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DOCTRINE OF EXHAUSTION OF ALTERNATIVE REMEDIES- WHETHER SUCH BEING A BAR ON THE WRIT JURISDICTION?

Abstract

In big nations such as India, where everyday thousands of matters reach the courts, one of the Quid Pro Quo is the streamlining of the judiciary. We have a proper hierarchy of the courts, jurisdictions fixed for the courts and much more, to maintain the same. Just like these mechanisms, there is a doctrine of alternative remedies, which is followed in many common law systems and so it is also followed in India. It is put in place to help the courts in deciding, that in what circumstances the court can refuse to hear the writ petitions filed before them and also the conditions where the courts have to entertain the same. The research article focuses on the doctrine and tries to answer whether it actually acts as a bar to the writ jurisdiction of the courts.

Introduction

Article 226 of the constitution of India, deals with the writ issuing power of the high courts of India. The article confers power on the high courts to issue writs, when the violation of a fundamental right takes place. The makers of the constitution felt that where such an important set of rights, namely fundamental rights are provided to the citizens, there should be an easy access to the remedy in case where there is a violation of these rights and for the same these writ issuing powers are granted to the high courts and the supreme court under article 226. These writs are, Habeas-Corpus, Mandamus, Certiorari, Quo-Warranto and Prohibition. This is the writ jurisdiction

of the courts. At times, a situation might arise that the litigant filing a petition or an appeal for the issuance of a writ, has other remedies also available to them in other statutes. This situation is known as the presence of alternative efficacious remedies. Now, here is where the doctrine of exhaustion of alternative remedies starts to operate. It says that in cases where, there is a presence of these alternative remedies the courts shall not grant the writ, but to conclude that whether it acts as a bar on the writ jurisdiction, its operation needs to be studied.

How the doctrine operates?

The doctrine sets a kind of limitation on the courts that in certain situations the courts shall not grant the writs. The objective is to establish a procedure or a code of conduct, that when all the remedies exhaust, then the litigant approaches the court for the writ. It must have been put into place so that the courts are not over burdened by the suits as the matter can be easily resolved by looking into an equally efficacious remedy being provided by the statutes. However, the doctrine is not a rule of law, but a kind of limitation or self-restriction that is being imposed upon the courts by themselves[1].

The doctrine can be imposed or not by the courts, it is a discretionary power that has been granted to the courts. In cases where the courts feel that the natural justice has been played with, then the courts can issue writs even if the alternative remedies do exist. It has to be noted that it is discretionary to the courts whether it has to issue the writs or not. A number of times, such a view has been held by the courts. The court have accepted that is a discretionary power, a self-imposed limitation of the courts on themselves, so even in case if the remedies have not been exhausted, the courts can decide whether or not to issue the writs[2]

The doctrine is not a bar on the writ jurisdiction

Superficially, it may seem that the doctrine of exhaustion of alternative remedies is actually creating a hindrance to the writ jurisdiction of the high courts, which acts as a protection mechanism for the fundamental rights of the citizens, but at the same time we need to see how the

[1] Halsbury laws of England
[2] Rashid Ahmed v. The Municipal Board, Kairana. (AIR 1950 SCR 163 566)

courts have interpreted this doctrine in various judgements. In the landmark judgement of *Harbansal Sahnia vs. Indian Oil Corporation Ltd*.[3] the court had laid down three instances where, writs could be granted if the alternative remedies are available – they are namely 1) in situations the writ petition ask for the enforcement of the fundamental rights 2) where there has been a violation of the principles of natural justice and 3) where the lower courts have acted out of their jurisdiction[4]. In this case, where the daily earnings of the petitioner were involved, the high court had rejected to grant the writ petition of the petitioner, as there were remedies available under the Adhiniyam act, but the supreme court reversed the same and said that the courts can grant the writ petitions in situations as mentioned above. *In L. Chandra Kumar vs Union of India*[5], though, it was held that the doctrine of remedies has to be followed and no writ petition can be entertained, on the other hand, in the landmark case of *T.K Rangarajan vs Govt of T.N*, it was a case where almost 2 lakh employees were dismissed by just an order and it was held by the high court, that in extraordinary cases, where such an incident takes, place and the court feels that it is necessary to intervene, then it may do so and hear the writ petition even in cases where there is a presence of alternative remedies. The ratio set up in L. Chandra Kumar was not followed here. Here the courts had felt that the courts' writ issuing powers are special and can never be undermined. In the T.K Rangarajan case, it was held that even though the alternative remedies were available under essential maintenance act 2003, the fundamental rights of the employees were at stake, therefore, the court felt the need of the granting of the writ. Here it was felt by the court that how can a single order, how a single stroke of pen can dismiss 2 lakh workers from their jobs, the courts must have felt there would have been some gross violation of fundamental rights and natural justice. So, as it can be observed that, it varies from facts to facts, as to how a case unfolds itself and whether the courts feel that there is some sort of intervention required on their part or not. This is the reason why, it is being held that the doctrine gives discretionary powers to court, as to how and when the writ issuing power can be invoked. Therefore, the doctrine operates in a check and balance manner. It does not put a bar of any sort on the writ jurisdiction of the courts. It is actually making the working of the courts quite efficient. To put it into simple words, the doctrine stops the courts from getting overburdened, as even hearing a writ petition is also time consuming, so it tells to be

