

15-6-1992

Speech by Mr. S. G. Page,
Government Pleader, High Court, Bombay.

My Lords, to some early, to some late, but to all inevitably must come that summons, the summons which cannot be defied, the summons that must be obeyed, the summons from the Court of the Great Judge of all of us. To Mr. Justice R. M. Kantawala, that summons came on the 2nd day of May 1992 and we have gathered here this morning to render our homage to his memory and to pay our tributes.

My Lords, Late Chief Justice Kantawala's school career was wonderfully bright. In His Lordship's college career, His Lordship showed marks of brilliance. His Lordship passed B.A. Examination with Mathematics, with highest distinctions and achieved the 'Daxina Fellowship' of the Bombay University. His Lordship also passed M.A. Examination with distinction and LL.B. Examination with First Class with distinction. In 1941, His Lordship was enrolled as an advocate on the Appellate Side of this Hon'ble High Court. After passing the Advocates' O.S. Examination, His Lordship joined Original Side bar in September 1943. Soon, His Lordship acquired a large practice. His Lordship was elevated to the Bench on February 9, 1962 as a Judge of this Hon'ble High Court and on October 27, 1972, His Lordship was elevated as the Chief Justice of this Hon'ble High Court.

My Lords, Late Chief Justice Kantawala, by nature and temperament was most courteous, very cool, very helpful and generous. His Lordship was having quick grasp and a mastery over facts and principles of law which were involved in cases that came up before His Lordship. His Lordship immediately used to put his finger on the right point in the case. His Lordship was an ideal Judge. His

Lordship's career has been one of the service and dedication to the cause of justice. It reflects through the untiring devotion to the duty. His Lordship had been an extremely thorough and patient Judge with unremitting industry and keen sense to discover truth and do justice. Law, liberty and justice were upheld with consummate ability and independence by His Lordship. His Lordship's judgments are truly models in themselves. The reported judgments of His Lordship in 66 Bombay Law Reporter 499, 67 Bombay Law Reporter 723 and 74 Bombay Law Reporter 514 bespeak a mind mathematical in its precision and nurtured on first principles of law.

My Lords, to Late Chief Justice Kantawala, seniors and juniors were equal. His Lordship used to respect and regard the Members of the Bar and avoided to talk with ridicules of the actions of executives. During the long period of the judicial career of His Lordship, there was no adverse comments or no adverse complaints against His Lordship from members of the Bar.

I join Your Lordship, Mr. Bhonsale, and my other brothers at the Bar in paying humble tributes to Late Chief Justice Kantawala, with these words :

Life's race, well run;
Life's work, well done'
Life's victory, won'
Now commeth rest.

May the departed soul rest in eternal peace!

15-6-1992

Speech by Mr. I. M. Chagla,
President, Bombay Bar Association.

My Lord the Chief Justice and Other Judges,

On behalf of the Bombay Bar Association, I associate myself with all that has fallen from My Lord the Chief Justice and my learned friends.

I myself did not know the late Chief Justice Kantawala at the Bar : when I began practice he had just been elevated to the Bench. But from my senior colleagues I learnt that he had distinguished himself as a lawyer not only by his Industry and his keen analytical mind (a result of the fine academic record to which My Lord has adverted), but also by that greatest of all qualities, a reputation for fairness as counsel.

As a Judge, Mr. Kantawala trod the straight and narrow path; he was not given to flamboyance either in language or in thought. He was not an "activist" judge. He believed that the function of a judge was to apply, not make the law, something he did with great ability and gave satisfaction to all. He never sought the time-light but was content to do his duty as commanded by his oath of office.

But fate decreed that he should, after all, have his place in the sun. The occasion was the Proclamation of Emergency in the June of 1975 when over-night all the prominent opposition leaders were incarcerated and the Censor had stilled the voice of protest. The following day we assemble in the Bar Library and resolved, as a mark of protest, not to attend the Courts for a day. We went in a delegation to the chambers of Chief Justice Kantawala and told him of our decision, and sought his co-operation that no litigant should

suffer as a result of our abstention from Court. He shared our anguish but explained that the Court could not remain closed : matters would be called out but he would ensure that none would be dismissed if the lawyer concerned was not present. And so it was.

The Bombay Committee of Lawyers for Civil Liberties (formed during, and for, the Emergency) proposed to hold a meeting to discuss Civil Liberties and the Rule of Law under the Constitution. It was a private meeting restricted to lawyer invitees and was to be addressed by M. C. Chagla, J. C. Shah and N. P. Nathwani. Permission to hold the meeting was denied by the Commissioner of Police and his decision was challenged. The Petition was heard by a Bench of Chief Justice Kantawala and Justice Tulzapurkar. The judgment in N. P. Nathwani is one of the abiding testimonials to democracy and to the judges who struck down the Police Commissioner's order. More than the judgment itself, My Lords, the hearing that took place in the First Court was an exercise in democracy itself, a heartening reminder that in the darkest days of the Emergency, there were in the entire country at least four walls within which civil liberties, fundamental rights and dictatorship itself, could openly and freely be discussed and debated. And this was due as much to the courage of lawyers as of the judges who permitted and heard the arguments.

