THE WRIT OF MANDAMUS AND ITS USE AGAINST EDUCATIONAL INSTITUTIONS

Harsh Vardhan Srivastava & Divyansh Agrahari

Law School, Banaras Hindu University, Varanasi

INTRODUCTION

As the famous saying of Lord Heward, C.J. goes" It is of fundamental importance that justice should not only be done but should manifestly & undoubtedly be seen to be done." Indian constitution has given the taste to the judiciary of ensuring maximum freedom to the masses. The writ of Mandamus has significant practical reform making judicial review more convenient & rapid. Writ of Mandamus literally means a command. It differs from writ of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed[1] for the performance of a public duty.[2]

BLACKSTONE said "A writ of mandamus is in generally a command issuing in the king name from court of king's bench and directed to any person corporation, or inferior court of Judicature within the Kings dominions requiring them to do some particular things there in specified which appertains to their office and duty. "[3] The writ of mandamus is a high prerogative writ of a most extensive remedial nature is in form, a command issuing from a court of justice, directing any person, corporation, or inferior court requiring him or them to do some things therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice, and accordingly, it will issue, to the end that justice may be done, in all cases where there is specific legal remedy for enforcing such right and it may issue in cases where, although there is an alternative legal remedy, yet such a mode of redress is less convenient, beneficial and effectual.[4]

In CORPUS JURIS SECENDUM (Vol. 55 p. 5) mandamus is defined as "Mandamus is a writ directed to a person, officer, corporation, or inferior courts commanding the performance of a particular duty which results from the official station of the one whom it is directed or frim operation of law".

[1] STEPHEN COMMENTARIES, 20th Edn., Vol. 1, p. 591
[2] Halsbury, (4th Ed.), Vol. I, paras. 80-89
[3] Halsbury, 4th Edition, Vol. 1, paras 80-89
[4] King V. Archbishop of Canterbury, (1812)15 East 117 (136)

The point of distinction between Mandamus and other prerogative writs can be pointed as:

1. Mandamus differs from certiorari and prohibition in that the latter writs are used where an inferior tribunal has wrongly exercised or exceeded its jurisdiction, while mandamus is only used where the inferior tribunal has declined to exercise jurisdiction. Its object is not to review the act but compel to act.

2. While Mandamus demands some activity on the part of the body or person to whom it is addressed, prohibition commands inactivity- the object of prohibition being to prevent the inferior court for usurping jurisdiction which is not legally vested in it or from exceeding the limits of its jurisdiction

3. The great advantage of Mandamus over prohibition and certiorari is that while the latter are limited to the control of judicial or quasi-judicial orders, mandamus extends also to administrative acts.

4. Mandamus differs from Quo Warranto is that it is used to compel an action while Quo Warranto only question the action.

5. Mandamus differs from mandatory injunctions or an order for specific performance in as much as it lies only to enforce duties of a public or quasi-public nature, and cannot be invoked to enforce merely private rights, whether arising from contract or otherwise.

6. Mandamus also differs from the injunctions in as much as the object of the injunction is preventive, while that of mandamus is remedial in nature.

HISTORICAL BACKGROUND

The origins of the writ are later than those of certiorari and prohibition. The principle on which it is founded in a common law is – "By Magna Carta the Crown is bound neither to deny justice to anybody, nor to delay anybody in obtaining justice. If therefore, there is no other means of obtaining justice, the writ of mandamus is granted to enable justice to be done."[5] The earliest reported case occurs in 1573 when it was issued to restore a franchise of a London citizen which had been found to have been illegally taken away. The writ of in its modern form was first issued in the year 1615 to restore the office of mayor to a person who had been unjustly removed from the office however the rules governing the issue of the writ gradually took shape until they were fully stated by Lord Mansfield in series of cases.[6] From the note of de smith it appears that the importance of this writ

[5] R V. Commrs of Inland Revenue (1884) 12 QBD 461 (478)
[6] R v.Blooper, (1760) 2 Burr 834; R V. Barker, (1762)3 Burr 1265; R V. Ashew (1768) 4 Burr 2186

declined whereas in India it had increasing importance. This was mainly because of the collapse of the administrative machinery and the repeated failure of the Central and State Governments to do what they are required by law to do. This writ has been particularly important in public interest litigation (PIL).

