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A CASE STUDY

Grounds for issuance of writs

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ABSTRACT

The paper aims of enumerating the heart and soul of the Indian court *i.e.*, Remedies available for the infringement of fundamental rights enumerated under article 32 and 226 for the Supreme Court and High Court, respectively the various types of write have been enumerated in the paper. Also various case laws have been discussed which replaying the changing attitude of the court for the fundamental rights and remedies. The various conditions and qualification for the use different write has been given.

Key Words : Writs, Habeas corpus, Quo-warranto, Mandamus, Certiorari

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In modern democratic countries, the administrative authorities are vested with vast discretionary powers. The exercise of those powers often becomes subjective in the absence of specific guidelines etc. Hence, the need for a control of the discretionary power is essential to ensure that 'Rule of Law' exists in all governmental actions. The judicial review of administrative actions in the form of writ jurisdiction is to ensure that the decisions taken by the authorities are legal, rational, proper, fair and reasonable.

Article 32 and 226 of the constitution of India has been designed for the enforcement of fundamental rights and for a judicial review of administrative actions, in the form of writs. It is a constitutional remedy available to a person to bring his complaint or grievance against any administrative action the notice of the court safeguard of fundamental rights and assurance of natural justice are the most important components of writ jurisdiction.

Type of writs :

There are namely five writs that can be issued by the apex court and the High Court.

Habeas corpus :

This writ is used primarily to secure the release of a person who has been detained unlawfully or without any legal jurisdiction. The great value of the writ is that it enables immediate determination of the right of a person as to his freedom.

Habeas corpus is a Latin term, which literally means, you may have the body. This writ is issued in the form of an order calling upon a person by whom another person is detained to bring that person before the writ and to let the court know by what authority he has detained that person. If the cause shown discloses that, the detained person has been detained illegally, the court will orders that he be released.

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The main object of the writ is to give quick and immediate remedy to a person, who is unlawfully detained by the person or the authorities, detained the person can be released forthwith.

Though the traditional function of the writ of habeas corpus has been to get the release of a person unlawfully detained or quested, the supreme court and India has widened its scope.

In Kanu Sanyal v. Distt. Magisterate (AIR 1974 SC 510), the supreme court held that, while dealing with the application of the writ of habeas corpus production of the body of the person alleged to be unlawfully detained was not essential. Court said that the production of the body of person alleged to be illegally detained is not an essential feature of writ of habeas corpus under Article 32 of the constitution.

In Sunil Batra v. Delhi Administration (AIR 1978 SC 1675), the supreme court permitted the use of writ of habeas corpus for protecting the various personal liberties of the prisoners *i.e.*, to prevent inhuman and cruel treatment meted out to the prisoners in jail.

Principles :

- It is a remedial writ, available when there is wrongful deprivation of individual freedom.
- The writ will not be used if the detention in question is lawful.
- In certain circumstances, the court has power to issue the writ expartie.
- The Doctrine of Res-Judicata is not applicable to the writ of habeas corpus.
- While issuing writ of habeas corpus, the court can award compensation in certain cases.

Quo-warranto :

The term quo-warranto means what is your authority. The writ of quo-warranto is used to judicially control executive action in the matter of making appointments to public offices under relevant statutory provision. The writ is also used to protect a citizen from the holder of a public office to show to the court under what authority he is holding the office in question. By this writ, a holder of an office is called upon to show to the court and the court may pass an order preventing the holder to continue in office and may also declare the office vacant. Writ of quo-warranto can be issued to prevent a person from holding an office which he is not legally entitled to hold.

In University of Mysore v. Govinda Rao (AIR 1965 SC 491), the supreme court laid down two important objects of writ of quo-warranto.

- To control executive action is the matter of making appointment to public offices, against the relevant statutory provisions.
- To protect a citizen being deprived of that to which he may have the right.

Conditions :

For the issuance of writ of Quo-warranto, following grounds, are to be taken into consideration.

- The office in question must be a public office.
- The office must be of a substantive character, which means that must be an independent office.
- The office must be statutory or constitutional.
- The holder must have asserted his claim to the office.

In Gokaraju Rangaraju v. State of Andhra Pradesh (AIR 1981 SC 1473), the court said that the acts of the officers de-facto performed by them within the scope of their assumed official authority, in the interest of public or third person and not for their own benefits are generally as valid and binding as they were acts of officers de-jure. But it is to be noted that by applying de-facto doctrine, the appointment of the officers de-facto does not become, valid or lawful nor can be allowed to continue in the said office. As soon as the attention of the court is drawn to the fact that, a person who is not entitled to hold an office is holding the public office contrary to law, it is not only the power, but duty of the court to declare that is not entitled to hold that office and to restrain him from acting as such.

Mandamus :

Mandamus is the command to an authority directing is to perform a public duty imposed upon it by law. The function of Mandamus is to keep the public authorities within the limits of their jurisdiction while exercising public function.

Mandamus means a command. It is an order issued by a court to an authority directing it to perform a public duty imposed upon it by the constitution or by any other law for time being enforced. It is a judicial remedy which can be issued to any kind of authority exercising the functions of public nature. The object of mandamus is to keep the public authorities within the limits of their jurisdiction while exercising their functions.

