Extraordinary Jurisdiction of High Courts: Scope, Limits & Judicial Reluctance

Jun 11, 2025

K. Ravi
Advocate

Dinesh Inbavadivu
Advocate

The question of maintainability / entertainability of a Writ Petition before the High Court under Article 226 of the Constitution of India has seen different phases. Some Learned Judges entertain the Writ Petition, while a few learned Judges do not entertain the writ petition if an alternate remedy is available to the aggrieved person. This Article traces the foundational aspect of the Extraordinary Jurisdiction of the High Court in entertaining a Writ Petition, more specifically, a Writ of Certiorari and why the courts are reluctant to entertain Writ Petitions.

What generally formed the basis of the decision of our Indian courts while issuing Writ of Certiorari are derived primarily from the English courts. Therefore, it is imperative that we need to trace the history of how the King's prerogative power evolved. It is an undisputed fact that there is a lack of uniformity even in the pronouncement of English judges with regard to the grounds upon which an order of Certiorari, could be issued. This is unavoidable in a Judge made law which has developed through a long course of years. It is pertinent to take note of the fact that the *Writ of Certiorari is so named because in its original form, it required that the king should be "**Certified of"** the proceedings to be investigated and the object was to secure by the authority of a superior court that the Jurisdiction of the inferior tribunal should be properly exercised*[1].

In the year 1920, Lord Justice Atkin laid down the fundamental principle on exercise of the King's Bench Division which is as under;

"... Whenever anybody or persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division

exercised in these Writs".

Therefore, one could understand that one of the fundamental principles in issuing a Writ of Certiorari is that on account of violation of "**Judicial acts**" which includes the exercise of Quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions.

Lord Cairns in the year 1878[2] held that the control exercised by the High Court over Judicial or Quasi-judicial tribunal or bodies has been answered as under:

"*In granting a Writ of Certiorari the superior court does not exercise the powers of an Appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person*"

While Lord Summer in **R. Vs Nat Bell Liquors Ltd**[3] had laid down the supervision of the superior courts in exercising its power via Writs of Certiorari on two counts. One, is the area of inferior jurisdiction and the qualifications and conditions of its exercise. The other is the observance of law in the course of its exercise. While holding so, the difficulty of applying such principles to facts of each case was reminded of.

One cannot ignore, the remarks of Lord Justice Morris in the case of **R Vs Northumberland Compensation Appellate Tribunal**[4] which is as under;

"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issue in the proceedings. It exists to correct error of law when revealed on the face of an order or decision, or irregularity, or absence of, or excess of, Jurisdiction when shown"

Therefore, the English Court had held that the Jurisdiction to entertain a Writ when grave injustice is caused, the court has to interfere. While doing so, it also made clear that when the Jurisdiction of the court depends upon the existence of some collateral fact, the court cannot by a wrong decision of fact give it jurisdiction.

It is an undisputed fact that the Constitution of India under Article 32 and 226 provides wide powers to the court in the form of Writs as may be considered necessary for enforcement of the fundamental rights. **The 5 judge Bench of the Hon'ble Supreme Court**[5] [*authored by Chandrasekhara J*] dealt with a SLP arising out of an issue from the Motor Vehicles Act, 1939 on issues on granting Permit / License for operation of Buses. The High Court quashed the proceedings and directed the Regional Transport Authority [RTA] to grant the permit for operation of buses. Against this an SLP was preferred wherein the Hon'ble Supreme Court found that the Motor Vehicles Act, 1939 itself is a self-contained code which lays down conditions that ought to be satisfied to be granted with a permit and it is the RTA & Provincial Transport Authority have been entrusted u/s.42 with such power to grant / reject the permit and ultimately found that the High Court had exceeded the

power to issue a direction to grant permit. This exercise of the High Court was found to be in excess of its power and jurisdiction. While the Hon'ble Supreme Court set aside the order of the High Court laid down the basic principle of when a Writ Jurisdiction could be invoked, at **Para 26** of its Judgement which affirmed the position that Article 226 of the Constitution of India enables the High Courts to issue Writs in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the Principles of Natural Justice, or refuse to exercise Jurisdiction vested in them or there is an error apparent on the face of the record that had resulted in manifest injustice.