USES AGAINST EDUCATIONAL INSTITUTIONS

Educational institutions and similar bodies that are created directly by statute, their power is limited by such statute and the rules and regulation validly made thereunder. Hence the court can issue the writ of mandamus against them in cases where it could be issued against other statutory bodies, e.g. where the order or resolution of the university is ultra vires.[7] Internal management of universities or institution cannot be questioned with unless the act is beyond the jurisdiction or against the rule of natural justice. In the absence of any enabling provisions in the relevant statute the Competent Court cannot give a direction to take over the management and administration of private institutions because there is mismanagement. But directions could be issued for proper management.[8] But where the breach alleged is procedural, the court should distinguish an irregularity from an illegality[9] thus though want of notice to each member to hold a meeting reminds the decisions taken at the meeting ultra vires, the defect would be cured if all the members appear at the meetings and unanimously come to a decision. Mandamus can also be issued where although the decision is not ultra vires, but the authority has exercised its discretionary power unreasonably or without due care, or arbitrarily.[10] In short it can be said that court had to be in certain limits before issuing the writ.

1. The Court cannot relax statutory rules or rewrite them.
2. It Can't devise a scheme of its own in place of that made by the statutory authority, Prescription of the academic standard falls exclusively in the domain of special bodies like Senate, Board of Governors etc.
3. No mandamus could be issued to the authorities directing them to grant admission to a candidate ignoring the claims of more meritorious candidate
4. Cannot go beyond the relief asked for the petitioner himself.
5. Can't interfere with the discretionary power of the government to grant or refuse permission to educational institutions to open new courses unless plainly arbitrary or unreasonable.

Private and Aided Educational Institutions:

[7] Cf Kamala Vs. Calcutta university
[8] IIIT College of Engineerig Vs. State of Himachal Pradesh AIR 2003 SC 3629
[9] Vice Chancellor Vs. S.K. Ghosh
[10] Surendra V. State of Bihar, AIR 1984 SC 87

It is a common perception that Mandamus can't be issued against an educational authority which does not hold a public office nor has any statutory duty to perform, e.g. the head or manager of a private or aided educational institution.

But the Apex court, in Unnikrishnan J.P. Vs. State of Andhra Pradesh[11] expressed the view that a recognised educational institutions Whether aided or not, performs public function and thus can be regarded as a instrumentality of state subject to judicial review. Public funds when given as grants and not loan carry the public character wherever they go. So, the institutions are subject to writ jurisdiction of the high Court. At the same time, it has also been held that private educational institutions either by recognition or affiliation could not be regarded as instrumentality of the state, since they do not receive any grant or public aid.

But is has been held that private unaided educational institution discharges public function, i.e. it is imparting education and therefore, writ petition is maintainable.[12] Bombay High Court has also held that a writ can be issued against private college under Article 226.[13] Just the fact that the educational institutions is a private body, it can't debar an employee from seeking relief against the order passed by a government affecting him.

ADMISSION

In matters relating to the internal working of an educational institutions ex. The matter of admission and academic matters, the Court generally do not interfere unless the act complained is clearly shows the act to be unreasonable, or contrary to the statue, rules or regulation governing the institutions, or the constitution or there is some statutory duty which the authority has failed to perform or impugned act is mala fide or violative of natural justice. In matter of selection of candidates for professional courses, it is not for court to sit in the judgement over the nature of questions to be put by the members of the Selection Committee in the absence of mala fides. Interference by court is to prevent arbitrariness and denial of opportunity. As held in the case of Minzoo Noazer,[14] High Court Cannot direct the institution to fill up a particular quota first against the discretion of the management, nor can the court direct to create additional seats against the consent of government and the statutory authorities. Some Instances where the Mandamus has been issued regarding the admission procedure are: When a candidate is admitted to a course in contravention of law or the constitution, such admission was held to be illegal.[15] Allocation of 33.5% marks for an oral interview was held to be arbitrary and unreasonable. High Court

[11] AIR 1983 SC 1215
[12]K. Krishnamacharyulu Vs. Venkateswara Hindu College of Engg. AIR 1998 SC 295
[13] Kobad Jahangir Vs.Farokha Sidhwa, AIR 1999
[14] State of Maharashtra V. Minoo Noazer Kavarana, AIR 1989 SC 1513
[15] Punjab Engineering College V. Sanjay Gulati, AIR 1983 SC 580

cannot direct the institution or the university permitting a candidate to sit for an examination if the candidate is not qualified for the same[16] In cases where admission is denied to an eligible candidate and an ineligible candidate is admitted who has completed on or two year course, the court directed that the admission of ineligible candidates need not to be cancelled, but additional seats must be crated for the injustice done. Those who infringe rules must pay for their lapse and the wrong done to the deserving student ought to be rectified.