Conditions :

Following condition and grounds are to be satisfied for the issuance of mandamus.

- A petitioner must have legal rights.
- A legal duty must be imposed on the authority to perform any act.
- An affected person must demand justice and it must have been refused.
- It cannot be issued to enforce a civil liability arising under the law of forts or contracts.
- An application for mandamus must have been made in good faith.

In Bombay Municipality v. Advanced Builders (AIR 1972 SC 793), the court directed the municipality to implement a town planning scheme which was prepared by it and approved by the Government under the relevant statute, but on which no action was taken for a considerable time.

Formerly the rule was that, only a person having a specific legal right to the performance of the duty by the concerned public authority, had a right to sick mandamus. Emphasis was laid on the individual right rather than public interest. But now this standing rule has been relaxed and the emphasis has come to be shifted from indication of individual right to public interest. No public authorities should perform their duties, as a matter of public interest.

Certiorari :

Certiorari is a latin word being passive from of word 'certiorari' meaning inform. It was essential royal demand for information, the king to be certified of same matter, order that the necessary information be provided for him. A writ of certiorari or in the nature of certiorari can be issued by the supreme court under act 32 and High Court under article 226.

Certiorari means to certify. It is an order issued by the superior court to an inferior court or any authority exercising judicial or quasi judicial functions to investigate and decide and legality and validity of the orders passed by it.

The function of certiorari is to quest a decision already made and so it is issued when the body in question has disposed of the matter and conducted a decision.

The object of the writ of certiorari is to keep inferior court and quasi judicial bodies within limits of their jurisdiction.

In Varma v. State of U.P. (AIR 1985 SC 167), the supreme court held that, if the judicial or quasi judicial body act in excess of their jurisdiction, their decision can be quested by superior courts by issuing writ of certiorari.

Grounds :

This writ can be issued on the following grounds :

- If any authority has acted under invalid law.
- If there is a jurisdictional error.
- If there is an ever apparent on the face of record.
- If the finding of facts are not supported by evidence.
- If there is failure of the principles of natural justice.

The writ of certiorari is now regarded as a general remedy in England for the judicial control of both quasi judicial and administrative decisions affecting rights of common people in the state.

Prohibition :

The writ of prohibition is a judicial writ. It can be issued against a judicial or quasi judicial authority. This writ can be issued by superior court to inferior courts for the purpose or preventing inferior courts from usurping a jurisdiction with which it was not legally vested or in other words, to compel inferior courts to keep within the limits of their jurisdiction.

This writ can be issued only to judicial and Quasi judicial bodies. It can be issued when the matter has not been disposed off, but it is being considered by the body concerned.

The object of the writ is to prohibit the body concerned from proceeding with the matter further.

Grounds :

In Union of India v. M.B. Patnaik (AIR 1981 SC 858), the supreme court said that, writ of prohibition can be issued on the following grounds :

- If the authority has acted under invalid law.
- If there is a jurisdictional error.
- If there is error apparent on the face of record.
- If the finding of facts are not supported by evidence.
- If there is failure of principles of natural justice.

Formerly writ of prohibition was issued only to the judicial or quasi judicial bodies. But now this writ is designed to prevent the excess of power by the public authorities.

Constitutional provisions :

Article 32 Remedies for enforcement of rights conferred by this parts :

The right to move the supreme court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

The supreme court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, qua-warranto, prohibition and certiorari, whichever may be appropriate, for the enforcement of any of the right conferred by this part.

Without prejudice to the power conferred on the supreme court by clause (1) and (2), Parliament by law may empower any other court to exercise within the local limits of its all jurisdiction or any of the power exercisable by the supreme court under clause (2).

The right guaranteed by this article shall not be suspended except as otherwise provided for by this constitutions.

Article 226 : Power of high court to issue certain writs :

Not withstanding anything in Article 32, every high court shall have the power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, quo-warranto, prohibition and certiorari or any of them, or for the enforcement of any of the right conferred by Part III and for the purpose.

The power conferred by clause (1) to issue directions, orders or writs to any govt., authority or person may also be exercised by any high court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arise for the exercise of such power, not withstanding that the seat of such govt. or authority or the residence of such person is not within those territories.

When any party whom an interior order, whether by way of injunction or stay or in any other manner, is made on or in any proceedings, relating to, a petition under clause (1), without -

- Furnishing to such party copies of such petition and all documents in support of the plea for such interior order ; and
- Giving such party on opportunity of being heard.

Makes application to the high court for the vacation such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party the high court shall dispose off the application within a period of 2 weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the high court is closed on the last day of that period, before the expiry of the next day afterwards on which the High court is open; and if the application is not so disposed off, the interior order shall, on the expiry of the period, or as the case may be, the expiry of the next day, stand vacated.

The power conferred on a High Court by this article shall not be in derogation of the power conferred on the supreme court by clause (2) of article 32.

Conclusion :

Since the commencement of the constitution the most commonly used technique to being violative state actions within the cognizance of the court has been the writ system. Innumerable case have taken place in this area and hundreds of cases continue to be filed against the administrative action every year for sacking writs. It may not be exaggeration to say that, the writ process has over shadowed all the techniques of judicial review of administrative action.

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