This decision was affirmed by yet another **5 judge Bench of the Hon'ble Supreme Court**[6] [*authored by B.K.Mukherjea J*] which dealt with the order of Election Tribunal wherein reference was made to landmark decisions of the English Courts. In the instant case, the Supreme Court found that the apparent errors pointed out by the High Court are neither errors of law nor do they appear on the face of the record and vacated the order of High Court.

It is pertinent to take note of the **7- judge Bench of the Hon'ble Supreme Court** [7] challenging the Election to the House of people from Hoshangabad constituency in the state of Madhya Pradesh wherein an Election Petition was filed setting aside the Election on the ground that the ballot papers did not have distinguishing marks prescribed under Rule 28 and that Rule 47 is mandatory. Relief was sought to set aside the Election calling for a fresh election. The Election Tribunal by majority held that the ballot papers found in the box bearing the wrong mark should not have been counted, while the third member was of the opinion that the rule was merely directory and that returning officer had the power to accept them. The tribunal, however, was unanimous in holding that the result of the election had not been materially affected by the erroneous reception of the ballot papers and on that ground alone dismissed the Election Petition. Aggrieved, two Writ Petitions were filed before the High Court of Nagpur under Article 226 & 227 of the Constitution of India to quash the decision of the Election Tribunal as illegal and without jurisdiction. This came up before a 3- Judge Bench who deferred in their conclusions wherein the Majority held that no Writ Petition would lie since the effect to Article 329(b) was to take away that power and that the Election tribunal had become *functus officio.* Ultimately, the Learned Judges dismissed the Writ Petitions in accordance with the opinion of Majority 2:1, however, granted certificate under Article 132(1) of the Constitution of India. This came up before a 7 Judge Bench of the Hon'ble Supreme Court which quashed the decisions of the High Court and Tribunal by setting aside the election. This decision of the larger bench threw some light on the scope of Writ of Certiorari relying on various decisions of the English as well as Indian Courts. More specifically the remarks of Lord Justice Denning who stated the power in broad and general terms as under;

"It will have been seen that throughout all the cases there is one governing rule; Certiorari is only available to quash a decision for error of law if the error appears on the face of the record".

While relying on various decisions, the Larger bench settled the position of law that a Writ of Certiorari could be issued to correct an error of law as under;

a. That the error must be something more than a mere error and it must be one which must be manifest on the face of the record;
b. That the error ought to be self-evident;

While holding so, the Court also felt the real difficulty in pointing out what could be an error apparent on record since the same cannot be defined precisely or exhaustively and ultimately left to be determined judicially on the facts of each case.

This being on one side, the Hon'ble Supreme Court in various other decisions (3 judges / 2 judges) held that Writ Petition cannot be entertained when an Appellate remedy is available and that the aggrieved person cannot by pass the alternate remedy which is a complete code in itself

As far as the Income Tax Act, 1961 is concerned, by no stretch of imagination, can it be disputed that the Income Tax Act itself is not a self-contained code having about 23 Chapters dealing with each stage from filing Return of Income till prosecution. One may find, that the officers u/s.116 of the Act, though are entrusted with Quasi- Judicial powers are also bound by the Income Tax Act and also bound by the Principles of Natural Justice which is inherent in any Legislation. The functions and duties are enumerated in the self-contained code itself. More often, the Taxpayers knock the doors of the High courts under Article 226 of the Constitution of India, challenging the notices / order of assessment passed by the Income Tax Officer either on violation of Natural Justice or inherent lack of Jurisdiction. Various High Courts entertain the Writ Petition and interfere with the order of assessment set aside the same considering jurisdictional fact while certain High Courts dismiss the Writ Petition *in limine* showing reluctance in entertaining the same on the ground that the orders of assessment is appealable u/s.246A of the IT Act and therefore, the alternate remedy ought not to be by-passed making the Writ Court a court of Appeal. Reliance is placed on the decision of **Commissioner of Income Tax Vs Chhabil Das Agarwal**[8] which deals with ex-parte order passed u/s.144 of the Act. The Hon'ble Supreme Court found that the Income Tax Act provides complete machinery for the assessment / reassessment of tax in respect of any improper orders passed by the Revenue Authorities and ultimately held that when a statutory forum is created by law for redressal of grievances a Writ Petition should not be entertained ignoring the Statutory dispensation and that remedy under the statute must be effective and not a mere formality with no substantial relief. While the Supreme Court set aside the order of the High Court concluded that the Writ Petitioner failed to prove that the alternate remedy was ineffective.