On his retirement, Chief Justice Kantawala did chamber work where his sound knowledge and vast experience was made available to all. He shall be greatly missed, My Lords, by the legal fraternity, the litigating public and his large number of friends.

On behalf of the Bombay Bar Association, I extend my heartfelt condolences to the members of the bereaved family.

SPEECH OF SHRI P.P. HUDLIKAR,
PRESIDENT, ADVOCATES' ASSOCIATION OF WESTERN INDIA,
MADE ON MONDAY, 15TH JUNE, 1992.

On behalf of myself and on behalf of the Advocates' Association of Western India, I join all present here in offering my condolences to the departed soul of Chief Justice Kantawala. About the Chief Justice Kantawala, two important things which I remember, which I wish to state in this meeting.

Firstly, he had handled the election petition which was filed by one of the great leaders of the city Mr. S. K. Patil against Mr. George Fernandes, who was then elected to the Parliament and that was a very prestigious seat and during the conduct of the election petition, I witnessed myself very great stalwarts like S. R. Chari appeared for George Fernandes and Ram Jethmalani for S. K. Patil. Throughout the proceedings irrespective of any loss of temper at the Bar, it was Mr. Justice Kantawala who had controlled that Court and ultimately gave the correct and proper decision irrespective of any pressures which were then likely to weigh on him.

There is one another small experience of mine which indicates consciousness of the justice in a given matter and in one Indian divorce matter, a person who was an Indian Citizen was then residing in London, he had married a Polish girl in London, they never stayed in India or they had no roots anywhere in India as regards the matrimonial matter is concerned and I was there to file a petition under the Indian Divorce Act which came up for hearing before His Lordship Mr. Justice Kantawala. I only pointed out one decision of the Sind High Court similar to the facts of this case concerning in the naval force officer and he accepted that this High Court has jurisdiction, called the Petitioner in the box, recorded the

evidence by examining the Petitioner himself and granted the decree nisi. Later, after six months he confirmed it. The indication is that he had a very great desire to do justice in a given case where justice was required.

He was twice the acting Governor and once while he was the acting Governor, the Government Pleader's Office had invited him for a dinner and at the time of dinner we realized that not only that he was a person well versed in law but he was also a person well versed in philosophy and religion and as my friend Mr. Bhonsale pointed out, it was his capacity to recite the Bhagwatgita right from first shloka to the end even in his tender age. My Lords, one must say that the name of this Bombay High Court is made great by such illustrious judges who had taken part in dispensing justice to the litigants who had come for justice in this temple.

My Lords, with these words, I say that may the soul of Justice Kantawala remain in peace and I offer my condolences to the relations of his family.

SPEECH OF MR. J. R. GAGRAT,
PRESIDENT, BOMBAY INCORPORATED LAW SOCIETY
ON THE OCCASION OF A REFERENCE FOR
LATE HON'BLE MR. KANTAWALA
HELD ON MONDAY, 15TH JUNE, 1992 AT 11.00 A.M.
IN COURT ROOM NO.46.

My Lords,

The Bombay Incorporated Law Society and its members fully associate themselves in paying their sincere respects and tribute to the memory of the late Chief Justice Kantawala who was an able, courteous and reliable Advocate; a sound and sober Judge; an independent and courageous Chief Justice and above all a great gentleman.

Chief Justice Kantawala hailed from a family of Lawyers and was himself a third generation Lawyer. He had a brilliant academic career, securing firsts not only in the field of Law but also in the field of Mathematics. In all the exams which he undertook he secured the available Fellowships, Scholarships and Prizes. He passed His LL.B. Examination in 1941 in the first class and he passed the Advocate's O.S. Examination where he stood first in 1943. When he took his Advocate O.S. Examination and stood first, other illustrious colleagues of his, all of whom became eminent Advocates of this Court, had appeared, viz. Mr. R. J. Joshi, Mr. B. J. Divan, Mr. G. A. Thakker and Mr. R. L. Dalal. Among the examiners who tested the candidates were also eminent Advocates of this Court, viz., Mr. S. V. Gupte, Mr. S. T. Desai and Mr. H. M. Seervai. His standing first was, therefore, undoubtedly a meritorious achievement.

He started practice on the Original Side of the High Court in 1943 and joined the chambers of Mr. N. H. Bhagwati who soon thereafter became a Judge of the Bombay High Court and soon thereafter the first judge to be elevated to Supreme Court from the Bombay High Court after that institution was established. He then joined the chambers of Mr. M. P. Amin, an eminent Advocate of this Court, who later became the Advocate General of Bombay and worked in the chambers of Mr. M. P. Amin till the time he was elevated as the Judge of the Bombay High Court. Of his work as a Junior in the chambers of Mr. M. P. Amin, Mr. Amin said when felicitating Mr. Justice Kantawala on his appointment as the Chief Justice of this Court in a Reference on 27th October, 1972, as follows:

“You were most helpful to me. I immediately found in you a very competent and efficient lawyer well prepared on all principles on questions of law on a variety of subjects in the conference that I used to have in my chamber. When you were always present there, you discussed the questions with brilliance and Solicitors began to know your highly academic qualities that helped you in your practice later on.”

