HON'BLE JUSTICE P.NAVEEN RAO AND HIS PATH-BREAKING JUDGEMENTS

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Hon'ble Justice Ponugoti Naveen Rao

Hon'ble Justice Sri *Ponugoti Naveen Rao* enrolled as Advocate in the year 1986 and elevated as Additional Judge, High Court of Andhra Pradesh on 12th April, 2013. Thereafter, appointed as a permanent Judge of High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh on 8th September, 2014. In his judicial service of over seven years, he is known by the legal fraternity and in the general public as a fine Judge with a refined and smooth demeanour. He conducts the Court proceedings gracefully and also makes an attempt to understand and comfort those Lawyers who are newcomers. Whichever way the case might go, every Lawyer who addresses the Court of Justice *Rao*, comes out with complete satisfaction over the quality of hearing and the more than expected respect he gets from the Bench. Some of his path breaking judgements are discussed herein which provides an insight to his intellect and judicial blend of mind which has shaped the dynamics of various statutory principles.

For instance, in *Ramesh Chennamaneni v. Union of India and others*, 2019 (5) ALD 118 (TS), dealing with matter of citizenship rights under the Citizenship Act, 1955, Justice *Rao* held that where several countries have made provisions not to deprive citizenship if it results in a person becoming stateless. In the modern context of Nation State once a citizenship of a country is granted, person has to forego citizenship of other country and cannot have citizenship of two countries. Further, depriving citizenship of one country would not restore citizenship of another country. In this context, it is appropriate to note that though the 1955 Act is silent on statelessness while arriving at the satisfaction of whether the continuation of citizenship is not in public good, this factor may also require consideration. Justice *Rao* goes on to say that "It must be noted that deprivation of citizenship is a serious aspect as it would affect a person's right to live in India, and it may also result in making the person stateless.

In a landmark judgment reported in case of *T. Ganesh v. State of Telangana and others*, 2020 (3) ALD 139 (TS) = 2020 (2) ALT 452 (TS), Justice *Rao* travelled through Sections 22-A, 69, 71, 72 and 77 under the Registration Act, 1908, Indian Stamps Act, 1899, visited G.O. Ms.

No.497 Revenue (Regn.I) Department dated 7.4.2003 and G.O. Ms. No.6290 Revenue (Regn.I) Department dated 28.9.2003 and after scanning through nook and corner of rules and standing orders such as standing order SO 219(b), held, refusal by the Registering Authority to register and release the document on the ground that injunction order of Civil Court in a pending suit is subsisting, cannot be held to be illegal and further, it cannot be said that discretion was not validly exercised and is illegal. No patent illegality vitiating the decision of registering authority was noticed to interdict the said decision in exercise of power of judicial review.

Justice *Naveen Rao*, in the case of *Thummala Narsimha Reddy and others v. State of Telangana*, 2020 (3) ALD 139 (TS) = 2020 (2) ALT 56 (TS), while dealing with an arbitrary action of Tahsildar and their endorsement held that the action of Tahsildar be amounting to arbitrary exercise of power and authority and he is warned to be careful in future. Justice *Rao* provided guidelines for Tahsildar by holding that Tahsildar could not have mechanically rejected applications for grant of Pattadar pass book and title deed leading to institution of writ petition. The Tahsildar was directed to act upon the application made by petitioner for issuance of e-passbook by following due procedure as contemplated under law and by putting him on notice. Upon conducting enquiry, if Tahsildar disagrees with the claim of the petitioner, he should assign reasons in support of his decision and communicate the same to the petitioner within a fixed timelines in these kind of cases.

Justice *Rao* in the matter of *A.P. Product and another v. State of Telangana*, 2021 (1) ALD (Crl.) 286 (TS) = 2021 (1) ALT (Crl.) 125 (TS), dealing with power of police to seize property under Section 102 of Criminal Procedure Code, 1973, it was held that police officer can seize if it is alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of offence. It is the duty of the Investigating Officer to preserve the said property so that evidence is not tampered/destroyed frustrating the investigation and trial. At the stage of investigation accused has no right of being heard and of affording prior opportunity before a property is seized. Further, Court cannot trench into the jurisdiction of the concerned Magistrate to deal with the crime property.

