basis of differentiation of contribution of two months' remuneration from the Death-cum-Retirement Gratuity under Rule 50 (4) and Rule 54 (5) of the Pension Rules, 1972 was subsequently removed with effect from 22-9-1977, is violative of Articles 14 of the Constitution, and this discrimination needs to be removed.

8. In any case, as the condition of payment of two months' remuneration out of Death-cum-Retirement Gratuity was removed by the Union of India with effect from 22-9-1977, the maintenance of differential between the Contributory and Non-Contributory Family Pension Schemes, particularly in the case of pensioners who have rendered more than 20 years qualifying service and who have out-lived the period of five years since retirement, has become totally meaningless and this distinction needs to be removed. Entitling the beneficiaries of family pensions of such pensioners to receive the quantum of pensions on the basis of table provided in sub-clause 2 (2) of Rule 54 of Pension Rules, 1972, instead of their pensions being limited to maximum of Rs. 150/- p.m. under the provision of sub-clause 4 (4) of Rule 55 of these Rules.

9. The very concept of pension is that a person who has given of his best to the State during the period of service, should be entitled to be recompensed by the State at the time when he is physically unable or disabled to look after himself. Conceptually, pension is recompense for services rendered when he who earns the pension is no longer capable of or because of certain reasons has been disabled from looking after himself. Pension is a social welfare measure rendering socio-economic justice to those who in the hay day of life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch. Articles 38 (1) enjoins the State to strive to promote welfare of the people by securing and protecting as effective as it may a social order in which justice, social, economic, and political, shall inform all institutions of the national life. The State after deriving the benefits of the services of a citizen is obliged to look after him and the members of his family after it no longer finds such person fit for further employment either because he has served the maximum number of years prescribed for his service or because of physical and/or mental disability. The services of a person represents the service of his family. The family pension scheme based on retirement or disability of the pensioner has its rational in the fact that the family of the person who has served the State is entitled to be looked after by the State for the services thus rendered. This is one of the fundamentals of a social democratic set up and essential pre-requisite of a State which claims itself to be a welfare State, particularly in a country like India where the families are dependent upon the bread-winners for their very existence.

10. Articles 41 of the Constitution obligates the State, within the limits of its economic capacity and development, to make provision for securing the right to work, to education and to provide assistance in cases of unemployment, old age, sickness and in other cases of undeserved want. The bare framework of socialism is to provide a decent standard of life to the working people and especially to provide security from the cradle to grave. Old age overtakes everyone. Socialism aims at providing an economic security to those who have rendered unto the society what they were capable of doing when they were

fully equipped with the health and physical prowess. In the fall of life, and particularly in moments when the bread-winner of the family is no more, it is obligatory on the State to ensure the family a reasonable decent standard of life, medical aid, freedom from want, freedom from fear, and relieving the helplessness of old age.

11. Widows, old pensioners and a number of organisations of pensioners have for long been representing to the Government for the removal of these discriminations and anomalies. Petitioner No. 1 had received a large number of representations from the widows of pensioners who retired before 1-1-1964 and who passed away during the years after 1-1-1964 as well as from those pensioners who retired before 1.1.1964 and are still alive. These representations were passed on to the office of the Prime Minister among nearly 13,000 representations which had been received by Petitioner No. 1 in relation to the discriminations caused by the Pension Liberalisation Rules of 1979. The reply of the Union Government to the representations has throughout been that it is not possible to accept the demand for entitling the pre-1.1. 1964 pensioners and their families to the benefits of family pensions for various reasons particularly administrative considerations. This matter was also raised in the Lok Sabha through a Private Member's Bill on 30.4.1981. In relation to the demand for removal of discrimination against the pre-1.1.1964, widows and pensioners in regard to family pensions the Minister of State for Home Affairs, on behalf of the Union of India made the following statement :-

"He and some other members also, Shri Suraj Bhan, particularly, have pointed out specifically the plight of pensioners who retired before 1964, whose families are not entitled to family pension and has suggested that this disparity need to be removed. The Government had considered this question several times in the past but has not found it feasible to accept this demand.

There are administrative difficulties in locating and assessing the number of beneficiaries particularly because most of the pensioners would have died and there are practical difficulties in tracing the old records. This is our difficulty. It is not as if we do not have sympathy with the suggestion made."