Most of the Attorneys and Solicitors who practiced between the years 1943 and 1962 had worked with him as a Counsel. He was found to have not only very sound principles of Law, but also by habit of thoroughness, a mastery over a facts and capacity to dissect the irrelevant from the relevant. A mass of files and papers with instructions given to him he could dissect it into a short pleading or a short opinion. Holding conference with him and instructing and

appearing with him in Court was a pleasure because he was courteous, unassuming, generous and understanding. He was in great demand but a large part of his practice time was taken up by the flood of work which was entrusted to him by the State Government, the Central Government and the Public Sector Undertakings and having to attend to the new innovative Constitutional work which had started, where his senior Mr. M. P. Amin was involved as the Advocate-General of Bombay. Even when appearing for the State he earned the respect of the citizens.

He had built up a large practice and one wondered why he accepted the offer to become a Judge of the High Court. The answer was provided by him in the response which he made to his felicitation as the Chief Justice when he said :

“Members of the Bar after having roaring practice for a fairly good number of years should be prepared to sacrifice a little when there is a call for public service or duty. Conditions of service of a Judge are rather unattractive looking to the modern times and cost of living. But a stage comes in everybody’s life when self interest has to be subordinate to public cause or service.”

It is perhaps a unique case My Lords, where a call for public service and duty was made on His Lordship at the very same time by two Chief Justices, one of the Bombay High Court and the other of the Gujarat High Court. If His Lordship had opted for the office of a Judge of the Gujarat High Court, Chief Justiceship of that Court was a certainty. By His Lordship opting for the office of a Judge of the Bombay High Court, Chief Justiceship was not a possibility then. It is

destiny that willed that His Lordship became the Chief Justice of the Bombay High Court when a younger but senior Judge of the Bombay High Court, Mr. Justice Chandrachud, was elevated to the Supreme Court.

As a Judge of the Bombay High Court His Lordship functioned as a sound and sober Judge. There was no exhibition of brilliance nor were the proceedings treated in a temperamental or a lighter vein. His Lordship was truly a sober and a sound Judge. It is only the facts and the law which decided the matter and not the presence of a Counsel or the face of the litigant. There was no criticism or comment on the conduct of the proceedings in His Lordship's Court at any time.

When His Lordship became the Chief Justice of the Bombay High Court on 27th October 1972, His Lordship had to shoulder the responsibility of one of the most turmoil times when the Judiciary was under severe strain and pressure from the Executive. I am referring to the years 1974 to 1977, the pre-Emergency days and the Emergency days. It was through these trying times that His Lordship, normally of a very quiet disposition, showed true courage and independence. His Lordship gave the leadership to the Bombay High Court to stand up for the citizen against the tyrannical State to keep the portals of the Court open for the people against arbitrary detention and ill-treatment during detention and to see that the citizens of the country could speak and meet freely within the legitimate bounds even that was sought to be denied. His Lordship did not hesitate to constitute a Bench comprising of His Lordship as the Chief Justice and another great and distinguished Judge of our Court, Mr. Justice Tulzapurkar, who decided as a test case the right of citizens to hold meetings and express their views even during

Emergency and to deny to the State the absolute power to prevent this minimal right. This now famous Judgment in the case of Nathwani v. The State reported in 78 Bom. L.R. 1, is and will always remain a landmark Judgment and the remaining cases reported during this period of other Judges of our Court in matters of Habeas Corpus and Censorship Laws are very much due to the presence and leadership of an independent and courageous Chief Justice who did not wish to please a powerful Executive nor did he wish to submit to the pressure of a section of the Bar then who were promoting Emergency powers. These were the finest years in the career of Chief Justice Kantawala and he lived up to the high burden and responsibility which was cast on him with great honour and distinction. The fact that he had acted courageously and honestly was acknowledged by the fact that the State Government appointed him as the Acting Governor of the State of Maharashtra on two occasions, once in 1976 and once again in 1977.

After his retirement as the Chief Justice on 6th October 1978 His Lordship typical of his unassuming and retiring disposition, carried on chamber practice and was available for opinion and advice but did not project himself in the eyes of the public. I believe he devoted a lot of time to matters of religion and Indian Philosophy in which he was well versed. He also became a regular walker at the Hanging Gardens where he developed a lot of friends and admirers.

His Lordship was active till about the last year. Consistent with His Lordship's nature he gave his best to any work entrusted to him as an Advocate, to any matter which came before him as a Judge, and to any cause which came before him as the Chief Justice.

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He leaves behind his widow and two sons to whom we extend our sincere condolences. May his soul rest in eternal peace!
