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Writ of Quo-Warranto

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ABSTRACT: ***Quo warranto is a special type of civil procedure that is used to settle a disagreement as to whether a single citizen has the legal right to occupy the elected office he or she holds. Quo warranto is used to assess the legitimate right of a person to occupy a position, not to determine the performance of the person in the office. For example, an action for a quo warranto might be brought to decide if a public official fulfils the condition that he or she lives in the district; or if two conflicting positions are held by a public official. In order to determine if an official has done fraud in office, Quo warranto is not eligible. It is possible to penalize or even suspend a person who performs fraud in a public position from office, but quo warranto is not the appropriate venue for such cases. For that function, other processes are usable.***

KEYWORDS: ***Constitution of India; Quo Warranto; Writ.***

INTRODUCTION

The word "quo warranto" (pronounced both kwoh wuh-rahn-toh and kwoh wahr-un-toh) is Latin for "by what power," as in, "by what authority does this individual hold this office?" And if the word no longer exists in the statutes, the expression "quo warranto" is still used today. As a procedure instituted by the crown to figure out if a person was lawfully exercising a right or office issued by the crown, Quo warranto arose in English common law, or whether the person was actually intruding into a royal prerogative. In the California Code of Civil Procedure, beginning with section 803, the laws relating to quo warranto are[1].

The writ was repealed by early California statute and a legislative action was replaced, similar in intent and effect to the common-law writ. Current California law specifies that either the Attorney General or a private entity operating with the permission and under the direction of the Attorney General can bring the action[1].

An action for a quo warranto could not be brought without the consent of the Attorney General (except in those cases where a public agency is authorized to file for itself). As the issue of who has the right to occupy a public office is a matter of public interest, not a private conflict, the redress of quo warranto is vested in the electorate, and not in any private person or party. A significant function of shielding elected authorities from frivolous challenges often meets the necessity of gaining consent. A private citizen or a local entity must file an application in compliance with the rules and regulations provided by the Attorney General in order to receive the Attorney General's approval[2].

The responding party is referred to as the "proposed defendant" or "the defendant." An application must include a verified complaint; a verified statement of facts; a memorandum of points and authorities; and a notice to the proposed defendant giving him or her at least 15 days to demonstrate to the Attorney General why the party filing the application with the Attorney

General is called the "relator." The appeal must be promptly served on the prospective claimant and filed with the Attorney General within five days of service[3].

Depending on where the service is carried out, the suggested offender is given 15 to 20 days to respond. The relator can then file a reply within 10 days. In special cases or upon a proof of good cause, the Attorney General can recommend a shorter period of time. It is also possible to expand these response times by stipulations lodged with the Attorney General or by evidence of good cause[3].

The Attorney General's Office reviews the evidence and the statute after all of the papers are filed in order to decide whether to give leave to sue. As this approval process is an administrative, not a legal, activity, there is no scope at this point for substantive discovery proceedings between the parties. The Attorney General can request additional information from one party or another from time to time in order to make a thorough assessment of the request and the answers[4].

If leave to sue is denied, the Rapporteur can bring an action for a quo warranto before the proper superior court. From that point forward, the matter is a legal action, according to the court's processes and laws. However, during the whole process of the action, the rapporteur shall proceed under the guidance and oversight of the Attorney General[4].

The relator must make any changes or changes that the Attorney General orders before filing a lawsuit with the superior court. The Attorney General may withdraw, discontinue or drop the lawsuit, or any part thereof, at any point of the proceeding. Additionally, at any point, the Attorney General may assume the management of the litigation[5].

The lawful ground and jurisdiction of a person assigned to public office is challenged by a lawsuit requesting a writ of quo warranto. For example, a writ of quo Warranto can challenge the appointment of a member of a Railway Board not eligible to hold the position and nullify the appointment if found to be unlawful[5].

DISCUSSION

To find an executive, legislative or quasi-judicial act void in statute, a writ of declaration queries. Some consequential relief must therefore obviously be obtained by a petition for such declaratory relief. Immediate discontinuance of the criminal activity, for example, and reasonable remedial payments[6].

Pursuant to Article 226, a petition requesting a writ of quo warranto challenges the legal justification and jurisdiction of a person assigned to public office. For example, a writ of quo warranto and an appointment nullified if found to be unconstitutional can dispute the appointment of a member of a railway board not eligible to hold the role[6].

The petitioner must be assured that the office in question is a public office and is occupied by the usurper without legitimate jurisdiction in order to sustain a motion for quo warranto. Since the word "office" is somewhat different from a "seat" in the legislature, a writ of quo warranto may lie in that regard, although the position of chief minister is office[6].