12. It has been submitted by Petitioner No. 1 to the Respondent that the difficulties mentioned by the Minister of State for Home Affairs in the Lok Sabha debate on 30.4.1981 is not insurmountable & that it can be easily overcome by making announcements through public notices, giving a period of six months, for pre-1.1.1964 pensioners and such claimants of family pension to offer claims regarding their eligibility. This is obviously a matter of great importance to the poor widows of low-paid pensioners of pre-1.1.1964 retirement or disablement and it is but appropriate that no stone should be left unturned to trace the claimants and to provide assistance of family pension to them. In any case the living pre-1964 pensioners are easily traceable.

13. Likewise, it is of obvious importance that the discriminations among the pensioners and their families because of the differentials between contributory and non-contributory family pension schemes, particularly where the pensioners who had rendered qualifying service of more than 20 years and have outlived the period of five years since retirement, particularly when the *raison-de-tre* for the differential has already been done away with by deletion of the obligation to pay two months' remuneration from the death-cum-retirement gratuity, should be removed.

GROUND

The family pension Rules relating to Central Government Pensioners embodied in Rules 54 and 55 of the Pension Rules 1972, involve serious anomalies and discriminations. Following are the glaring anomalies and discriminations arising from these Rules :-

(i) The widows of pre-1.1.1964 pensioners who have since passed away, as well as the pre-1.1.1964 pensioners who are at present alive and when they pass away, their widows are not entitled to any pension whatsoever, whereas the pensioners retired after 1.1.1964 are entitled to family pension. This fact adds to the indigence, penury & want of the widows of the pre-1.1.1964 pensioners in these hard days of living amidst inflation and high prices. Nearly 50,000 persons are adversely affected by this discrimination, which is ultra vires of Article 14 of the Constitution and is also contrary to the obligations imposed on the State by Article 41 of the Constitution. It is palpably wrong

to contend, as the Respondent has hitherto done, that it is difficult to trace out the Family pension beneficiaries of pre-1.1.1964 pensioners who are still alive.

(ii) There is inherent discrimination between the family pension beneficiaries of the pensioners who come within the purview of contributory family pension scheme of Rule 54 of the Pension Rules, 1972, and the beneficiaries of pensioners who come within the purview of Rule 55 of the Pension Rules, 1972, when there is no justification for continuance of this differential since the abolition from 22.9.1977 of regulation of deduction of two months' remuneration from death-cum-retirement gratuity which had formed the basis of distinction between the contributory and non-contributory family pension schemes, particularly in the case of pensioners who have rendered more than 20 years qualifying service and who have out-lived the period of five years since retirement. This discrimination too is ultra vires of Article 14 of the Constitution and is contrary to the obligation imposed on the State by Article 41 of the Constitution.

18 The Petitioners have not filed any other case on these grounds before this Hon'ble Court or before any other Court.

PRAYERS

15. On the basis of foregoing, it is respectfully prayed that the Hon'ble Court may be pleased to :

(i) Issue writ, direction or order directing the Union of India to extend the benefits of family pension scheme of pension Rules, 1972 to also the widows and beneficiaries of the pensioners who retired or were disabled prior to 1-1-1964, thereby removing the discrimination against them which at present exists on account of their being deprived of the benefits of family pension scheme and which is ultra vires of Articles 14 of the Constitution of India and contrary to the principles enshrined in Article 41 of the Constitution of India;

(ii) Direct the Union of India to remove the discrimination between the beneficiaries of

contributory family pension scheme and non-contributory family pension scheme provided for respectively in Rule 54 and Rule 55 of the Pension Rules, 1972, as such discrimination is violative of Article 14 of the Constitution of India, in view particularly of the fact that the factor which originally justified the differential between the two schemes, comprising deduction of two months' emoluments from death-cum-retirement gratuity, has since 22-9-1977 been done away with, and especially in relation to the pensioners who have rendered more than 20 years qualifying service and who have out-lived the period of five years after retirement, as this discrimination is violative of Article 14 of the Constitution of India and is contrary to the principles enunciated in Article 41 of the Constitution of India, thereby entitling all such beneficiaries to the benefits of the contributory family pension scheme of Rule 54 of the Pension Rules, 1972;

(iii) declare that the date 1-1-1964 fixed in relation to the above which disentitles the widows and beneficiaries of pre-1-1-1964 pensioners is arbitrary and the discrimination pursuant thereto is violative of Articles 14 of the Constitution of India;

(iv) declare that the continuation of distinction between the contributory family pension scheme of Rule 54 and non-contributory family pension scheme of Rules 55 of the Pension Rules, 1972 is arbitrary in view of the stipulation of two months' remuneration from death-cum-retirement gratuity having been removed with effect from 22.9.1977, which formed the basis of differentiation and particularly in relation to the pensioners who rendered more than 20 years qualifying service and who have out-lived the period of five years after their retirement.

