



JUDICIAL CONTROL OF ADMINISTRATIVE ACTION IN INDIA THROUGH WRIT OF MANDAMUS



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Received: 09.02.2024

Reviewed :11.02.2024

Accepted: 14.02.2024

ABSTRACT

A comprehensive mechanism is available for judicial control of administrative action under the provisions of the Constitution of India, CPC, specific relief act etc. Firstly, it includes judicial review of administrative action under Articles 32 and 136 by the Supreme Court of India and under Articles 226 and 227 by the High Courts, Public Law Review and Private Law Review. Effective implementation of writ of mandamus is urgently needed as it is essential and significant to keep administration / public officials within their limits. Creation of an awareness claim of writ of mandamus is equally important. Mandamus is important to exercise control on public officials who are not performing their public duty reasonably and properly. It gives relief to the individuals against irregular administrative action. Writ of mandamus is crucial to keep administrative authorities within their limits which is the core object of administrative law. Indian judiciary has played crucial role in the effective implementation of writ of mandamus.

KEY WORDS: Judicial Control, Mandamus, Writ, Public duty

Introduction

There is an availability of comprehensive mechanism for judicial control of administrative action under the provisions of the Constitution of India, CPC, specific relief act etc. Firstly, it includes judicial review of administrative action under Articles 32 and 136 by the Supreme Court of India and under Articles 226 and 227 by the High Courts.

Secondly it includes Public Law Review through writs and through PIL. Thirdly, it includes Private Law Review through injunctions, declaratory judgments and specific performance and civil suits for compensation.

There are five kinds of writs viz. Habeas Corpus, Mandamus, Writ of Prohibition, Writ of Certiorari and Quo-Warranto. The Supreme Court of India can issue writs under Article 32 of the

Constitution of India. Similar power is vested in the High Court under Article 226.

The term Mandamus means “the order”. The writ is thus a command issued by a Court asking a public duty belonging to its office. It is issued against a public authority that is under a legal duty to do or forbear to do something, in the performance of which the petitioner has a legal right. But, no mandamus can be issued to the rule making authority to make rules to carry out the provisions of the Act when it is discretionary for the authority to make or not to make the rules. (Union of India v. Namit Sharma AIR 2014 SC 122.)

The scope of present research paper is confined to discuss and analyze judicial control of administrative action through writ of mandamus.

Objectives

- To consider the meaning of mandamus.
- To discuss object and to analyze the purposes of mandamus.
- To discuss and analyze the concept of writ of mandamus.
- To study and analyze the importance of writ of mandamus.
- To create awareness amongst the individuals about claim of writ of mandamus.
- To analyze few landmark case laws on issuing of writ of mandamus.
- To highlight the significance of implementation of mandamus.
- To draw conclusion and suggest recommendations.

Hypothesis

- Effective implementation of writ of mandamus is urgently needed as it is essential and significant to keep administration / public officials within their limits.
- Creation of an awareness claim of writ of mandamus is equally important.

Research Methodology

Research methodology adopted for writing this research paper is Doctrinal Research Method / Methodology.

Meaning of Mandamus

Meaning –

‘Mandamus’ literally means ‘a command, or’ the order; It is an order by a superior court commanding a person or a public authority (including the Government and public corporation) to do or forbear to do something in the nature of public duty or in certain cases of a statutory duty. e.g. a licensing office is under a duty to issue a license to an applicant after fulfillment of required and requisite conditions. But despite of the fulfillment of the conditions; if license is not issued; an applicant may ask for an issue of mandamus against the licensing officer.

Object and Purposes (Analysis)

Object - The object of the writ of Mandamus is to give an order to a person or public authority to perform his public duty properly and reasonable.

Purposes –

- For the enforcement of fundamental rights, the court would issue a writ of mandamus restraining the public officer or the Government from enforcing that order or doing that act

against the person whose fundamental right has been infringed.

- Apart from the enforcement of fundamental rights, mandamus is available from a High court for various other purpose, e.g.,-

To direct a public official or Government not to enforce a law which is unconstitutional.

- To compel a court or judicial tribunal to exercise its jurisdiction when it has refused to exercise it.
- To compel any person to perform his public duty where the duty is imposed by the constitution or a statute or statutory provision.
- To enforce the performance of a statutory duty where a public officer has got a power conferred by the constitution or a statute.
- The writ of mandamus can be granted in the circumstance such as the public authority has against the law, or has exceeded his limits of the powers; or has acted malafide; or has not applied his mind; or abused his discretionary powers; or has not taken into account of relevant consideration, or has taken into account of irrelevant consideration.

Analysis of Concept of Writ of Mandamus

Who may apply -

- Any person who has legal right to compel the performance of public duty by the authority.
- Who is a victim of the violation of the statutory duty or the abuse of the statutory power.

When it will lie / when it is issued – (Conditions)

- Mandamus will lie in a case of violation / failure in a performance of public duty by the public authority.
- It will lie in a case in which a public duty is created by a Statute or rule of common law.
- In order to lie Mandamus, the public duty performed by the person or authority must be imperative or mandatory and not discretionary. There must be failure in the performance of public duty.
- The petitioner should have legal right to compel the authority to perform his public duty.
- When the petitioner has asked / requested the authority to perform its public duty which is mandatory and the concerned authority refused to do that duty.

