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Writ of Prohibition

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ABSTRACT: ***The prohibition script is as ancient as common law. It was originally used to regulate ecclesiastical authority by prohibiting them from behaving without or in violation of their jurisdiction and is increasingly used by the courts of common law. Prior to the adoption of the Constitution of India, three charters were used by the court to exercise its authority and, after the implementation of the Constitution, the High Court and the Supreme Court exercised their jurisdiction to issue this order. It is an outstanding preventive text. This forbids the judges, tribunals, quasi-judicial bodies and other officers from exercising their powers outside their authority or from exercising other powers which they do not have. The judge or other court is granted a writ of injunction to discourage them from doing what they are going to do. This bar is imposed if the case is heard by a subordinate court or tribunal outside its jurisdiction or over matters on which it has no jurisdiction.***

KEYWORDS: ***Constitution of India; High Court; Prohibition; Supreme Court; Writ.***

INTRODUCTION

Prohibition is a statute, not a writ, of necessity, which is preventive rather than corrective in nature. The primary aim of this paper is to stop the unconstitutional presumption of authority. Therefore, in the event of an irregularity in the exercise of authority or jurisdiction, the writ is not wrongly or erroneously exercised. The availability of an alternative solution would not impose an absolute bar on the issuing of a prohibition order[1].

During trials pending before a judicial and quasi-judicial tribunal, this writ can be issued and if the proceedings have been discontinued and the jurisdiction has been functus officio, then no writ of prohibition may be issued in such cases. A writ of certiorari can be issued in such cases[2].

In its scope and in the laws of its governance, the Writ of Prohibition is very much in common with certiorari. All these cases are thus aimed against a judicial and quasi-judicial entity, not against any administrative power. All of these letters deal specifically with public law[2].

The literal sense of 'Prohibition' is 'Prohibit.' A higher-position court imposes a Prohibition against a lower-position court to discourage the latter from violating its authority or usurping a jurisdiction it does not have. Inactivity guides it[3].

Writing prohibition involves banning or preventing which is generally referred to as 'Keep Order'. This Writ is issued as it threatens to transgress the boundaries or rights vested in it by a lower court or a body. It is a Writ given to the lower court or a tribunal by a higher court forbidding it to conduct an act outside of its jurisdiction. The lower court etc. come to a halt after the issue of this Writ proceedings. Any High Court or Supreme Court shall grant a Writ of Ban to any inferior court, banning the latter from initiating litigation in a specific case in the absence of judicial authority in the proceedings[3].

While the Writ of mandamus commands do something concrete, the Writ of prohibition is essentially directed to an inactivity-commanding subordinate court. Therefore, a notice of prohibition is not applicable against a public official who does not have judicial or quasi-judicial authority. This writ may only be issued by the Supreme Court when a constitutional right is affected. In order to preclude an inferior court or tribunal from violating its authority in cases pending before it or behaving according to the laws of natural justice, a writ of prohibition is primarily issued[4].

It is granted to inferior courts by a supreme court to usurp a power with which it has not been constitutionally vested, or, in other words, to force inferior courts to stay within their jurisdiction's boundaries. In all cases, where there is an excess of jurisdiction and where there is no jurisdiction, the writ is then issued[4].

The injunction does not constitute a continuity of litigation and should be forbidden. In the opposite, the purpose is to arrest the trials of the subordinate tribunal. In reality, it is a collateral matter between the two tribunals, one inferior and the other superior, that the latter, by virtue of its authority of superintendence over the former, limits it under its valid jurisdiction. It is held that its existence depends on the nature of the forbidden practice[5].

The writ will only be issued if the hearings of a court are continuing, if the proceedings have elapsed into a verdict, the writ will not lie. If the judge, before which the case is pending, has ceased to exist, the writ of injunction would therefore not lie under that state and there can be no trials on which it can act, but on the other hand, if the court is operating, the writ can be given before the inferior court or tribunal at any point of the proceeding. It can only be provided in respect of a judicial or legislative role[5].

DISCUSSION

The prohibition brief is often referred to as a prevention brief. Prohibition may be given prior to the conclusion of the trials. It is allowed to prohibit a lower court from functioning under an unjust statute. The issuing of the writ of prohibition is unlawful in the absence of a very convincing and strong justification. It was pointed out that, under the CPC, the civil court had ample authority to determine its own jurisdiction and that the High Court erred in intervening with Prohibition and asked the civil court to decide preliminary issues such as the suit's sustainability and applicability/estoppels[6].

