

What is a writ petition ?

A writ petition is a petition or an application by a petitioner where prayer is made for issuance of 'Writ' for the redress of his grievances. Writ petition contains averments or statements sworn, in form of affidavit, writ, literally means a legal document that orders a person to do a thing.

Article 32 (1) guarantees the right to move the Hon'ble Supreme Court for the enforcement of the rights guaranteed by Part III of the Constitution of India (Fundamental Rights).

Article 226 (1) empowers the Hon'ble High Court, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, 2<sup>nd</sup> warrants and certiorari, for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose (i.e. for enforcement of Constitutional rights other than fundamental rights and legal rights under other statutes).

As per Article 12 state includes the Govt. and Parliament of India and the Govt. and the legislature of each of the States and all local or other authorities within the territory of India or

under the category the Govt. of India , and Article 13 (2) says that the State shall not make any law, which takes away or abridges the rights conferred by this part and any law made in contravention of clause (2) of Article 12, shall to the extent of the Contravention be void.

Law includes any ordinance, order bye-laws, rule, regulation , notification, custom or usage having in the territory of India the force of law.

As per Article 53 executive power of the Union is vested in the President and in exercised by him either directly or through officers Sub-ordinate to him and similarly as per Article 154, executive power of the State is vested in the Governor and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution.

Thus the laws made by the Parliament in respect of matters in the 'Union' and 'Concurrent' list or the State Legislature in respect of matters in the 'State' and concurrent list, or any conduct or action or inaction of the Government through its Officers can be fundamental, constitutional or legal rights of the petitioner, in appropriate proceedings praying for writs.

In English common law 'prerogative writ' referred to extra ordinary writs granted by the Sovereign, as fountain of justice, on the ground of inadequacy of legal remedies. In course of time writs came to be issued by the High Court of Justice, as the agency through which the Sovereign exercised his judicial powers and these prerogative writs were issued as extra ordinary remedies in cases where either no remedy was available under the ordinary law or the remedy available was inadequate. These writs are habeas corpus, mandamus, prohibition, certiorari and quo warrants.

*(Ref. D.Basu, Introduction to Const. of India, Chap. 8 P 127, 19<sup>th</sup> ed.).*

#### Reasoned Order:

The Supreme Court has clarified in *Ram Jawaya V State of Punjab* (1955) 2 SCR that executive power connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away. This exercise of executive function do not require prior legislative sanction except for incurring expenditure for affecting private rights.

The acts of administrative authorities, may be divided into three broad categories; a) Quasi-legislative, i.e. one of making rules, regulations, etc. by way of subordinate legislation:

(b) Administrative : applying laws to a class of person or objects ,e.g. relating to the formulation or alteration of Government Policy.

c) Quasi- Judicial- here administrative act affects an individual's legal rights or the law requires that in coming to decision authority must follow a procedure simultaneously judicial process. It has an additional requirement to follow a particular procedure to ensure a minimum amount of fairness or justice.

In respect of this third category, the concept of reasoned order comes . Again if the action involves somebody's fundamental rights reason is compulsory ( Jafar V Union of India (1994) Supp. (2) SCC 1 (Para 12). If the Statute makes it obligatory , then also statutory body requires to give reasons and absence of reasons make the ultra vires. There the duty extends to communication of the reasons to the party affected ( Mukherji V Union of India A 1990 SC 1984( Para 39) (Organo Chemical VS U/I, A 1979 SC 1803, Rama V State of Ker. A 1979 SC 1918 Para 14, Maneka V U/I, A 1978 SC 597 ( Para 64).

Reasons should be disclose the following :

a) to prevent the order from being substantive ultra vires, it has to be shown that it was made under the power specified;

- b) to prevent the orders from being procedural ultra vires ,
- i) It has to be in the form of required by the Statute i.e. if statute prescribes written licence, it cannot be oral.
  - ii) if statute prescribes a condition precedent or a procedure, which is mandatory, it should be followed;
  - iii) if , consulting another body is a prior requirement , it is a necessity.
  - iv) If it is necessary to act upon recommendation of other authority, it should be followed.
  - v) Where notice is a prior requirement , it is a must and it should be in the form specified.  
(Nageswar Rao V State of A.P. A 1959 SC 1376  
(1376 ( 1383)
  - vi) If notice needs be personal notice, general notice by publication in the Gazette would not suffice ( SDO V Srinivas A 1966 SC 1644).
  - vii) If statute requires hearing the parties affected or concerned, it is mandatory.

- viii) hearing presupposes (i) giving of notice of the time and place of hearing and (2) giving of an opportunity to state his case.
- ix) rule of natural justice needs not be followed where action is purely administrative ,e.g. deciding whether there is a prima facie case for instituting a legal proceeding, adverse civil consequences though it may raise some expectation i.e. the revaluation of answer papers at an examination (Maharashtra State E. Bd. V Paritosh A 1984 SC 1543, Para 12).
- x) However, where natural justice need not be attracted in above referred case, the other limitation to statutory power would be applicable, i.e. ultra vires, malafides, and foul play ( Srilekha V State of U.P. (1991) 1 SCC 212) (Mahabir VS I.O.C. A 1990 SC. 1031).
- xi) Where statute does not permit delegation, delegation of power to pass order would not be sustainable.

*(Ref. D. Basu, Administrative Law).*

How to deal with the Writ petition:

- (i) Before dealing with the writ petition, one petitioner should keep in mind, there should an Officer to receive properly all the writs, Notices in that regard and maintain in official record.
- (ii) After receiving the writ petition the Office firstly gone through the writ petition each paragraph and each annexure (Annexure is the document enclosed with the writ petition)
- (iii) The Officer should verify all the annexures enclosed therewith, whether that documents are true or fabricated, and try to understand the prayer of the petitioner.
- (iv) Thereafter the Officer may prepare a statement of act in which every paragraphs and annexures should be deal and reply to the allegation.
- (v) While dealing with the writ petition, the Officer should gone through the relevant laws, Government Order, Notifications, and make a photocopy of that orders for the concerned Advocate.

- (vi) If the concerned Officer have any confusion regarding, the appropriate law or notification, he/she seeks clarification from the Higher Officer.
- (vii) It is very important the concerned Officer should be well known the fact and law, so he/she may properly guide the learned advocate to contest the same on behalf of the Govt.
- Viii) Immediately after preparing the statement of fact along with all relevant records, the Officer try to contact with the learned Advocate and if necessary file an Affidavit-in-Opposition within specific period.
- ix) The concerned Officer should take necessary steps in response to every notice, radiogram message, and phone calls.
- x) The action and co-operation of the concerned Officer in the great factor to obtain an appropriate order in favour of the Govt.

Practical Guidelines about how to pass the reason Order:

- 1) After receiving the certified copy of the solemn order of the Hon'ble High Court , the concerned Officer gone through the order and concentrate on three points:

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- (a) Upon whom the direction has been given.
  - (b) the specific time mentioned in the order, and
  - © the particular point on which the reasoned order is sought for ;
2. Reasoned order should be passed by the particular Officer upon whom the direction was given and within specific period as mentioned in the order.
  3. Before passing the reasoned order, the concerned Officer issue notice upon all respective parties and Officer for giving them adequate opportunities of hearing.
  4. Fixed a specific date for hearing the parties and on the same consider all relevant documents.
  - 5 (a) In the reasoned order it should be mentioned that the opportunity of hearing was given and considering the respective documents.
  - 5(b) Should be record the submission made by the parties.
  - 5© Should record the relevant rule, notification and law.
  - 5(d) Decision;
  6. The reasoned order should be communicated to the parties immediately after passing such order.