In *Dy. Director General (Admn.), National Sample Survey Organization (Field Operations Division), New Delhi and another v. S. Veerabhadraiah*, 2021 (1) ALT 410 (DB), Justice *Rao* dealing with power of Court to review under Section 114 and Order 47 Rules 1 and 2 of Civil Procedure Code, 1908, held that it is a settled rule that if a decision has been given *per incuriam* the Court can ignore it. *Per incuriam* are those decisions given in ignorance or forgetfulness of some statutory provision or of some authority binding on the Court concerned. He further goes on to say that the Division Bench which decided WP No.21824 of 2010 did not consider the relevant law laid down in Paragraph 14 of the *P.V. Sundara Rajans* case, (2004) 4 SCC 469, where it was held that power of review can be exercised in case of discovery of new and important matter, mistake or error apparent on the face of the record and for any other sufficient reasons. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of Apex Court. Power of review can be exercised in case of discovery of new and important matter, mistake or error apparent on the face of the record and for any other sufficient reasons.

In *Thummala Narasimha Reddy v. State of Telangana rep. by its Principal Secretary, Revenue Department, Hyderabad and others*, 2020 (2) ALD 139 (TS) = 2020 (2) ALT 56 (TS), dealing with Article 300-A of the Constitution of India *viz.*, Right to Property, Justice *Rao* held that Tahsildar is required to conduct enquiry as right to property is an invaluable right. Indian economy is primarily an agricultural economy and most of the citizens depend on agricultural lands to eke-out their living by cultivating the land contrary to the statutory requirements and responsibilities vested in the Tahsildars, they are mechanically rejecting the applications for grant of title deeds or Pattadar pass books holding that person is not in possession without recording reasons as to how such decision is arrived at. Time has come for the authorities to set in order the process of consideration of all issues concerning land, complying with the statutory requirements in a systematic and transparent manner as ordained by law and in a fixed time.

In *Lubna Tabassum and others v. State of Telangana and another*, 2020 (1) ALD 64 (TS) = 2020 (2) ALT 17 (TS), dealing with power of judicial review on executive decision under Articles 14 and 226 of Constitution of India, 1950, Justice *Rao* held that *Judicial review in executive decision is confined to illegality, irrationality, procedural impropriety, lack of jurisdiction and competence*. Merely because a person contends that there is a better principle, in exercise of power of judicial review, the Court cannot mandate the recruiting agency to adopt a different principle. It is for the agency to choose a principle as it deems fit and Court cannot interfere in such matters. Judicial interference in administrative decisions is that if the Government takes into consideration all relevant facts, eschews from considering irrelevant facts and acts reasonably within the parameters of the law, Courts should keep off the same. Legality of policy and not the wisdom or soundness of the policy, is the subject of judicial review. The Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision.

Justice *Rao* in *T.V. Rao and others v. State of Telangana and others*, 2019 (3) ALD 556 (TS) = 2019 (2) ALT (Crl.) 90 (TS), dealing with matter under Sections 3, 4, 5, 12, 16, 18 and 31 of Protection of Women from Domestic Violence Act, 2005 and the applicability of Section 362 under Code of Criminal Procedure, held that the Act is a self-contained Code; deals with what constitutes domestic violence and the remedies available to the victims and the protection that is required to be provided from such violence unlike ordinary civil litigation, occurrence of domestic violence or imminent violence can be reported by any one and based on such report case can be registered and proceedings would commence. The aggrieved person can enforce the rights flowing out of the said Act by availing the remedies provided under the Act. Thus, merely because for some of the provisions of the Act, the Code of Criminal Procedure is made applicable would not mean that the orders/decisions made under the Act are governed by the Code of Criminal Procedure. Further, though Magistrate Court is vested with jurisdiction to adjudicate cases of domestic violence, but is not constrained by the Code of Criminal Procedure while adjudicating cases under the Act and has the liberty to lay down its own procedure. Section 362 of the Code of Criminal Procedure is not attracted to the orders/ decisions made in an application/ petition filed under the Act and the bar imposed therein does not operate to the decision made by the competent Court under the Act. He observed that "*It is appropriate to note that Act does not impose specific baron power to recall/set aside order dismissing*

the DVC for non-prosecution Act also does not specify that Section 362 Criminal Procedure Code is applicable."

In *Yaragada Govind v. State of A.P.*, 2018 (2) ALT (Crl.) 457 (DB), Justice *Rao* dealing with Section 302 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 held that consistency and corroboration in ocular testimony and medical evidence is necessary. It was held that where there is consistency and corroboration between the ocular testimony and medical evidence mere interestedness is not a ground to discard their evidence, unless they have a strong reason to falsely depose against the accused and their presence at the time of the incident is found to be improbable.