The Writ of Prohibition is the final written term that may be issued under the Constitution. This Writ is not commonly issued and is an unusual relief that a Supreme Court issues to an inferior court or tribunal to prohibit them from determining a case when they do not have the authority over these courts. When the judge or tribunals do not have authority because the matter is not resolved, it would be an invalid decision and it should have the sanction of statute in order for an act to be legitimate[6].

The Writ of prohibition implies to ban or to stop and it is popularly known as 'Stay Order'. This order is issued where the limitations or rights vested in it are attempted by a lower court or an agency to transgress. Any High Court or Supreme Court shall grant a notice of injunction to any inferior court or quasi-judicial entity banning the latter from pursuing litigation in a

particular case where it has no authority to proceed. Proceedings in the lower court etc. come to a halt after the issue of this writ[7].

Prohibition translates to "forbid or stop" and is generally referred to as a "stay order." Where a lower court or a quasi-judicial entity threatens to breach the rights imposed on it, the writ is issued by the Supreme Court or by any High Court, barring the latter from conducting the trial in a specific case[8].

Prohibition is provided in India to safeguard the person from unreasonable administrative acts. Prohibition is not against the discharge of administrative functions by an entity, but against the discharge of judicial functions by an authority[8].

Prohibition usually implies halting. "The Supreme Court and High Courts may prohibit the lower courts such as special tribunals, magistrates, commissions or other judicial officers who do an act that exceeds their jurisdiction or acts contrary to the rule of natural justice. This writ is commonly referred to as a "Stay Order. For example, if a judicial officer has a vested interest in a case, the decision and the course of natural justice can be hampered[9].

This means that, where the courts have behaved in excess of authority or in breach of the rules of natural justice, this brief is given. When the letter is released, hearings remain in the lower court, i.e. res sub judice[9].

The Writ of Prohibition Implies is a Writ given to its inferior authority by the higher authority to avoid anything forbidden by statute. It is only against a judicial and quasi-judicial entity that this writ may be issued[10].

There are the five forms of grievances issued by the Arts Supreme Court and High Court. Certiorari and Mandamus are the two most often pursued statutes that govern the acts of executive bodies. 32 and 226 of the Constitution. Habeas corpus and Quo warranto are limited to particular cases[10].

CONCLUSION & IMPLICATION

The preamble of the Constitution's first and foremost aim is to ensure civil, economic and political justice for all its people. It is the driving philosophy of the country as it lays forth the key priorities to be accomplished by the legislature. The social reforms envisaged by the builders of the Constitution were pursued in the Constitution to be done by the exercise by individuals of fundamental rights and by pursuing the course of the state's policy against the priorities set out in Chapter IV of the Constitution, i.e. defining the values of state policy of the Directive.

The judiciary was established in the Constitution to efficiently operate these values and objectives in real life and to avoid abuse of these rights and freedoms. It is a trite saying and a Latin maxim *ubi jus ibi remedium*, which means that there is a remedy for the same wherever there is incorrect committed law. Therefore, the judiciary was well formed to conform with this principle and when a redress for violation of any right is offered, it will make the right more powerful.

The judiciary has relaxed the law of locus standi in favor of an individual behaving bonafide and showing ample involvement in public interest legal cases to promote access to justice (here

in after referred as PIL). Law scholars, law professors, NGOs, public-spirited citizens and decent Samaritans have sent amusing applications to the Supreme Court. For the defense of an individual's interests.

In addition, under Article 32 and 226 of the Indian Constitution, the Supreme Court and the High Court have acknowledged notes, postcards, telegrams and even newspaper articles as written petitions. Those petitions provide the individual whose rights are infringed by either judicial or quasi-judicial order with exceptional judicial relief. In the justice system, PIL has an important role to play; it offers a ladder to justice for the marginalized parts of society, some of which may not yet be well educated about their rights.

The civil law itself states that the law is a supreme authority and no one should be above the law. In compliance with the constitution, even the judges of the supreme court are bound by the judgment issued by them. And for the whole scheme, the constitutional remedies given under the statute serve as a check and balance. Written jurisdictions therefore serve as judicial limitations on policy actions that are arbitrary, unjust and contrary to the public interest.

Although conditional not limitless in its limits, the power to grant written discretion should be exercised only on solid legal standards. The lack of absolute authority is the first part of the rule of law concept on which the whole constitutional system is based.

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