

opportunity of being heard, despite the pleading that, the Government Officer who is party to the proceedings taking steps to evict him from the land knowing fully well the *lis* in respect of the subject-matter of the said appeal, and that in case he evicted the very purpose of filing appeal will become futile, and there is no provision under such statute to get back the possession of the land.

The very interesting fact to be noted is that, the Revenue Tahsildars/Mandal Revenue Officers are generally respondent(s) in the (Revenue side) quasi judicial tribunals, and they are differentiating the orders issued by the LAS Officers with that of the Non-LAS Officers. If the Quasi Judicial Tribunal is presided over by an I.A.S. Officer, these respondents never made attempts to file any appeal against the orders passed by such officers, irrespective of the demerits, procedural lapses etc., existing in the said decisions. Even, any aggrieved party files an appeal also, the general result would be confirmation of the order issued by such officer. But, in case, such order was issued by the said tribunal presided over by a Non I.A.S. Officer, the appellate tribunal generally presided over by a senior I.A.S. Officer, the result would be reversal of the said orders, despite existing of merits, discussion of the documents, application of mind, and in accordance with the precedents of the High Court(s) or the Hon'ble Supreme Court of India.

In the existing circumstances, in order to uphold the system and to deprecate the existing practices adopted by the Quasi Judicial Tribunals (especially Revenue Department side) in disposing of the matters, the judicial check or control is essentially required in the Quasi

Judicial adjudicating stage itself by way of appointing a Judicial Officer not less than in the rank of District Judge, as the final appellate authority in the hierarchy of the appeals under such statute(s), who is able to cure the defects in the decisions by the Lower Quasi Judicial Authorities and able to put an end to the litigation in majority matters according to strict application of the Law, par with that of a civil Court. *Like appointment of District Judge as the Presiding Officer of the Land Reforms Appellate Tribunal under the provisions of Land Reforms Act.*

Therefore, in order to reduce the litigation on the file of the High Court(s), the Hon'ble Supreme Court in respect of majority of the matters consisting with the above discussed common manifest errors, not only the judicial check and control by way of appointing the Judicial Officers in the rank of District Judges as the final appellate authority under such various statutes became essential, but also suitable amendments have to be made in the service rules, prescribing minimum qualifications in Law, necessary training in writing the judgments by application of mind to the issues involved in the matters, fixing of minimum responsibility, to promote and post the administrative authorities as the first quasi judicial authority under various statutes, including the possibility of utilizing the services of the senior advocates by way of appointing them as the Quasi Judicial Authorities are essentially required to create confidence among the public litigating for their rights before the quasi judicial tribunals as a part of reforms in the quasi judicial tribunals and appellate tribunals.

IS THE PERIOD OF LIMITATION FOR BSNL/GOVT. COMPANIES 30 YEARS OR 3 YEARS ?

By

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Introduction

This article raises an important question

on the period of Limitation as applicable to Government of India Companies in general and BSNL in particular.

In a civil revision petition between *Paras Ram Vishnudas Rupani v. Bharat Sanchar Nigam Ltd. (BSNL)*, Hyderabad, His Lordship Mr. Justice N.V. Ramana (2003 (3) ALD 250), observed “Respondent-plaintiff being a Central Government Company is entitled to the benefit of Article 112 of the Limitation Act, 1963.”

Para 3, of the judgment mentions “The only contention urged by the learned Counsel for the petitioner is that the respondent-plaintiff is not a Government Company, and as such, it is not entitled to claim the benefit of Article 112 of the Limitation Act 1963, and if the general period of three years for filing the suit is taken, the suit filed by the respondent-plaintiff would be barred by limitation. The point of limitation being a question of law, the Court ought to have decided the same, but by dismissing the application, it has committed an error, and he prayed that the impugned order be set aside and CRP be allowed.

In Para 4 his Lordships Mr. Justice N.V. Ramana observed “I am unable to agree with this submission of the petitioner. The respondent plaintiff being a Central Government Company is entitled to the benefit of Article 112 of the Limitation Act 1963.

The Para 3 of the judgment gives the impression that the learned Counsel for the petitioner contended that BSNL is not Government Company, therefore Section 112 of Limitation Act 1963 is not applicable to BSNL. That means BSNL is a Government Company, as per the Counsel for the petitioner, the Section 112, of Limitation Act 1963 is applicable.

Scope of the Article

The scope of this article is to discuss as to whether Section 112 of Limitation is applicable to Government Companies as decided by His Lordship Mr. Justice N.V. Ramana (Even assuming that there is no dispute of a particular Companies being Companies of Government of India).

Article 112 of Limitation Act 1963.

Article 112 of Limitation Act says “Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir the Period of Limitation is thirty years, when the period of limitation would begin to run under this Act against a like suit by a private person.”

From the wording of the Article 112 of the Limitation Act, it is clear that the Act is meant for Central Governments and the State Governments including the State of Jammu and Kashmir. Now the following questions also arise in this connection :

- (i) Whether Article 112 of the Limitation Act 1963 is applicable to only to Pure Government departments or also to Government Companies (which are also called Corporations/Public Sector Undertakings of either Central Government or State Government).
- (ii) Suppose that the Article 112 is not applicable to other Government of India Undertakings like Banks, NMDC *etc.*, can it be made applicable only to BSNL being an Undertaking of Government of India.
- (iii) To decide the above issues, it is felt necessary to go into the Spirit of Enactment by Parliament.

