Writs: Utility in Administrative Law

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ABSTRACT

In modern times the strengthening of power of administrative authorities has resulted into different complications and repercussions in socio-economic field in India.

The administrative law is that branch of law that keeps the governmental actions within the bounds of law and prevents the enforcement of blatantly bad orders from being derogatory.

State not only has the legal duty to protect the rights guaranteed, but also a social duty to compensate the affected, when the state violates these rights.

There has been tremendous expansion in the administrative process in our country, which is obvious in a welfare state as a welfare state is basically an administrative state.

Keywords

Rule of law, Habeas Corpus, Certiorari, Prohibition, Mandamus, Quo Warranto

INTRODUCTION

Writ jurisdiction is exercised by the Supreme Court and the High courts only. This power is conferred to Supreme Court by article 32 and to high courts by article 226. Article 32(1) guarantee a person the right to move the Supreme Court for the enforcement of fundamental rights guaranteed by part III of the constitution. Article 32(2) empowers the Supreme Court to issue direction or orders or writs in the nature of Habeas Corpus, Certiorari, Prohibition, mandamus and Quo-warranto for the enforcement of fundamental rights. Article 226 empowers the state high courts to issue directions, orders or writs as mentioned above for the enforcement of fundamental rights and for 'any other purpose'. i.e., High courts can exercise the power of writs not only for the enforcement of fundamental rights but also for a 'non fundamental right'.

1. Habeas Corpus

The meaning of the Latin phrase Habeas Corpus is 'have the body'. According to article 21,"no person shall be deprived of his life or personal liberty except according to the procedure established by law". The writ of Habeas corpus is in the nature of an order directing a person who has detained another, to produce the latter before the court in order to examine the legality of the detention and to set him free if there is no legal justification for the detention. It is a process by which an individual who has been deprived of his personal liberty can test the validity of the act before a higher court. The objective of the writ of habeas corpus is to provide for a speedy judicial review of alleged unlawful restraint on liberty. It aims not at the punishment of the wrongdoer but to resume the release of the retinue. The writ of habeas corpus enables the immediate determination of the right of the appellant's freedom. Article 22 of the constitution requires an arrested person to be produced within 24 hours of his arrest and failure to do so would entitle the person arrested to be released. The grounds of his arrest should also be informed to him. Even when the arrest is valid, failure to inform the grounds within a reasonable time would make the detention unconstitutional. In such cases, the writ of Habeas corpus acts as a constitutional privilege. If the court finds that there was no legal ground for the imprisonment of a person, it will pass an order to release him forthwith. The question before the court is whether the detention is lawful. In the writs of habeas corpus, the merits of the case or the moral justification for the imprisonment or detention are irrelevant. Any person whether he is guilty or not, is entitled to be set at liberty if his imprisonment is not as per law.

Who can apply?

A writ of habeas corpus is issued to the authority or person who has detained the person. The application for habeas corpus can be made by the prisoner himself or by any interested person other than a total stranger. Even a letter to the court pointing out the illegalities of imprisonment or unlawful detention will be admitted. If the court gets any information from anyone, it can act suo-moto in the interest of justice.

2. Certiorari

The writ of Certiorari is generally issued against authorities exercising quasi-judicial functions. The Latin word Certiorari means 'to certify'. Certiorari can be defined as a judicial order of the supreme court or by the high courts to an inferior court or to any other authority that exercise judicial, quasi-judicial or administrative functions, to transmit to the court the records of proceedings pending with them for scrutiny and to decide the legality and validity of the order passed by them. Through this writ, the court quashes or declares invalid a decision taken by the concerned authority. Though it was meant as a supervisory jurisdiction over inferior courts originally, these remedy is extended to all authorities who issue similar functions. The concept of natural justice and the requirement of fairness in actions, the scope of certiorari have been extended even to administrative decisions. Whether the decision is judicial or quasi judicial is irrelevant nowadays. Certiorari is corrective in nature. This writ can be issued to any constitutional, statutory or non statutory body or any person who exercise powers affecting the rights of citizens. Grounds for Certiorari: The following are the grounds for Certiorari:

1. Lack of jurisdiction: When the authority has no jurisdiction to take action, it is lack of jurisdiction. When an authority is improperly constituted or is incompetent to take action and if it acts under an invalid law, it will amount to lack of jurisdiction. Similarly when the authority acts without jurisdiction, fails to exercise the vested jurisdiction or acts in excess of the limits, there involves a defect of jurisdiction or power. The court can issue certiorari to quash such orders.

2. Abuse of jurisdiction: If an authority abuses its jurisdiction, a certiorari can be issued. When the authority exercises its power for improper purposes it is abuse of jurisdiction. Similarly if the authority acts in bad faith or ignores relevant points and facts or acts on some other considerations abuse of jurisdiction occurs and the writ of certiorari becomes applicable.

3. Jurisdictional facts: A jurisdictional fact is that fact or facts upon which an authority's power to act depends. In the absence of jurisdiction for collateral facts an authority cannot exercise jurisdiction over a dispute and decide it. If the authority takes a decision on the wrong assumption of existence of jurisdictional facts, the order is liable to be quashed by the writ of certiorari.

4. Error of law apparent on the face of record: A writ of certiorari can be issued to quash an order if there is an error of law apparent on the record. An error is apparent on the face of record if it is self evident. i.e. if the error can be ascertained by a mere perusal of the record without a detailed argument or further evidence. An error of law apparent on the face of the record is treated as an insult to the legal system. Ignorance or neglect of law, wrong proposition of law, inconsistency between the facts, law and the decision etc amount to errors of law.

