In *Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi*, 1991 SCC 716, right to Education at the secondary stage was held to be a fundamental right. In *J.P. Unnikrishnan v. State of Andhra Pradesh*, 1993 (1) SCC 642, a Constitution Bench had held education upto 14 years to be fundamental right; right to health has been held to be fundamental right; right to potable water has been held to be fundamental right; meaningful right to life has been held to be a fundamental right. The child is equally entitled to all these fundamental rights. In *M.C. Mehta v. State of Tamilnadu and others,* 1996 (6) SCC 756, the Supreme Court considered Constitutional perspective of the abolition of the Child labour below 14 years of age in the dangerous Sivakasi Match Industries.

In *Bandhua Mukti Morcha v. Union of India and others* reported in 1997 (3) SLJ 22 (SC) the Apex Court directed the Central Government to convene a meeting within two months to evolve principles to policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in *M.C. Mehta's* case, 1996 (6) SCC 756.

It is hightime to convene a meeting as directed, also it is better to enact a comprehensive legislation covering all aspects on child protection applicable to the whole of the nation in terms of Article 253 of the Constitution as we have duly acceded the United Nations Convention on the rights of the child on 11-12-1992. It is felt that the comprehensive legislation on this subject may help a lot to achieve the object. Creating a Children's Rights Commission at each State would be an important reform for the better protection of our children and young people. The Commission's work will no doubt improve law, policy and practice affecting children.

Norway was the first country on the globe to appoint on Ombudsman for children during 1981. The role of the Ombudsman is to protect and to improve interests of children. The Norwegian experience may be brought to our Nation. The institution of Ombudsman may be introduced in each State.

It is the duty of the State to protect disabled children, orphans, destitutes, and deserted children from the social evils. More voluntary organisation may come forward to save child abuses.

The law makers are earnestly requested to believe the grand old slogan ''today's children are tomorrow's citizens'' and to their best to make a comprehensive, uniform and viable law on this subject duly considering the rights of the children on survival, development and protection.

A critical note about the decision in Sunkara Lakshmi (died) etc., v. Vadlapudi Venkateswara Rao etc.

Reported in 1998 (2) ALD 249 = 1998 (1) ALT 807

--A.S. RAMACHANDRA MURTHY,
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1. The main questions that arose for consideration in the above decision are : Firstly, whether an appeal preferred by a transferee of a promissory note who is granted a decree against his transferor only but not against the promissors of the pronote, is maintainable under law, and secondly, whether the High Court in a second appeal can go into a question of fact. This article is not about these two aspects.

2. While deciding those aspects,

the Hon'ble Judge made a passing observation about the period of limitation for pronote suits. A reading of the judgment shows that the second appeal was ultimately dismissed by the Honourable Judge on the question of maintainability and it does not appear to be on the question of limitation.

3. In para 16 of the judgment, the Honourable Judge observed that a suit filed on 2-11-1971 based on a pronote dated 2-11-1968 is barred by time.

4. With great respect to the learned Judge, I submit that the observation made in para 16 about the limitation aspect is not correct. It is clear that the Counsel who raised this contention urged it contrary to the express provisions of law. Basing on this observation by the Court in this decision, now similar contentions are being raised in Subordinate Courts and there are instances where Courts are dismissing the suits also.

5. The following aspects show that the said observation about limitation in the case is not correct. If the pronote is dated 2-11-1968, two suit can be filed on 2-11-1971 without facing any risk of limitation, because, under Section 12 of the Limitation Act while computing the period of Limitation for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. Therefore if the Ist day, *i.e.* 2-11-1968 is excluded, then, the 3 years period ends in the midnight of 2-11-1971 and as such the suit can be filed on 2-11-1971. We are aware of cases being filed on the last day of limitation at the Judge's residence after Court hours but before the date is changed.

6. Section 12(1) of the Limitation Act, 1963 which is the relevant section, reads :

> Section 12 :- Exclusion of time in legal proceedings.
>
> (i) In computing the period of Limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.''