In this connection, in the case between *Kamta Prasad Singh and another v. The Regional Manager, FCI and another*, reported in AIR 1974 Pat. 376 (Vol. 61 C104), the index note of His Lordship Mr. Justice S. Sarwat Ali, J., assumes importance and is given below :

- (a) *Index Note :—Civil Procedure Code (1908), Section 80 – Expression “Government” – Meaning of*

Brief Note :—“The fact that capital of a corporation provided by the Central Government or that its working was supervised or directions were issued by the Central Government, does not make a Government within the meaning of Section 80. Although the expression “Government has not been defined in code it cannot be include a “Corporation” constituted under Act of Parliament.

From the above it is clear, that Section 112 is meant for pure Government and *not for its corporations/undertakings/Companies of Government*. In other words, the judgment of *N.V. Ramana* is at variance with the established principles, regarding Governmental corporations/ companies and the Government

Spirit of the Enactment of Article 112, by Parliament

From the wording of the enactment of Article 112, it is amply clear that it is meant for Pure Government Departments only be it, Central or State Governments and not for undertakings or Companies of Governments.

For other Government of India Undertakings like NMDC, Coal India, Hindustan Copper Limited, Hindustan Zinc Limited *etc.*, the period of Limitation is 3 years only. BSNL is an undertaking of Government of India and Parliament did not confer any special status on BSNL. Therefore what ever is the period of Limitation for other Undertakings is also applicable for BSNL also. Therefore the period of limitation for BSNL cannot be 30 years, when the period of Limitation for other Government of India undertakings like Banks, NMDC Ltd., HCL, HZL *etc.*, is only 3 years.

To appreciate the point further, the following judgments are relevant.

Judgment of Andhra Pradesh High Court

In the following judgment, His lordships Justice Sri P. Chandrasekhara Reddy CJ and Justice Chandrasekhara Sastry, J reported in

AIR 1963 AP 479, (*Devi Dayal Marwah, Appellant v. the State of Andhra Pradesh, Respondent*) (V.50 C152), the Hon’ble Bench of A.P. High Court interpreted the Article 112 and laid down the following guide lines.

“One of the tests to find whether an Institution is a Corporation or a department of the Government is to *enquire whether the undertaking functions as a responsible independent organization and not as a part of any department of State.*

Another test would be to see whether it is *endowed with the capacity to contract obligations and of suing or being sued.*

Further the *power to possess, use and change a seal is incidental to a Corporation*”. Applying the above tests, it is clear that BSNL is a Corporation of Government of India because, (i) it functions as a responsible independent organization, (ii) BSNL is endowed with the capacity to contract obligations and of suing or being sued (iii) BSNL uses a seal of its own and not that of Government of India.

One recent judgment of the Hon’ble Supreme Court reported in AIR 2003 SC P.2189 (*A.K. Bhindal and another v. Union of India and others*) when in the Apex Court held that the Fertilizer Corporation of India and Hindustan Fertilizer Corporation are both Companies, registered under Companies Act with the only difference that they are Government Companies within the meaning of Section 617 of the Companies Act. Identity of the Government Company remains nevertheless remains distinct from the Government (emphasis by the author).merely because the entire shareholding is owned by the Central Government, will not make the incorporated Company, as Central Government.

The above ruling in general and rulings of the Apex Court in particular do not appear to have been brought to His Lordship’s notice, and if only they were brought to his

Lordship's notice, the Judgment of His Lordship Justice Sri N.V. Ramana would have been otherwise.

Binding Effect on Lower Courts

The following is the position of the judgment of His Lordship Justice N.V. Ramana of A.P. High Court.

Subsequent judgment has to be relied upon by the lower Courts, (provide it is not judgment *per incuriam*). If the judgment of a particular state is judgment *Per Incuriam* that that case, even the judgment of High Courts of the same state do not bind the lower Courts. A bench can over rule the judgment passed by a Single Judge. If a bench of equal size passes another judgment subsequently, if the judgment clarifies some of the ambiguities, it becomes binding on the lower Courts in preference to the first judgment. A judgment

of a Larger Bench for example a judgment of Full Bench or Full Bench becomes binding over the judgment passed by bench of two judges.

Conclusion

In view of the judgment of the Apex Court referred to above, the judgment of His lordship Mr. Justice N.V. Ramana reported in 2006 (3) ALD 250 cannot be considered to good law and in this connection it is relevant to quote a ruling of A.P. High Court Division Bench reported in 1992 (3) ALT at Page 715 in which the Hon'ble High Court held that decision of any Court in conflict with the decision of Supreme Court is not est. and without jurisdiction.

From the above, it follows that the judgment of His Lordship Mr. Justice N.V. Ramana needs immediate review.

PRINCIPLE OF INDEPENDENCE OF JUDICIARY UNDER THE INDIAN CONSTITUTION

By

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Introduction :

At the outset, it is to be noted that only an impartial and independent Judiciary can stand as a bulwark for the protection of the rights of the individual and mete out even-handed justice without fear or favour. By independence of the Judiciary is meant that there shall be no interference in the Judicial functions of the judges by the Government or the executives authorities under it. The Judges are free to arrive at their decision regardless of administrative policies or the political philosophies of the party in power.

An independent judiciary is an indispensable requisite of a free society under the principles of rule of law. The Judiciary is not subservient to the Government on the one hand nor to the people on the other. The judiciary stands above the popular frenzy and the Governmental might. As the legislature represent the will of the sovereign people, the Judiciary represents the conscience of the sovereign people. Independence of the Judges has now come to be accepted as an essential trait of free democratic society.

Importance of the Independence of Judiciary :