Nav Rattanmal v. *State of Rajasthan* Perpetuating Fallacies

PRASHANT MENDIRATTA*

The Supreme Court of India speaking through a Constitution Bench in *Nav Rattanmal* v. *State of Rajasthan* [1]upheld the Constitutional validity of Article 149 of the Limitation Act, 1908 which provided a 60-year period of limitation for suits by the Government.[2]

Reasons Given by the Supreme Court:

The Contention of the Appellant that Article 149 of the Limitation Act (hereinafter called the Act) is *ultra vires* Article 14 of the Indian Constitution, was negatived by the Supreme Court and the following reasons were given in its judgment:

(i) The learned judges of the apex Court accepted the fact that the statute of limitation is a statute of repose but went on to say that Article 149 of the 1908 Act should be viewed with the background that the State ought not to suffer for the negligence of its officers or for their fraudulent collusion with the adverse party.[3]

(ii) The Court was of the opinion that it is a fact that in the case of the Government if a claim becomes barred by limitation the loss falls on the public at large i.e., on the community in general and to the benefit of the private individual who derives advantage by the lapse of time, this in itself would appear to indicate a sufficient ground for differentiating between the claims of the community at large.[4]

(iii) The Constitution Bench felt the need to mention, that in the case of Governmental machinery it is a known fact that it does not move as quickly as individuals. Apart from the delay occurring in the proper officers ascertaining that a cause of action has accrued—Government being an impersonal body, before a claim is launched there has to be inter-departmental correspondence, consultations and sanctions obtained according to the rules. These necessarily take time and it is because of these features which are sometimes characterised as red tape that there is delay in the functioning of Government officers.[5]

---

* IV Year B.A. LL.B (Hons), NLSIU

1. AIR 1961 SC 1704
2. Under the Limitation Act of 1963 this 60-year period has been reduced to 30 years. See Limitation Act, 1963, Section 112.
3. *Supra* n.1 at Page 1707
4. *Ibid.*
5. *Ibid.*

(iv) The Court, to give legitimacy to the object behind this special provision of limitation for Government suits, said the ratio underlying this special provision is similar to the ratio underlying the special provisions for summary recovery of amounts due to Government without resort to suits by a procedure not available for enforcing the dues of private individuals like the "Revenue Recovery Acts" and "Public Demands Recovery Acts". These Acts which have been on the statute book for over a Century have also similar objectives, viz., the interest of the public and of the Community in realising what is due to it expeditiously; and the apex Court was impressed by the fact that the Supreme Court itself had upheld these Special Recovery provisions in *Purshottam Govindji Malai* v. *B.M. Desai*.[6]

(v) Another decision which was cited was *Mannalal* v. *Collector, Jhalawar*[7]. In that case the summary mode of recovery of amounts due to the Government for which provision was made by the Rajasthan Public Recovery Act was impugned as being *ultra vires* Article 14. It was contended that a mode of Recovery which was not available to the private citizen contravened the equal protection of the laws guaranteed by Article 14. This contention was repelled on the grounds that the dues of the Government of a State are the dues of the entire people of the State and thus giving special facility for the recovery of such dues cannot in any event be said to offend Article 14.

For these reasons the Supreme Court upheld the validity of Article 149.

The Supreme Court Errs

I shall endeavour to critically look at reasons given by the apex Court and try and highlight the point that there is a need to review this case which is very liberally cited as an authority by jurists, lawyers and academicians.

(1) The first and foremost reason which the Court gave was that Article 149 has to be viewed with the background that the State ought not to suffer for the negligence of its officers or for their fraudulent collusion with the adverse party.

It is submitted that the apex Court failed to take notice of leading judgments where the State has suffered due to the negligence of its officers. There have been decisions where Courts have held that the officers of the State have been negligent and the burden of such negligence should be borne by that sovereign authority which failed in regulating the conduct of such officers.

The Supreme Court failed to take note of *P & O Steam Navigation Co.* v. *Secretary of State*[8] where it was held that a suit lies against the Government for wrongs done by public servants in the course of transactions which a trading company or a private

6. AIR 1956 SC 20
7. AIR 1961 SC 828
8. (1861) 5 Bom H.C.R. App.A

person could engage in. In this case the Government was made liable for injury due to the negligence of servants of the Government employed in a dockyard.

