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AR ANTULAY V. RS NAYAK

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ABSTRACT

The case was a landmark judgment as it stated the corruption cases that are triable by a special judge, cannot be transferred to a High Court judge for a hearing. After the judgment of this case, many legal academics pointed out how the legal system of India is restricted by the limitations of human foresight. In the famous Sahara's case, the court stated this case to be of irrelevant precedent and the judgment must be cited as a precedent, only when confined to the facts and circumstances of the cases.

INTRODUCTION

Mr. Antulay, the Respondent in this landmark case, was the then Chief Minister of Maharashtra who resigned and left office on January 20, 1982, while the petitioner, Mr. Nayak, was a political figure with political ties. The lawsuit centers on the Respondent's claim that his fundamental rights had been violated. The Apex Court had issued a landmark decision, stating that the High Court's rulings were in violation of Section 7(1) of the Criminal Law (Amendment) Act, 1952, as well as the appealing party's fundamental rights under Articles 14 and 21 of the Constitution of India.

RESEARCH OBJECTIVES:

This research paper especially speaks about the case study of the case AR Antulay v. RS Nayak. It was a landmark judgment where it is triable by a special judge, and it cannot be transferred to a high court judge for a hearing. After hearing the case it has pointed out the many different provisions in the legal system of India.

RESEARCH PROBLEM:

The research problem of this research paper talks about how the perspective of the Indian legal system is restricted by the limitations of human foresight.

RESEARCH QUESTIONS:

Statue must be read as whole, Clear, and unambiguous language.

What are the facts and the judgment of the case?

What is the different perspective given in the case?

RESEARCH HYPOTHESIS:

In the case of AR Antalya v. RS Nayak (1988) is one of the landmark judgments in Indian legal history because it established that corruption matters tried by a Special Court cannot be referred to a High Court judge for a hearing. Despite much criticism, the Supreme Court of India was certain that justice had been delivered properly. This subsequently led several legal scholars to assert that law was being hampered by human foresee constraints.

SCOPE OF STUDY:

The research paper talks about the concept of clear and numerous meaning n the statue.

The scope of study of the research paper also deals with the case law which states the clear example of clear and unambiguous meaning.

RESEARCH METHODOLOGY:

Descriptive and analytical methodology has been followed by the research through the research paper. Secondary sources like books, articles and websites have been referred by the accomplishment of the research paper.

STATUTE MUST BE READ AS A WHOLE

When a question arises as to meaning of a certain provision in a statute, it is known that it should be read as whole in its context.

The context over here means, the statute as a whole, the previous state of law, other statutes in "Pari Materia"(same matter or same subject), the general scope and the mischief that it was

intended to remedy. It is an established rule now that the intention of the legislature must be found by reading the statute as a whole. The rule is said to be compelling rule or elementary rule or settled rule.

Lord Davey "every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter".

The above mentioned rule is said to be "**ex visceribus actus**".

Lord Coke: "to construe one part of the statute by another part of the same statute, for the best preset the meaning of the makers". To ascertain the meaning of a clause in a statute the court must look at the whole statute, at what precedes and what succeeds and not merely at clause

PLAIN OR AMBIGUOUS LANGUAGE

The same word may mean one thing in one context and another in different context. For this reason the same word used in different sections of a statute or even used at different places in the same clause or section of a statute may bear different meanings. The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived by studying the statute as a whole. How far and to what extent each component part of the statute influences the meaning of the other part would be different in each given state.