(v) issue such other writs and pass such further orders or decrees as this Hon'ble Court may deem fit and proper to meet the ends of justice.

Our writ Petition Regarding Maruti Cars

We strongly felt that a discretionary quota of the production of Maruti cars, reserved for allotment at the discretion of the manufacturers, in view of the large public demand for these vehicles, was inappropriate. Accordingly, we filed a Writ Petition in the Supreme Court praying that Maruti Udyog Limited, which is a public sector concern, should not be allowed to make any out-of-turn allotment of cars excepting for public purposes such as ambulances etc. We urge that 1,35,000 applicants of Maruti cars were in the queue and nobody should be allowed to jump the queue because this would be tantamount to discrimination, being violative of article 14 of the constitution. It is unfortunate that the Writ Petition, when it came up for preliminary hearing, was not admitted. As this matter is of general importance, and as it has assumed particular importance in view of the demand recently voiced in the Parliament for preferential allotments to Members of Parliament, and a list of out-of-turn allotments of Maruti cars has been published in "INDIA TODAY" dated 31st march, 1984, we feel that people should know the grounds on which we had taken this matter to the Supreme Court. It will be observed that contingencies of this nature, arising from pressures developing on Maruti manufacturers, had been foreseen by us and this was the main reason which impelled us to take this matter to the highest court of the land. We give in the paragraphs that follow main contents of the Writ Petition. Petitioners of this Writ included the COMMON CAUSE and three persons who had submitted applications and made deposits for allotment of Maruti cars.

WRIT PETITION

1. Maruti Udyog Limited, a company established at Delhi, with the present authorised capital of Rs. 35 crores, for the manufacture and distribution of various types of automobile vehicles and in which the Union of India has substantial and majority holding of the nature of public sector enterprises, has undertaken a programme for the manufacture of automobile vehicles in their factory on Gurgaon Road, near New Delhi. The programme envisages that the Maruti Udyog Limited (hereinafter referred to as MUL) will start with the manufacture of passenger cars and the manufacture of these will be followed by the manufacture of automobile vans (ordinary and high roof) and thereafter of pick-up trucks. Target for the manufacture, till march 1985, is stated to be 21,000 vehicles, most of which will be passenger cars.

In 1985-86 the target is to manufacture 40,000 vehicle and in 1986-87 it is 60,000 vehicles. The production in the first three years ending March 1987 is, thus, expected to be between 1,20,000 to 1,30,000 vehicles; the manufacture is expected to reach 1,00,000 vehicle per annum by 1988-89.

2. MUL invited applications for allotment of these vehicles. The last date for submission of applications was 8th June 1983. A form was prescribed for submission of applications. It will be observed that this form is for applications in relation to the different types of vehicles proposed to be manufactured by MUL, namely, passenger cars, vans (ordinary), vans (high roof) and pick-up trucks. It is stipulated in this form that each application should

be accompanied by a deposit of Rs. 10,000 for allotment of car and van (including high roof) and Rs. 5,000 for pick-up truck.

3. According to information available to the petitioners, the total number of applications received by MUL is about 1,35,000 of which 90% are stated to be for cars and about 9% for vans. The funds received by the MUL in the shape of deposits by applicants for allotment of these vehicles are stated to be of the order of Rs. 134 crores.

4. Amidst the prevailing high prices of the other automobile cars presently available in the country, ranging about Rs. 80,000 and above, the receipt of as many as 1,35,000 applications for the Maruti vehicles, which are promised to be of substantially lower prices, in the neighbourhood of Rs. 50,000, and possessing more satisfactory features of quality including particularly the important element of fuel economy, is indicative of the great anxiety on the part of a large number of people to secure allotment of the Maruti vehicles, and particularly the cars.