In *Bhanu Prasad Alluri and others v. Chief Controlling Revenue Authority and Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad and others,* 2018 (1) ALD 412 = 2018 (1) ALT (Rev.) 46 (SB), Justice *Rao* dealing with issue of payment of higher stamp duty. It was held that the possession of schedule properties are to be mulcted with higher stamp duty by treating the mortgage deed as one burdened with transfer of possession to the mortgagee necessitating payment of higher stamp duty as per Article 35(a) of the Indian Stamp Act, 1899. It was further held that possession to mortgagee handing over possession to mortgagee cannot be assumed unless clear intention is expressed in the mortgage deed.

Justice *Rao* in the leading judgement of *Gaddam Laxmaiah and others v. Commissioner and Inspector General, Registration and Stamps, Hyderabad and others*, 2018 (1) ALD 532 (DB) = 2017 (4) ALT 213 (DB), in the issue under Sections 17, 23, 24, 25, 26, 35, 41, 43, 45, 69, 71, 75, 77, 88 and 89 of Registration Act, 1908, held that the transfer of property necessarily involves conveyance and such conveyance requires payment of stamp duty and some of the deeds of conveyance require compulsory registration. The instructions/circulars issued by the competent authorities are meant to be followed by all the subordinates. A registered sale deed or any other document such as Development Agreement-cum-GPA, which creates right in favour of the party in the subject-matter of document, if sought to be cancelled, registration of such deed must be at the instance of both parties. Even execution of a deed of cancellation of the registered document which created rights in favour of the other party in the subject-matter of the document, cannot be registered unilaterally but it should be bilateral. The transfer of property necessarily involves conveyance and such conveyance requires payment of stamp duty and some of the deeds of conveyance require compulsory registration.

In a leading public interest litigation, Justice *Rao* in *Mohamed Abdul Nayeem Zakee v. State of Telangana rep. by its Prl. Secretary, Home Department, Hyderabad and another*, 2021 (2) ALD 141 (TS) = 2021 (2) ALT 223 (TS), under Article 226 of the Constitution of India, 1950, held that no Court interference when public interest is involved compliance of various requirements is mandatory. Insistence of such compliances amounts to imposing reasonable restrictions and such restrictions are in larger public interest. The right of individual to carry on his business is subservient to larger public interest. Judicial review against administrative decisions is not against the decision *per se* but on the decision making process. Even if one or more of these parameters are not satisfied in making administrative decisions. Court may still not interfere having regard to the issue involved or if consequences of setting aside would result more harm to the larger public interest. The decision making process is not vitiated under Article 226 of the Constitution of

India, writ remedy is an equitable remedy and discretionary.

In a landmark judgement of *Gummakonda Jagan Mohan Reddy v. State of Telangana and others*, 2018 (4) ALD 166 = 2018 (5) ALT 600 (SB), Justice *Rao* providing insights over legal rights/remedies of litigant held that litigant must prosecute his legal remedies with due diligence, fairness and honesty. One cannot take undue advantage and try to score over his opponent. Person has right to seek legal remedies to redress his grievance but has no right to scuttle other persons right to seek legal remedies. If petitioner has objection on maintainability of the subsequent suit, petitioner ought to have raised specific objection before the competent Court where the suit is pending and it is for that Court to consider the petition and take a decision. Jurisdiction of the writ Court has no bounds and can be extended far and wide but there are self-imposed restraints in exercising such jurisdiction. When a writ is filed against inferior Tribunal/quasi-judicial authority or an administrative authority when proceedings are pending before them, ordinarily writ Court do not entertain writ petition unless it is pleaded and established that such authority/Tribunal lacks jurisdiction to decide the issue, biased and/or there is violation of principle of natural justice and/or lacks fair play in action. Writ Court cannot usurp jurisdiction of Civil Court under Article 226 of the Constitution of India and restrain the Competent Civil Court from exercising power to adjudicate a suit instituted before that Court. No *mandamus* would lie to hold that the principle of *res-judicata* is attracted to a suit filed subsequent to the suit filed by the petitioner even if it concerns the same suit schedule property.

A true and fair construction of the above mentioned judgments makes one believe that his Lordships, Hon'ble Justice *Naveen Rao* while adhering to the Doctrine of "Due Process of Law" and "Procedure established by law" also applied the "*Prima Facie* case" and "balance of convenience" principles of Law. As rightly said, a great Judge must be a great man. He must have a full sense of the seamless web of life, a grasp of the endless tradition from which we cannot escape. He must be capable of stern logic, and yet refuse to sacrifice to logic the hopes and fears and wants of men. These all qualities and standards have been strongly and clearly shown by Hon'ble Justice *Naveen Rao* in his Court demeanour as well as in his judgements and observations made in these seven years of his public service. I would conclude saying we need more such polite, respectful and a considerate Judges like Hon'ble Justice *Naveen Rao* for a better future in mankind and the judicial outcome of any dispute out of it.