CASE LAW

Citation: AIR 1988 SC 1531

Judges/Bench: Sabyasachi Mukherjee, G.L. Oza, M.N. Venkatachaliah, Ranganath Misra, JJ., B.C. Ray, S. Natarajan, S. Ranganathan

Court : Supreme Court of India

Petitioner: A.R Antulay

Respondent: R.S Nayak

Date of the judgment: 29th April 1988

Reference: The Constitution of India, The Indian Penal Code, Criminal Amendment Act 1963, Criminal Procedure Code 1973 & Criminal Law Amendment Act 1952

Legislation and Rules: 1. Sections 6 & 7- offences Criminal Law 1952

2. Sections 374, 406 & 407 Criminal Procedure Code, 1973

3. Articles 13, 14, 21, 32, 134, 136, 139, 141, 142 of the Constitution of India

FACTS

Mr. Antulay (Barrister Abdul Rahman Antulay) had resigned as Maharashtra's Chief Minister on January 13, 1982, after the Bombay High Court sentenced him to prison for coercion. The Court found that Antulay had illegally bought Bombay region developers in exchange for more concrete than the quantity distributed by the government to Indira Gandhi Pratibha Pratishtan Trust, which was of the few trusts he had set up and controlled. The Court eventually released him on bond. However, the Supreme Court later cleared him of the charge. An appeal was filed under Article 136 of the Constitution on February 16, 1984, and the Supreme Court's Constitution Bench ruled that a member of the legislative assembly is not always a public worker thereby reversing the previous order. Rather than returning the case to a Special Judge for disposition as required by law, the Supreme Court unilaterally removed it from the Special Judge's Court and transferred it to the Bombay High Court.

CONTENTIONS

The Appellant party had claimed that he was forced to deal with bias without being given the opportunity to present any pleadings or contentions in front of the Court, which he claimed was a violation of his fundamental right under Article 14 of the Indian Constitution. It was also argued that the litigant's fundamental Right to Trial by a Special Judge under Article 21 of the Constitution was contravened. The fundamental rights of equality and justice, which stipulated that no one should suffer the brunt of technical faults, were blatantly infringed, according to the Appellant. The appealing party had also lost two important rights, namely the ability to appeal to the High Court under Section 9 of the Criminal Law Amendment Act and the opportunity to appeal to the Supreme Court under Article 136 of the Constitution.

The respondent argued that the High Court could withdraw the matter from the Special Judge under the Criminal Law Amendment Act by means of Section 407 of the Criminal Procedure Code if the conditions were right. It was stated that the matter was transferred without providing the appellant an opportunity to present his reasons, which was unacceptable. The issue of whether the superior court had jurisdiction was debated and it was contended that the Court could not be held liable for such charges unless it had behaved in a Coram non-judice (not before a judge) manner.

DECISION

The Supreme Court's decision, in this case, was handed down by a seven-judge panel. The Bench ruled in 1988 that the case's 1984 ruling was unreasonable, unlawful, and unconstitutional under Article 21 of the Indian Constitution because Antulay's right to use the appeal system was limited. The Apex Court stated that Section 406 of the Criminal Procedure Code, 1973 allows for the transfer of criminal cases and the Supreme Court to move cases and requests. According to the law, the Court may coordinate a specific case or allure from one High Court to the next High Court, or from a Subordinate Criminal Court to another Criminal Court of equivalent or upper-level purview.

The Supreme Court lacks the authority to transfer cases to itself. Only the Parliament, by law, has the authority to create or expand the jurisdiction. The judiciary has not been vested with such power. It was also noted that the appellant had the fundamental right under Article 21 of the Constitution, a Special Judge's trial under Section 7(1) of the Criminal Law (Amendment) Act, 1952, and the right not to suffer as a result of any judgment rendered by the Court in violation of natural justice.

LEGAL VIEWPOINTS

The Code of Civil Procedure, 1908 and its viewpoint

The case of A.R. Antulay vs R.S. Nayak & Anr (1988) is commonly referred to while studying Section 9 of the Code of Civil Procedure, 1908 which talks about the jurisdiction of the civil courts. The Supreme Court had clarified in this case that the subject matter of jurisdiction of a court has obtained a legislative character, which is to say that the judiciary has no role in widening or narrowing its jurisdiction by itself.