5. MUL devised a procedure for allotment of the vehicles, which is stated to be based on computerisation of the applications, in order to avoid the possibility of any preference being given to any applicant in the allotment. Distribution lists were prepared for the 51 cities from which applications were received, and for each type of vehicle. This was done with the help of a computer, programmed to arrange names of persons who have booked for vehicles, in a random manner. The random number programme was triggered by seed numbers for each of the 51 cities, which were introduced on the 24th September, 1983 by the Vice President of India in the open view of a large number of people. The order in which names appeared in the lists was determined by the seed numbers.

6. That while, thus, MUL ostensibly tried its level best to give confidence to all applicants and to ensure that no undue preference would be given to any applicant in the matter of allotment of vehicles, the Petitioners strongly feel that in the manufacturing and distribution programme the MUL has deliberately kept a quota of five percent of the production which is proposed to be utilised for giving preferential allotment of the vehicles, side-

stepping the above mentioned publicised computerised basis of the allotment. In this matter the Petitioners invite the attention of this Hon'ble Court to the following sentence appearing in clause 13 of the "Instructions and Procedure for Booking of Maruti Vehicles" which were incorporated in the form of Application :

"In addition the company would keep a small manufacturers quota to be allotted at the discretion of the Board". (The Board in this context obviously implies the Board of Directors of the company).

7. It has been reported in the Press that the quota proposed to be reserved for such allotment, "at the direction of the Board" is five percent. It has also been reported in the Press that there is considerable pressure on the MUL from members of Parliament etc. to increase the preferential quota and that they should be given preferential allotment of vehicles. This news item stands uncontradicted, and it is accordingly to be believed that the news of preferential quota being fixed at five percent and the existence of pressure on the MUL for increase of the preferential quota and for allotment of vehicles from it to individuals is not without basis.

8. In the absence of any guide-lines in respect of the utilisation of five percent quota reserved for discretionary allotment by the Board of Directors of MUL the Petitioners apprehend that persons who would otherwise not be entitled to any allotment of Maruti cars, or who would not be entitled to receive any priority over them, will receive such allotments which will be discriminatory against the interests of the Petitioners. The petitioners also feel that the employees of MUL as well as its distributors and agents will be receiving their wages/commissions, and accordingly they cannot be entitled to any preferential allotment of the cars to the detriment of the interests of the Petitioners. Net result of any preferential allotment to any person either from among the applicants or from outside the list of applicants will be to the prejudice of the legitimate claims of the Petitioners by causing delay of allotment of the cars to them.

9. Petitioner No. 1 COMMON CAUSE wrote three

letters to the MUL as well as to the Ministry of Industry, Government of India, wherein the question of reservation of quota for preferential allotment of Maruti Vehicles was raised. These letters were written on 17.6.1983, 2.8.1983 and 24.9.1983, the last mentioned being registered, acknowledgements due. Following main points were made in these letters :

(i) That whereas practice of utilising of any quota for such preferential allotment in the case of private sector enterprises may be existing, it is not appropriate for public sector organisations to make any such preferential allotment. This becomes particularly relevant in the context of great anxiety on the part of a large number of people to secure allotment of Maruti vehicles, which is evidenced by the very large number of applications received for the allotments.

(ii) That there will be no objection to the utilisations of any such quota for preferential allotment for specific public purposes such as for ambulances, but it would be tantamount to discrimination and arbitrariness if the preferential quota is utilised for allotment of the vehicles to any individuals, side-stepping the legitimate rights of the applicants.

(iii) That MUL should give assurance and confirm that the preferential quota will not be utilised for any allotment which would, in terms the above, be considered as unlawful. In the letter dated 24.9.83 addressed to the MUL, it was stated that as no confirmation has been forthcoming in this respect it was assumed that MUL is not in a position to provide such confirmation.

10. As will be observed from the above-mentioned programme of the MUL, which is also confirmed by the letters issued by MUL to the individual applicants communicating their respective allotments based on computerised allotments, the production of vehicles will be of the order of 1,20,000 to 1,30,000 during the first three years of the manufacture. Thus the five percent quota of this production will be of the order of about 6,000 vehicles which is a very substantial number of vehicles proposed to be allotted on preferential basis, outside the scope of the above-

mentioned computerised allotment.