5. Violation of the principle of natural justice: When there is a violation of the principle of natural justice, a writ of certiorari can be issued. An authority is bound to observe the principles of natural justice. Anyone who decides a case must adhere to the minimum standards of natural justice. Hence when there occurs an infraction of fundamental right, the writ of certiorari comes for restoration of that right.

3. Prohibition

The grounds for issuing the writs of certiorari and prohibition are generally the same. It is a general remedy for the control of judicial, quasi judicial and administrative decisions affecting the rights of persons. Grounds: The writs of prohibition and certiorari are issued more or less on similar grounds.

1. Absence or excess of jurisdiction: The writ if Prohibition prohibits an authority from exercising a jurisdiction not vested on it. When there is absence of jurisdiction or total lack of jurisdiction an authority cannot act.

2. Violation of fundamental rights: When an authority acts in violation or infringement of the fundamental rights of a person, a writ of prohibition can be invoked.

3. Violation of the principles of natural justice: All authorities are to observe the principles of natural justice while exercising their powers. If an authority fails in this regard the decision of that authority is liable to be quashed through the writ of prohibition.

4. Statutes or laws against the constitution: When an authority tries to act under a statute or a law which

is unconstitutional, the writ of prohibition can be applied.

4. Mandamus

The writ of mandamus is a judicial remedy in the form of an order from the supreme court or high courts to any inferior court, government or any other public authority to carry out a 'public duty' entrusted upon them either by statute or by common law or to refrain from doing a specific act which that authority is bound to refrain from doing under the law. For the grant of the writ of mandamus there must be a public duty. The superior courts command an authority to perform a public duty or to non perform an act which is against the law. The word meaning in Latin is 'we command'. The writ of mandamus is issued to any authority which enjoys judicial, quasi judicial or administrative power. The main objective of this writ is to keep the public authorities within the purview of their jurisdiction while performing public duties.

Conditions required for mandamus

- The petitioner must have the right to compel the performance of the duty. This writ cannot be invoked if the person complaining has no legal right.
- There must be public duty. That duty must be mandatory and not discretionary. But at the same time when a discretionary power is abused or improperly exercised, that would be treated as non exercise of discretion and the court can command the authority to exercise the discretion in accordance with law. •The petitioner must have made a specific demand for the performance of the duty and the authority must have made a refusal to perform. Then only a writ of Mandamus can be sought.
- A civil liability arising under a contract cannot be enforced through mandamus. The grant of mandamus is discretionary. If there is unreasonable delay in filing the petition or if there is an adequate alternate remedy mandamus may be refused by the court.

Grounds

1. Lack of jurisdiction.
2. Error of jurisdiction.
3. Excess jurisdiction.
4. Abuse of jurisdiction.
5. Violation of the principles of natural justice.
6. Error of law apparent on the face of the record etc.

In the modern age, administrative agencies enjoy vast discretionary powers. Judicial review of the administrative actions often becomes necessary. The judicial review of administrative functions also comes under the scope of mandamus. When an administrative authority who has the power of discretion fails to act bonafide or if it abuses or exceeds the jurisdiction and if it does not apply 'mind' in solving issues the writ of mandamus acts as an extraordinary remedy.

Who can apply?

Generally the affected person has the right to seek this remedy.

Exceptions are

1. The writ of mandamus cannot be issued against the president or the governors of states. They cannot be insisted to exercise powers and to perform duties.
2. The writ of mandamus cannot be issued against the state legislature to prevent it from the execution of a law alleged to be violative of the provisions of the constitution.
3. The writ of mandamus cannot be issued to an officer who acts on the orders of his superior.

Grounds for refusal of mandamus: Mandamus is a public law remedy and hence it cannot be used to enforce a civil liberty arising under contracts. If there is unreasonable delay in filing the petition and if there is another adequate alternate remedy, the writ of mandamus cannot be issued. In fact the writ of mandamus is more purposeful than certiorari or prohibition. It combines the aspects of both the writs to make an effective and better solution.

5. Quo Warranto

The word meaning of 'Quo warranto' is 'by what authority'. It is a judicial order against a person who occupies a substantive public office without any legal authority. The person is asked to show by what authority he occupies the position or office. This writ is meant to oust persons, who are not legally qualified, fro substantive public posts. The writ of Quo warranto is to confirm the right of citizens to

hold public offices. In this writ the court or the judiciary reviews the action of the executive with regard to appointments made against statutory provisions, to public offices .It also aims to protect those persons who are deprived of their right to hold a public office. Conditions: The following conditions are to be present if the writ of quo warranto is to be issued. The office must be a 'public office'. All offices established by statutes or as per the provisions of the constitution and which carry out public duties are public offices. It must be substantive in nature. A substantive office is independent and permanent. It must be held by an independent officer. The holder must be in actual possession of the office. The person must have actual possession of the office. A person who has been elected or appointed to a particular post cannot be sued upon unless he has not accepted the post. The holding of the post must be in contravention of law. The appointment of a person to a public office must be a clear violation of law. Irregularities in procedures etc cannot be taken as violation. Who can apply? Any member of the public can seek the remedy of quo warranto even if he is not personally aggrieved or interested in the matter.

CONCLUSION

Writs are prerogative powers provided by the constitution for judicial review of administrative actions and they are discretionary in nature. Although discretionary in nature but the discretion should be exercised on sound legal principles ie it should not be arbitrary in nature and predictable and act as restraint on unfair and unreasonable decisions of government.

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