The Court did not take note of the law laid down in *Rambrahma* v. *Dominion of India*[9] which was similar to the ratio of *P & O Steam Navigation Case*. In *Rambrahma's case* it was held that whenever the State has benefitted by the wrongful act of its servants whether done under statutory powers or not, the State is liable to be sued for restitution of the profits unlawfully made, just as a private owner.

Even so the State is made to suffer for injury done by vehicles maintained for the service of its employees[10] or engaged in famine relief work[11].

Thus it can be seen that the Supreme Court in *Nav Rattanmal's* case proceeded on the wrong presumption that the State ought not to suffer for the negligence of its officers or for their fraudulent collusion with the adverse party. The State which is supreme cannot make the burden of negligent and lethargic officers of the State fall on the common people. Even if the State does not want to suffer for negligence of 'its' officers the principle of personal liability can be invoked which is the constitutional prescription[12] and is embodied in the Indian Penal Code[13] and other relevant provisions of various enactments.

(2) The second reason which the Supreme Court gave was that in the case of the Government if a claim becomes barred by limitation the loss falls on the public and the benefit goes to the private individual who derives advantage by the lapse of time.

It is submitted that the Court has failed to take note of the object of the enactment which is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or laches.[14].

(3) The third reason which the Supreme Court gives is that it is a known fact that Governmental machinery does not act as quickly as in the case of individuals, that there has to be inter- departmental correspondence, consultations and sanctions obtained according to the rules. Thus the Court justifies this long period of time given to the Government to file a suit.

The question is how can the highest Court of the land justify the functioning of the Government at a snail's pace? As it is, the State is supreme as it has all the resources, the manpower and all the vital information. What is the need to wait for a long period of time and make the individual believe that the property belongs to him and then later on divest the person of such right which should have been his in justice, good conscience and equity. Further the object of the Limitation Act is that such a right, to enjoy the property, should belong to the individual.

---

9. AIR 1958 Cal. 183
10. *Union of India* v. *Sugrabai* AIR 1969 Bom 13
11. *Shyam Sunder* v. *State of Rajasthan* AIR 1974 SC 890
12. Bhat, P. Ishwara, *"Administrative Liability of the Government and Public Servant"*, (1983), Deep & Deep Publications: New Delhi, p.110
13. Indian Penal Code, 1860, S.166 read with S.44
14. *Rajendra* v. *Santa* AIR 1973 SC 2537

Moreover due to this inaction for such a long period of time the ultimate loser is the public because they are the ones who could have benefitted if the Government could have realized its right earlier in point of time and have it recognized by the Court.

(4) The apex Court also cited other cases in support of its view[15].

I submit that in those cases the provision which was challenged was not against the object of the impugned enactment but was framed in pursuance of the object of the impugned enactment, which is very different from the present case. The provision which has been challenged is not at all in pursuance of the object of the Limitation Act.

Did the Supreme Court Look at Article 14?

A provision will not be struck down as *ultra vires* Article 14 if it can be shown that it falls under permissible classification. In *Dalmia's Case*[16] it was said that permissible classification must satisfy two conditions, namely :

(i) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and

(ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question.

Now, as is evident the intelligible differentia as explained above is far from intelligent and the reasoning only legitimizes the Government's slow functioning and lethargy.

The Supreme Court further failed to see that the differentia did not have any rational relation to the object sought to be achieved by the Statute in question.

The object of the Limitation Act is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction or negligence[17]. Thus it can be seen that the differentia has no rational relation to the object sought to be achieved by the statute in question.

Thus there is no doubt that the question of challenge of Article 14 was not properly handled or few questions which should have been answered have not been dealt with by the apex Court.

The Court's opinion seems to lend credence to the statement that:

"Supreme Court is not the apex Court because it is infallible but it is infallible because it is the apex Court."

---

15. AIR 1961 SC 1708
16. (1959) SCR 279
17. *Rajendra* v. *Santa* AIR 1973 SC 2537