The judiciary can only interpret laws and in doing so, it cannot expand or reduce the jurisdiction of a court. In this scenario, the consent of a court is immaterial as the judiciary cannot surpass the legislative decision-making. Along with the power to create and enlarge jurisdiction, the legislature has also been vested with the power to confer a right of appeal or take away the same from a particular court. The Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the jurisdiction of the court or divest a person of his or her rights of revision and appeal.

Constitutional viewpoint

The rule of law is the core of our democracy, which means we need an independent judiciary, and judges who can make decisions regardless of the political winds that are blowing. The other branches of the government including the executive and legislative branches, must not obstruct the judiciary's ability to do justice. Judges must be able to carry out their duties without fear of reprisal or favor. The primary aim of judicial independence is for judges to be able to settle a matter before them based on the law, without being affected by any other element.

Though there is no clear provision in the Indian Constitution in relation to the separation of powers, the independence of the judiciary and the rule of law are fundamental characteristics of the Constitution that cannot be changed, as the Hon'ble Supreme Court had observed in the case of *S.P. Gupta v Union of India* (1962).

Article 50 of the Indian Constitution specifically mentions the independence of the judiciary that is the separation of the judiciary from the executive organ of the government. Although different compartments are functioning different roles in the parliamentary form of government, hardly can the executive and the legislature be distinguished from each other. What is interesting to note in this viewpoint when put on the same plate as the present case is that determination of jurisdiction does not come under the ambit of judicial independence.

This is because the independence of the judiciary does not signify taking away legislative power of law-making, instead what it does mean is to interpret the laws made by the legislature in such a way so that a common man can understand the meaning of the same. Thus although the judiciary is supposed to be independent of the other two organs of the Indian government, it cannot determine its own jurisdiction.

Administrative perspective

Article 12 of the Indian Constitution defines "State". It states that the term 'State' includes the Central and state governments, Parliament, and legislatures, and all local or other authorities functioning under India's government or Indian territory. Whether the judiciary is included in the broad term "State" is a significant question to be addressed in this context. The judiciary's position under Article 12 is based on judicial and non-judicial decisions, whereby if the judiciary is deciding cases, it cannot be referred to as a State.

However, if it is performing non-judicial functions, it is included in the definition of State, because if the courts are completely exempt from the State, it will have unrestricted power to make laws that violate fundamental rights. This is backed by Article 13 which provides that any law that violates basic rights is unconstitutional, and since courts have the power to establish laws, this suggests that they are performing a State duty. Article 141, on the other hand, states that the Supreme Court's decision is binding on all courts within India's territory. As a result, Supreme Court's verdicts are unassailable, but the lower court's conclusions can be appealed if they infringe fundamental rights.

Where in a case the appellant filed a complaint against the respondent, A.R. Antulay, a public servant being the Chief Minister of Maharashtra State under ss. 161, 165 I.P.C. and s. 5 of the Prevention of Corruption Act, 1947 (1947 Act) alleging abuse of office of Chief Minister, the issue as regard to interpretation of the act came before the court.

If the language is clear and unambiguous, no need of interpretation would arise. The 5-judge bench further observed that the question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating.

CONCLUSION

When the Supreme Court handed down this verdict in 1988, it drew criticism from observers, notably legal professor Upendra Baxi, who believed that India's anti-corruption legislation protected the guilty. The Court, on the other hand, believed that "finality is fine, but justice is better." In this instance, the principle of *Ibi jus ubi remedium*, which states that if a person's legal rights are violated, he has the right to seek redress in a court of law, has been applied. It is important to remember that judges and judgments play an important role and should not be skewed in any way. As a result, technical faults or ideological differences should not be reflected in judgments, if they are, our fundamental rights will be violated.

BIBLIOGRAPHY

1. <https://www.legalbites.in/case-summary-ar-antulay-v-rs-nayak-1988/>
2. <https://www.lawyerservices.in/Abdul-Rehman-Antulay-and-Ors-Versus-RS-Nayak-and-Anr-1991-12-10>