The appointment of the Chairmen of the Bihar State Housing Board was questioned on the ground that only directory was necessary punishment under Sec. 7. It was concluded that such a defence could be available but not against quo warranto against a writ of mandamus[7].

Quo warranto can be given against Chief Ministers or Ministers, but cannot be challenged whether the Governor has held the Ministry until further arrangement after the government's loss on account of no confidence[7].

If the petitioner fails to state that the minister is not eligible under the law to hold office or is not duly named, a writ of quo warranto will not be issued against a minister. A writ of quo warranto shall not be given to an Official appointed by the state government to oversee the Municipal Corporation until new elections are held following its dissolution[7].

Every party to the conflict is entitled to respond to a dispute concerning elective positions in the Co-operative Community. Even by a person not related to the legislature, the legitimacy of the nomination to the State Legislature may be questioned. Registered graduates can contest the election of a university syndicate. Any one may contest the election to public office whether or not his constitutional right or any civil right is infringed[7].

Writ of quo warranto shall be issued only on the grounds of compliance with an offence of a public nature. A petition would not lie against a private company violation. The role of a business manager incorporated under the Companies Act will not be held as a public authority. Even the writ of quo warranto does not go against a private educational institution's management committee not formed by statue or laws having procedural legislation Power[8].

Even against a person holding a position in a government corporation that could be a 'authority' and, thus, a 'power' under the scope of Article 12, a Writ of Quo Warranto will not lie; as such a post is not a civil post, nor is it a post or offence kept under the state. Where an individual is ex facite private, it is not necessary to issue a writ of this nature-the legitimacy of an election to the membership of an association's working committee such as Arya Pratinidhi Sabha is not subject to the Quo Warrant[8].

Relevant provisions have been rendered in Articles 32 and 226 of the Constitution of India concerning the issuing by the Supreme Court and the High Courts of directives, orders or writings of the form of quo warranto. Quo Warranto is deemed to be an appropriate and adequate procedure for the determination of the right or title to a public office and the dismissal of one who improperly usurped or intruded into that office. The object of the in quo warranto action against a public official is to decide if he is entitled to retain office and discharge his office, and the quo warranto allows for a judicial inquiry into that matter[8].

Quo Warranto has been called a writ of discretionary prerogative, though under some provisions it may be dismissed. Therefore, of course, the writ of quo warranto is not a writ, it is a discretionary writ, and the High Courts which deny the writ on the basis of pause and laches, acquiescence, waiver, availability of alternative remedies, or if the usurper of the office stopped keeping the offense by the time the petition was submitted[9].

Originally, a writ of quo warranto was only required for the king's use to protect the king from the violation of the royal prerogative or the rights, franchise or liberty of the crown, and the

availability as a redress was similarly limited to the knowledge in the nature of quo warranto that litigation had taken the place of the old writ of quo warranto. That was the civil plea in the crown's suit[9].

Originally, by virtue of the statue of Quo Warranto, the writing had been retuned before the kings justices at Westminster but later only before the justices of the eyre. However, the wait for Quo Warranto fell into disuse and resulted, by way of details, in the nature of Quo Warranto, in the replacement of proceedings. Whatever the immigrant origin of the move or whenever it was brought in is not ascertainable, so because of these writs, the attorney general's tradition of sensing knowledge is rather old[10].

It was a judicial proceeding of the form and it maintained this feature for some time after the writ was superseded by the knowledge of the quo warranto, in so far as there was also a fine, albeit negligible, in addition to threatening to reclaim the franchise or evict the wrongful possessor. Section 48 of the Supreme Court of Judicature Act 1925 now states that trials in quo warranto are to be treated as civil proceedings, whether for the reason of appeal or otherwise[10].

CONCLUSION & IMPLICATION

In order to decide the right to the office, the writ was against a person who asserted or usurped an office, franchise or liberty to ask on what authority he approved his argument. That was often in the event of a franchise being non-used, misused or long ignored.

The jurisdiction to grant a writ of quo warranto is not narrower than that in England, and as has been well known in England, the courts in India have adopted principles as well as limits. It is a technical writ given against an office usurper or against a person who is entitled to make an appointment to that office. It is irrelevant what prevailed in the mind of the appointing official to make the impugned appointment otherwise the occupant of office will be at a significant disadvantage when he is merely called upon to assert his power to retain the office and he is generally the only party to the petition.

Originally, the writ of quo warranto was a power for the King to ask under whatever authority he approved his argument against the subject who asserted or usurped some office, franchise, liberty or luxury belonging to the Crown, in order to decide the right. This writing was used by Edward I to discourage infringement of his privileges and prerogatives. Thus, quo warranto was a shield in the king's possession against the usurpation of the Crown's prerogative, but it had long been extended past the point and was even used by a private suitor.

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