When it will not lie -

- Mandamus will not lie when the duty is not mandatory and merely discretionary in nature covered within discretion of public authority.
- Mandamus cannot be issued against the private body or private individual if it is not entrusted with any public duty.
- Mandamus shall not lay civil liability, which should be solved in the Civil Courts by Civil suits.
- Mandamus may be refused on the ground of laches.
- Mandamus may be refused on the ground of suppression of material facts by the petitioner.
- Mandamus may be dismissed on the ground that it is found to be infructuous or fruitless.

- Mandamus cannot be issued for the enforcement of the private duties e.g. for the enforcement of obligations arising out of a contract.

Against whom it will lie / it is issued -

- Mandamus may be issued against the public authority, Government, public corporation, administrative bodies, local bodies, tribunal or any person performing public duty.
- It may be issued even against Legislature.

Against whom it will not lie / it is not issued -

- Mandamus shall not lie against the President of the Governor of a State, for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers (Article 316, post)
- Mandamus does not lie against a private individual or body whether incorporated or not except where the State is in collusion with such private party.
- Mandamus will not lie against a company which is incorporated under the Companies Act and has no statutory duty or public duty to perform.
- Mandamus cannot be issued so as to command the Legislature to enact a particular law which is competent to enact or to prevent it from enacting a law which contravenes any provision of the Constitution.
- When the High Court of the Judge thereof acts in judicial capacity as distinguished from an administrative capacity, the writ of mandamus cannot be granted against High Court or the Judge.

- A writ of mandamus cannot be granted to enforce an obligation arising out of contract.

Importance of Writ of Mandamus

- Mandamus is important to exercise control on public officials who are not performing their public duty reasonably and properly.
- It gives relief to the individuals against irregular administrative action.
- Writ of mandamus is crucial to keep administrative authorities within their limits which is the core object of administrative law.

Few Landmark Case Laws

- In Sharif Ahmad v. H.T.A., Meerut, (AIR 1978 SC 209.) the Respondent did not oblige the orders of the Tribunal. The petitioner approached the Supreme Court for the enforcement of the orders of the Tribunal. The Apex Court have the Mandamus ordering the Respondent to obey the orders of the Tribunal.
- In Shenoy & Co. v. CTO (AIR 1985 SC 881.), the Apex court has held that it should be taken to mean a command issued by the Court competent to do so, to a public servant, amongst others to perform a duty attaching to the office, failure to perform which leads to the invitation of action.
- In Sales Tax Officer v. Kanhaiyalal (AIR 1959 SC 135.), the Court has issued the Mandamus to Sales Tax Officer to refund the tax illegally collected to the Petitioner.
- In States of MP v. Mandawara (AIR 1954 SC 493), the Court has held that the writ of mandamus cannot be issued to compel the

Government of grant the Dearness Allowance as the Government is given discretion to grant Dearness Allowance to its employer.

- In *Ajit Singh v. State of Punjab* (AIR 1999 SC 3471.), the Court has held that the writ of mandamus cannot be issued to the Government to provide for reservation.
- In *Director of Settlement of AP v. M.R. Apparao* (AIR 2002 SC 1598.), the Court has held that in order to obtain the writ of mandamus the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such must be subsisting.
- In *Mrs. Santosh Singh v, Union of India* (AIR 2016 SC 3456.), the Supreme Court held – The writ of mandamus cannot be issued for introduction of moral science as a compulsory subject in school curriculum. There is no dispute about the value based education. The jurisdiction of the Supreme Court is not a panacea for all ills but a remedy for the violation of Fundamental Rights.(Ibid at p. 3460.)
- In *Swaraj Abhiyan (II, III and IV) v. Union of India* (AIR 2016 SC 2953., a writ petition was filed under Article 32 of the Constitution regarding non-implementation of National Food Security Act, 2013. The Supreme Court held – Mandamus cannot be issued by the Supreme Court to the State Government for implementation of the Act beyond what is required by the terms and provisions of the statutes. It is not possible for the Court to issue a positive direction to the State Government to

make available to the needy persons any item over and above mandated by the Act, such as dal/lentil and edible oil or any other item for that matter to all households in the drought affected areas.

Significance of Implementation of Mandamus

- Implementation of writ of mandamus would result into relief to an individual against arbitrary administrative action.
- Implementation of writ of mandamus compels the public official to perform his public duties in reasonable manner.

Conclusion

- Indian judiciary has played crucial role in the effective implementation of writ of mandamus.
- Effective implementation of writ of mandamus is urgently needed as it is essential and significant to keep administration / public officials within their limits. Creation of an awareness claim of writ of mandamus is equally important.
- Writ of mandamus is a weapon at the hands of the common man to exercise control over the administration.

Recommendations

- Camps should be organized to make people aware about the mandatory duties of the public officials and their rights in a case of non-performance of such duties.
- Training programs should be organized to make the public officials cautions to perform their duties efficiently and sincerely.

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