EXAMINATION FOR ACADEMIC PURPOSES

Mandamus may lie against Universities or other examining authorities where-

- There has been a contravention of law of statutory rules and regulations governing the examination, e.g. as to the Constitutions of the examining body itself[17]
- Where the result of the petitioner's examination has been withheld, though he was duly qualified in violation of the guarantee of equal protection or natural justice[18]
- Where the process of examination is arbitrary e.g.-
    1) When, in addition to the written examination, more than 15% of the total mark is allotted to viva voce or interview.[19] While holding that addition of villages in the list of Backward Areas for reservation allocation of 15% marks viva test is not valid. At the same time, assignment of lesser marks in a viva voce to candidates who has obtained higher marks in the written test does not amount to unfair treatment[20] (It must be clear that there is no hard and fast rule of universal application can be laid down for allocation of marks for viva voice, but when such allocation is capable of being misused or abused in its exercises, it violates Art. 14 of Constitution is liable to be stuck down).
    2) When the result of the examination has been arrived at by an arbitrary process. Example: (a)When the key answer in an exam for admission is wrong and when the students had correctly given the answer, they would be entitled to get marks and consequently admission.[21]

[16] Aarti Sapru V. State of J&K, AIR 1981 SC 1009
[17] Jitendra Nath Banerjee V. W.B. Board of Examination, AIR 1983,
[18] Board of T.E. Vs. Dhawantari, AIR 1991 SC 271
[19] Ajay Vs. Khalid, AIR 1981 SC 487
[20] Mohan Lal Vs. State of J&K, AIR 1995 SC 1088
[21] Abhijit Sen V. State of U.P. AIR 1984 SC 1402

(b) Where assessment of the merit is based not on the same qualifying examination but at different qualifying examination held by different State Government and Universities, same was held to be arbitrary.[22]

The Court cannot interfere on the following grounds:

(a) Were there is no statutory provisions creating any legal right in favour of the petitioner, e.g. in the manner of awarding grace marks, but even in such cases, the court may interfere on the ground of discrimination in violation of Article 14 of the constitution, if, in the same examination, grace marks have been given to some of the examinees and discrimination and denied to the petitioner without any justification. Of course, no such discrimination arises only because grace marks were allowed at some previous occasions and refused in the case of disputed examination.[23]

(b) The court cannot strike down a regulation which, after taking all possible precaution for ensuring a fair evaluation of answer papers, prohibits their revaluation, because there is no such rule of fair evaluation of answer papers prohibits their revaluation, because there is no such rule of fair play of natural justice or reasonableness that an examinee who is dissatisfied with his results shall have an inherent right to demand a disclosure and personal inspection of his script and further a right to ask for their revaluation.[24]

In Case of Sahiti V. Dr N.T.R. university[25] of Health Science, it was held that in the absence of any provision for revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks. Where yielding to the pressure of some failed candidate who applied for revaluation, the vice chancellor directed re-evaluation and that was done is undue haste the court held that no credence could be given for such revaluation.

RESERVATION

When Reservation is made without any reasonable ground for classification it would violate Art. 14. Article 15(4) of Constitution also does not contemplate to reserve all seats or the majority of seat in an educational institution at the cost of rest of the society. Same principle applies with equal force in the case of reservation of seats institutions for a certain class of persons to the exclusion of meritorious candidates. Institutional reservation principle is not supported by the constitution or its principles. But a certain degree of preference for students of the same institutions intending to persecute further studies therein permissible

[22] Dr. Dinesh Kumar V. Motilal Nehru Medical College AIR 1985 SC 1059
[23] Rajinder V. State of Punjab AIR 1983 P&H 285
[24] Maharashtra S.B.O. V. Paritosh, AIR 1984 SC 1543
[25] AIR 2009 SC 879

on grounds of convenience, suitability and familiarity with an educational environment. Such preference must be reasonable and not excessive. The preference should be prescribed without making an excessive or substantial departure from the rule of merit and equality. Marginal institutions preference is tolerable at post graduates level, but is rendered intolerable at still higher levels such as that of super speciality. In the case of institutions of national significance such as AIMS, additional consideration against reservation or preference of any kind destructive of merit became relevant.[26]

Some instances include Wholesale reservation made by government based on domicile or residence requirement within the state or based on institutional preference for students is violative of Art. 14.[27] But University or region wise[28] reservation as an exception to the general merit system, has been permitted by the Supreme court to serve regional demands particularly higher medical education.

But college wise reservation or weightage has been struck down as violative of Art. 14 and the proper mode of admission was to be based on the merit list at the state level If however, out of the merit list preference has been given to the students of the university in question, who have passed the qualifying examination from that university, there will be no violation of Art 14 and 15.

SYLLABUS TEXT BOOKS

1. The Courts are not experts in academic matters and it is not for them to decide as to what course should be taught in Universities and what should be their curriculum.[29]

2. The State Government, in the exercise of its executive power under Art. 162 of the Constitution, prescribe text-books. Provided it does not violate the provisions of any law or the fundamental rights of an individual.