11. The appropriation and utilisation of five percent quota of the vehicles by MUL, an organisation which is operating on the lines of public sector organisations, established under the auspices of the Union of India, on the basis of preferential allotment at the discretion of its Board of Directors, is in the present context of great anxiety on the part of 1,35,000 applicants to secure allotment of the Maruti vehicles, would be discriminatory, arbitrary, illogical and unlawful, being violative of Article 14 of the Constitution of India.

PRAYERS

It is accordingly most respectfully prayed by the Petitioners that during the pendency of the present Writ Petition, the Hon'ble Court may be pleased to :

i) Issue an appropriate writ, order/direction to the MUL to quash the decision of, setting apart the proposed discretionary quota from the production programme of Maruti vehicles to the extent of its expected utilisation for preferential allotment of vehicles to any individual (s), coupled with direction that such discretionary quota be not utilised for allotment to any individual (s) whatever be their status, including its employees, distributors and agents.

ii) To issue a Writ of Mandamus and other appropriate Writ and/or direction prohibiting Maruti Udyog Limited from allotting any vehicles out of its productive or distribution programme to any individual (s) outside the scope of its computerised programme whereby the allotments are proposed to be made on fair basis without any preference to any applicant or person.

iii) To direct that the Maruti Udyog Limited should prepare and submit a programme to this Hon'ble Court for utilisation of any such discretionary quota of the production of Maruti vehicles for meeting any essential requirements for public purposes which may not be utilised for the advantage of any particular individual.

(iv) Issue any other appropriate writ, orders and/or directions to give more effective relief to the Petitioners.

HOW TO WRITE YOUR WILL

It is obviously of fundamental importance that every individual, particularly of advanced years, should draw up a WILL. There should certainly be no feeling of 'inauspiciousness' about the drawing up of a WILL; it is merely a matter of facing reality with a view to avoidance of disputes and problems arising in respect of any property on demise of the owner. Considering the importance of this subject, we present in this write-up some bare facts about the WILLS; Succession Certificates and Probates so that everybody becomes aware of these.

The Indian Succession Act, 1925, lays down the rules and procedures for making WILLS. It defines WILL as the "legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death". If one wants to expand or alter or add to the WILL it is done through a document called "codicil". The codicil is deemed to be part of a WILL.

Any person who is major and is of sound mind can dispose of his movable and immovable property by WILL. Handicapped persons, who are deaf, dumb or blind, can make a WILL if they are able to understand what they are doing. A person who does not realise what he is doing, because of delirium, mental illness or drunkenness cannot make a WILL. A WILL can be declared bad if it is the result of force or fraud on the testator. His free consent is necessary for a valid WILL. Undue influence by a son or anybody can prove fatal to the validity of the WILL. The WILL can be revoked by making another WILL or by simply tearing it off.

A WILL must be drawn up in clear, unambiguous terms. It is not necessary that the WILL must be couched in any legal or technical language. The main requirements are: (i) the testator must sign or affix his mark on the WILL or someone else should sign it in his presence at his direction, (ii) the WILL should be attested by two or more witnesses, each of whom should specifically state that he has seen the testator sign or affix his mark or has seen some other person sign the WILL in the presence of and at the direction

of the testator; or has received from the testator personal acknowledgement of his signature or mark. Each of the witnesses must sign in the presence of the testator, preferably on the same occasion in each other's presence. There is no particular form of attestation but it should be stated that the testator has signed the WILL in the presence of witnesses.

It is desirable to name an executor in the WILL to whom the execution of the WILL is entrusted by the testator. Preferably he should not be one of the witnesses, but there is no bar to one of the legatees being an executor. A beneficiary of the WILL can also be a witness but it is advisable not to make him a witness of the WILL because "a bequest or appointment shall be void so far as it concerns the person so attesting or the wife or husband of such person, or any person claiming under either of them" (Sec 67).

At the end of this write-up we give two model forms of WILLS. These are merely illustrative and can be suitably modified or amended.

Although it is not obligatory to register the WILL, it is advisable to do so before the sub-registrar of documents because such registration gives presumption of genuineness to the WILL. Mostly the attack on any WILL is on the grounds of genuineness of the document.