In addition to this provision of Law, there is also Section 9 of the General Clauses Act which gives the meaning of the words ''from'' and ''to''. Therefore, there can be no doubt that in the particular case, the first day, *i.e.* 2-11-68 is to be excluded and as such the suit filed on 2-11-1971 is perfectly in time. Some old cases reported under Section 12(1) of the Limitation Act make this abundantly clear.

7. Due to such incorrect and incomplete contention about the Limitation raised in the reported case for the appellant serious problems are arising.

8. Let us, then examine the articles of Limitation Act that are applicable for pronote suits. For pronotes which are payable on demand and which are not accompanied by any writing restraining or postponing the right to sue, the period of Limitation is 3 years ''from'' the date of the note as per Article 35 of the Act. This word ''from'' in this Article is again controlled by Section 12(1) of the Act. There are other articles like 34, 36, 37 and 38 of the Limitation Act governing other situations. In the reported case, it is a case where the pronote is accompanied by a separate letter of the same date as the pronote regarding the consideration and enforceability and this we can see from para 3 of the judgment itself. Therefore, this reported case is not one to which Article 35 is applicable. But yet, contentions were incorrectly advanced for the appellants as if it is a pronote falling under Article 35 of the Act. In this view also, the plea of Limitation raised of hand at the bar even without a pleading and quite contrary to the Statute, is not at all correct.

9. Thus the observations of the learned Judge about the Limitation aspect are not correct. They are only *per incurium* and are also in the nature of *obiter dicta*.

10. In a recent Full Bench judgment of our High Court reported in 1998 (3) ALT 96, the High Court observed that a decision given contrary to or in ignorance of the terms of a statute or of a rule having the force of a Statute is also treated as given ''*per incurium*''. The Full Bench of our High Court relied upon three decisions of the Supreme Court referred to in that decision in paras 16 to 18 of the judgment.

11. In view of the legal position I am of the view that the observations of Hon'ble Ms. *Maruti*, J., about the Limitation aspect are not at all correct and that they are only the result of incorrect and incomplete contentions, and that these observations require immediate reconsideration. As the said observations of the Hon'ble Judge are causing loss. I request the High Court and the Honourable Judge to review the matter so that further loss is not resulted to litigant public.

12. Before concluding I also state that 1-11-1971 might have been a holiday for the Courts on account of the Andhra Pradesh Formation Day, in which case the suit filed on 2-11-1971 will be in time. This factual aspect should have been checked up by the plaintiff's Counsel.

CONSTITUION AND FUNCTIONING OF SPECIAL COURTS AND TRIBUNALS UNDER THE A.P. LAND GRABBING (PROHIBITION) ACT, 1982

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The Land Grabbing (Prohibition) Act, 1982 is a special enactment applicable in the State of Andhra Pradesh and was brought into the statute book to meet the peculiar situation created by certain groups of people known as Mafia or land grabbers.

There are two types of Courts established under the Act. One is the Special Court, which was formed in the year 1982 and the other is the Special Tribunal. The Special Court consists of a Working/Retired Judge of the High Court with two benches in this Court. One consisting of the Chairman (Working/ Retired High Court Judge), a Judicial and a Revenue member. The other bench consists of a Judicial and a Revenue member. The Special Tribunal consists of the District Judge/Chief Judge, as the case may be in Mofussil or city area.

The Act was mainly passed for the purpose of arresting the land grabbing activities of the Mafia, which had increased to an alarming proportion.

The two important aspects of the entire Act is the Constitution of the Special Court and its functioning. The constitution and functioning of any Court, must be such as to create confidence in the mind of the public about its integrity and effectiveness. The Special Court, however comprises of retired people accountable to none but themselves. The control which the Chairman is supposed to exercise is illusory. It has become a haven and a rehabilitation centre for those retired officials, who some how catch the eye of the authorities. The term of the members of the Special Court is limited to 2 years and the Government has the right to abolish the Court at its pleasure. Thus, the members of the Special Court are persons who hold office at the pleasure of the Government or for a period of 2 years with expected renewal/renewals of their term of office.