3. But no publisher has any fundamental right to have the books prescribed as text-books.[30]

4. But a statutory authority, such as an Education Board has no power to prescribe text-books unless empowered by the statute in that behalf, and unless the power is exercised in conformity with the procedure prescribed there by and the policy and standard laid down therein. It was held in that case that the Board could only recommend textbooks and there is a basic difference between "recommendation" and "prescription". The schools are bound to follow the textbooks "prescribed" by the authority having legal power to do so.

[26] AIIMS Student Union V. AIIMS, AIR 2001 SC 3262
[27] Pradip Jain Vs. Union of India, AIR 1984 SC 820
[28] State of Rajasthan V. Ashok, AIR 1989 SC 177
[29] P.M. Bhargava V. University Grants Commission AIR 1983 SC 1230
[30] Naraindas V. State of M.P. AIR 1974 SC 1232

"Prescription of a textbook carries with it a binding obligation to follow the textbook, but there is no such obligation where the power is only recommendatory, and the Board has not been given a power to "prescribe" and the Board being a creature of statute, cannot go beyond the powers provided therein.

5. Mandamus will issue if the act of the government or the statutory authority is ultra vires on any of the grounds specified in the preceding paragraphs.

APPOINTMENT AND REMOVAL OF STAFF

Mandamus would issue to cancel the appointment of a person who has been appointed to an educational institution controlled by the State, if such appointment is made in contravention of statutory provisions[31], but not to help a person whose appointment was void ab initio, having been made by some authority which is not empowered by statute in that behalf.[32] Appointment of the headmaster of a school should possess the educational qualification, seniority and the administrator ability to administer the institution along with other qualities. Without considering the same, if the appointment is made by secret ballot it is unconstitutional and the court will interfere.[33]

In Mohd. Sohrab Khan Vs. Aligarh University[34] it was held that, no appointment should be made by changing the qualification after the advertisement is issued for filling the vacancies. Deviating from the prescribed qualification as stated in the advertisement is impermissible. Power under article 226 cannot ordinarily be invoked by regarding service condition, staff to be employed or already employed when such direction causes financial implication on the institution. In the matter of education, the interest of society at large should prevail. The issue of direction that may endanger such interest should be done with extreme caution and after careful deliberation. Court should remember that employee's right may have to be made subservient to the right of society.[35]

In Case of the minority institution, dismissal and removal of teachers in such institution can be made without approval of educational authorities of the state, and in such cases, the court cannot issue any writ against any institution.[36] In the case of appointment of teachers in the educational institution, the qualification and character of the teachers are very important. It was held that the clay-like minds of young children are shaped into beautiful moulds by teachers. They shape the future course of students. To a great measure, their

[31] Calton V. Director, (1988) UJSC 493
[32] Ramaji V. State of U.P., (1983) SC 1230
[33] P Thurai Pandian V. K. Subramaniam
[34] (2009) 4 SCC 555
[35] Lt. Governor of Delhi Vs. V.K. Sodhi, (2007) 15 SCC 136
[36] Kanya Junior High School V. Bal Vidya Mandir, AIR 2006 SC 2974

behaviour, character, reputation leave imprints in minds of young children. If their conduct behaviour and reputation are full of blemish, that would not be in the interest of and welfare of the students.[37] Where the rule provides that members of the family of the manager were disqualified to hold of the headmaster, the same could not be overcome by the manager by taking medical leave and get his son appointed as headmaster. Since the same amounted to fraud on administration, the appointment was held invalid. Where disciplinary proceedings were started against the teacher of a school which is recipient of grant-in-aid and when the grant-in-aid code requires approval of the disciplinary action by the Director of education of the Government, and when such approval for termination by the management of the school was given (not by the statutory authorities), a writ petition against termination was held sustainable.[38] Appointment of teachers made on ad hoc basis at the commencement of academic year and terminating their services before summer vacation based in a policy decision of the government was held to be violative of Article 14 and 16 of the constitution.[39]

CONCLUSION

Mandamus is issued against the educational authorities to prevent arbitrariness and denial of opportunity. The court can issue directions order or writs to reach injustice wherever it is found and would be a relief to meet the peculiar requirement of justice. A writ of mandamus or a writ of the nature of mandamus lie where the government or public authority has failed to exercise or wrongly has exercised discretion conferred upon it by a statute or a rule or a policy decision or exercised such discretion mala fide or on irrelevant consideration or by ignoring relevant consideration and materials in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been confirmed. No Mandamus lie where the duty sought to be enforced is of a discretionary nature nor will it lie to compel performance of an act contrary to law.

[37] Manager, Nirmala Senior Secondary School V. N.I. Khan, AIR 2004
[38] Francis John V. Director of Education, AIR 1990 SC 423
[39] Ratanlal V. State of Haryana, AIR 1987 SC 478