The law restricts bequests to charitable or religious institutions while the person has close relatives. Sec 118 of the Act says: "No person having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a WILL executed not less than 12 months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of WILLS of living persons".

If the WILL imposes an obligation on the legatee, he can take the WILL only if he accepts it in full. One cannot choose the beneficial part and refuse to accept the burden imposed by it. A bequest made on the condition that the legatee should do something illegal, immoral or impossible, would of course not be valid.

SUCCESSION AND PROBATE

Probate means the copy of the WILL certified under seal of a court of competent jurisdiction (district court or high court) with the grant of administration to the estate of the testator. Probate will be granted only to an executor appointed by the WILL. The appointment must be express or by necessary implication. Probate cannot be granted to any person who is a minor or of unsound mind. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Administrator means a person appointed by competent authority to administer the estate of the deceased when there is no executor. If the deceased did not leave a will, the court can grant letter of administration of his estate to any person who would be entitled to the whole or any part of the estate. When several persons apply for the letter of administration, the court gives it to one, using its discretion. When no one applies, it can be granted to the creditors of the deceased. If an executor of the WILL renounces the executorship, the letter of administration may be granted as in the case of intestacy (dying without a WILL). Letter of administration cannot be granted to a minor person or person of unsound mind.

An application for probate may be made to the district court or the high court, stating the date and time of death of the testator, and accompanied by copy of the WILL. It should also show other relevant details like the assets which are expected to come to the petitioner. The same is the position with application for letter of administration. If anyone has objection to the grant of probate or letter of administration, he can file a 'caveat' with the court. Once this is done, no proceeding in this regard can take place without notice to the concerned party.

Any person of sound mind and not minor can apply for succession certificate provided he has interest in the estate of the deceased. The only right which entitles another person to succession certificate is the beneficial interest in the debts or securities. It is open to anyone who has beneficial interest to apply for succession certificate. The application for

a certificate has to be made to the district judge showing among other things the debts and securities in respect of which the certificate is applied for. The object of certificate is to facilitate the collection of debts and securities. A person claiming succession under the WILL as executor or legatee, has to get a probate or letter of administration before a succession certificate can be granted to him. The succession certificate becomes absolutely necessary for operating a bank account, any locker, for claiming payment of shares, debentures, dividends etc. It is also necessary to note that the court will not grant a certificate without clearance from the estate duty officer, even though the estate of the deceased may not be assessable to estate duty. It is unfortunate that this requirement of estate duty clearance certificate has been imposed on the people. This matter is being separately taken up by COMMON CAUSE.

FEES

The expenses involved in getting the succession certificate, probate etc. depend on the value of property involved. Stamp Duty Act deals with this matter in a schedule. Following Provisions in the Stamp Duty Act are relevant in this connection :

The fee is $2\frac{1}{2}$ percent of the amount or value of the property in respect of which the grant of probate or letter of administration is sought if it exceeds Rs. one thousand but does not exceed Rupees ten thousand. The fee goes up to $3\frac{1}{4}$ percent where the amount or value exceeds Rupees ten thousand but does not exceed Rupees fifty thousand. Where the amount or value exceeds Rupees fifty thousand, the fee is levied at a higher percentage.

(We are grateful to Mr. J. A. Anthony and to Mr. Pramod Dayal, Supreme Court Advocate, for helping us with this write-up. Mr. Anthony is the author of the book entitled LAW FOR THE LAYMAN, published by Hind Pocket Books, G. T. Road, Delhi-32, which contains chapters on various subjects of interest and importance to everybody.)

SPECIMEN OF WILL

THIS IS THE LAST AND ONLY WILL OF

MINE.....

aged about.....years, son of.....

now residing atin the city of.....

I hereby appoint my wife.....and eldest son....., joint executors of this WILL. If any one of the aforesaid executors should pre-decease me then the survivor shall act as sole executor of this my WILL

If any of my children should on my demise be minors then I direct that my friend Shri....., If he be alive, together with one of my major sons, will assume joint guardianship of the property of such minor child or children.

I leave and bequeath all my movable property and my residential house (situated at..... in the city of.....) and other movable property at.....to my wife and the said subject to the condition that she shall have only life interest, with no power to encumber or mortgage the house in any manner whatsoever. On her death or on her re-marriage, the said house and all the moveable property therein shall revert absolutely to my.....in equal shares.