Very recently, the Hon'ble Madurai Bench of the Madras High Court[9] dismissed a Writ Appeal on the context that the Appellant had by passed the alternate remedy by way of an appeal before CIT(A); While doing so, it drew analogy from the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax Vs Chhabil Das Agarwal &**

C.A.Abraham Vs ITO, Kottayam to hold that the Income Tax Act is a complete machinery and that the taxpayer could not abandon to resort the alternate remedy. The Court having taken note of the fact that the aforesaid decision carves out an exception yet held that the court has to apply its mind and judiciously exercise its discretion. The relevant portion of the order is as under;

*"10. In other words, even if the Writ Petitioner demonstrates that the case on hand falls under the exceptions carved out in Chhabil Dass Agarwal, still the Writ Court has to apply its mind and judiciously exercise its discretion as to whether the appeal remedy can be by-passed. There cannot be any automatic admission or entertaining of Writ Petitions even in such cases. It would always be possible to point out some breach of procedure or violation of Principles of Natural Justice by the authority concerned. The Writ court should not readily latch on that argument to facilitate by-passing the statutory remedy. The courts must see if the point projected by the Petitioner goes to the root of the matter. That is why, the Division Bench of the Delhi High Court in the decision reported in 1974 SCC Online Del 177 (Gee Vee Enterprises Vs CIT) relying on the decision of the Hon'ble Supreme Court reported in *(1971) 3 SCC 20 (Champalal Binani Vs CIT, West Bengal) remarked that while it is most important that the assesse must get the benefit of the rules of natural justice, such a benefit can be given to him by the Income Tax authorities themselves and that it cannot be said that he can be given natural justice only by the Writ Court."*

The Madurai Bench of the Madras High Court relied on the decision of the Supreme Court in the case of **Gee Vee Enterprises Vs Addl CIT**[10] where the challenge was against the order of Commissioner u/s.263 after considering various decisions held that there is no rigid rule of law to fit a case under Article 226 but over the years, had enumerated the following exceptions based on the decisions of the Hon'ble Supreme Court over the years;

1. That the impugned order was passed without jurisdiction;
2. Violation of Natural Justice;
3. Disclosed an error of law apparent on the face of the record;
4. That it was based on extraneous or *mala fide* consideration;
5. That Statutory remedy was not adequate or was onerous;
6. That resort to statutory remedy would cause irreparable injury to the Petitioner;
7. That the impugned order infringes on a fundamental right of the party;
8. Provision of law under which the order was passed itself is unconstitutional.

The Hon'ble Madras High Court having merely traversed on the decision of the Supreme Court in Chhabil Das Agarwal, C.A.Abraham & Gee Vee Enterprise, ignored to look into the decision of the 3- Judge bench of the Supreme Court in Sahara India Vs CIT[11] & Addl Commissioner of Sales Tax Vs Commercial Steel Ltd[12] which again re-affirms that the existence of alternate remedy is not an absolute bar in maintainability of Writ Petition.

The Authors are of the view that though the Powers vested under Article 226 of the Constitution of India are very wide and has to be tested judiciously, however, the court ought to give more importance to the rule of "Natural Justice" which are not embodied rules which is only to check the arbitrary exercise of the power by the state or its functionaries.

RULE OF LAW DO NOT SUPPLANT THE LAW BUT SUPPLEMENT IT

[1] Ryots of Garabandho Vs Zamindar of Parlakimedi (1943) Scc Online PC 21

[2] (1878) LR 4 AC 30 at P.39 (HL) – referred at Para 12 of (1954) 2 SCC 881

[3] (1922) 2 AC 128 at p.156 (PC) – referred at Para 9 of (1954) 1 SCC 905

[4] (1952) 1 KB 338 at p. 357 (CA) – referred at Para 11 of (1954) 1 SCC 905

[5] (1952) 1 SCC 334 G.Veerappa Pillai Vs Raman and Raman Ltd

[6] (1954) 1 SCC 905 T.C.Basappa Vs T. Nagappa and Another

[7] (1954) 2 SCC 881 Hari Vishnu Kamath versus Syed Ahmed

[8] [TS-391-SC-2013-O]

[9] VV Minerals

[10] [TS-5-HC-1974(DEL)-O]

[11] [TS-97-SC-2008-O]

[12] [TS-482-SC-2021-GST]