To my two sons,and..... I leave and bequeath all the cash, securities, shares and moneys whether at the Bank or elsewhere in equal shares.

Out of my two other houses situated at..... and.....in the city of.....together with all movable property therein, I leave and bequeath the former to my eldest son and the latter to my younger son

The residue of my property consisting of..... and other property not disposed of above, which may be in my possession or be entitled to me on my demise. I direct to be given to the temple/church atfor purpose of its annual repairs and such other like uses as may be required from time to time.

In case there are debts outstanding against me on the date of my demise, then such debts shall be payable from the moveable and immoveable property of my estate.

IN WITNESS whereof, I the said A.B. have hereto signed atthis the..... day of19.....and I have also signed the alteration/ addition on page one line four of this my WILL.

Sd/ A. B.

SIGNED by the said testator as his last WILL. in the presence of undersigned who, at his request, in his presence and in the presence of each other, have subscribed our names as witnesses. The said testator having, before signing the same, caused the words "....." to be inserted in the fourth line on page one.

Names and description of the said

Witnesses :

1. Sd/ B C.
2. Sd/ C. D.

WILL APPOINTING EXECUTOR

I, A.B., aged.....years, son of... resident of..... do hereby make and declare this as my LAST WILL and TESTAMENT whereby I leave, bequeath and give to..... (my wite/son/daughter) all my property, movable and immovable, which I may be possessed of or entitled to at the time of my death.

AND I HEREBY APPOINT her (or him) the said..... sole executor of this my WILL.

IN WITNESS wherof I, the said A. B. have hereto signed at.....this the.....day of.....19.....

Sd/ A.B.

SIGNED by the said A, B. as his LAST WILL and TESTAMENT in tne presence of undersigned, present at the same time, who in his presence and in the presence of each other, sign as witnesses hereto. Names and particulars of the Witnesses.

1. Sd/ C.D
2. Sd/ E.F.

IN BRIEF

PENSION NOMINATIONS

Pension nominations in Banks, which were recently authorised by the Govt of India through a notification, have not yet widely caught on. A number of branches of the Banks have not yet received detailed instructions. Accordingly, we have requested the Govt of India to extend the period by another six months for filing nominations.

UNEARNED INCREASE

Delhi Development Authority charges 50 per cent of unearned increase when any plot on leased land is transferred. On representations received by us, we have taken up with the Delhi Development Authority (DDA) that whereas this practice of charging 50% of unearned increase may have justification where the plots are either directly or through co-operative societies allotted by DDA, there can not be any justification for charging such unearned increase where a plot was originally sold through public auction by DDA to the highest bidder. DDA in such transactions acts primarily as any other developer of land and the sale through auction is effected on commercial basis.

A REQUEST — We have previously requested, and repeat, that correspondents should kindly write their full name and address (preferably in capital letters), along with pin-code. This request is particularly made to the organisations and associations of pensioners. Quite often they send letters on printed letter-heads which do not contain any detailed address nor pin-code; with the result that possibly our replies and circulars do not reach them. Also, quite frequently they change the addresses, consequent upon the changes of names of executive committee or governing body of the organisation. It becomes impossible to go on recording the changes of address, and we plead that the organisations and associations should kindly select one fixed address and intimate it to us, which will not be altered on the change of names of members of the executive body of the organisation.

The write-up on consumer protection has been held over for the next issue.

LAND ALLOTMENTS FOR PUBLIC PURPOSES

Delhi Development Authority and Delhi Municipal Corporation have been approached by us for allotment of plots of land in cooperative house building colonies, for public purposes such as community centre, club or non-commercial school, without insisting on payment of market price of the land. Cases have come to our notice where price of land for such purposes has been demanded, besides also an assurance, on the strength of bank certification, that the Society possesses funds for purchase of land and construction of building.

BUS FARE HIKE

Consumer Education & Research Centre, CERC, (Address: Ellisbridge, Ahmedabad), a public interest organization like COMMON CAUSE, filed a writ petition in the Gujarat High Court against increases in bus fares effected by the public transport authority. The High Court struck down the bus fare hike on the grounds, inter alia, that CERC had not been provided opportunity to file objections against the proposal of increase of bus fares. This is a land-mark judgement in a case of public interest litigation.

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