[3]Harbansal Sahnia v. Indian Oil Corporation. (2003) 2 SCC 107
[4] V. N SHUKLA, CONSTITUTION OF INDIA, Page 672
[5] L. Chandra Kumar v. Union of India (1997) 3 SCC 261

mindful that such a doctrine exists, it is better to first exhaust other remedies and then approach the court for the issuance of a writ and in case such an issue comes before the courts, they can reject to hear it, without any ado as they will be following the doctrine. But, at the same time, in that very particular case itself, if it is felt by the court, that some wrong decision is taken by the court below it or really the fundamental right or the principles of natural justice have been violated, then definitely, the courts will hear the writ petition and may grant the writs for the same.

In a case, in April 2021, which was decided by honorable Justice D.Y Chandrachud and Justice JJ shah, the same doctrine was reiterated again. This was the case of, *Radha Krishna Industries v. State of Himachal Pradesh*[6], where the high court of Himachal Pradesh had dismissed the appeal for the writ petition, as there were alternative remedies available to the petitioner. Here, the petitioner had challenged the actions of joint commissioner of state excise and tax. Section 83 of the sales and goods act, 1973 of Himachal Pradesh had been invoked and the high court refused to hear the petition on the ground that it can't be entertained as alternative efficacious remedies are already available. The matter went on appeal to the supreme court where honorable judges, referred to the *Harbanslal Sahnia vs Indian Oil Corporation*, and also to the *Whirlpool Industries vs Registrar of the Trade Mark Companies* where it was held that the doctrine is not a bar on the jurisdiction and it can be granted even in presence of alternative remedies in three contingencies – writ petition is filed in relation to the violation of the fundamental rights , violations of the principle of natural justice and the order or the proceedings are wholly without the jurisdiction of the ultra vires act. the basic principle of natural justice means, a person should have the right to be heard without any bias, which means a free and fair hearing. If the courts anywhere feel that any of these three contingencies are being dealt with, it can definitely entertain the writ petition, else, where it does not feel so, it can refuse to hear the same. The court explained that when the statutes are already providing a remedy for the act, one needs to seek them first before filing for a writ in high courts.

[6] Radha Krishna Industries v. State of Himachal Pradesh, (2021) SCC 334

Situation in other countries

It is to be noted that, since in India we follow the common law system, the doctrine continues to remain same in other common law systems as well. In the United Kingdom, in the case of *Oyekan vs Secretary of State for the Home Department*[7], the doctrine was upheld by the court of appeal, where the petitioner a Nigerian citizen wanted a judicial review without the exhaustion of the other remedies available to him. It was marked by the court that, it is one of the fundamental procedures of the court system, that one needs to approach and seek other remedies before appealing for the judicial review, so the appeal for the same was considered ill founded by the court. The doctrine is also a well established and accepted rule in in the country of Pakistan, which is yet another commonwealth nations. So, we can say that, this common law doctrine is followed by most of the systems that are following the common law system of adjudication.

Conclusion

The doctrine of alternative and efficacious remedy by no way puts a complete bar on the writ jurisdiction of the high courts. It just puts a limitation on the functioning of the court or in other words provides a particular rule as to how the cases can be entertained in the courts. We must realize that the judiciary of our country works in a very streamlined manner. For the same, certain limitations, checks and self-imposed restrictions are important, so that the courts don't get overburdened by the cases. If for one case where there is already a statutory remedy, filing a writ for the same will be a waste of time for the courts as well as for the petitioner. There will be additional costs that will have to be borne by the petitioner for the same, where she could have simply got a section invoked from a statute. The efficiency of the courts will be hampered by the same. Therefore , such a doctrine has been created , so that the courts know what type of cases actually deserve the granting of a writ and even the parties are aware that such a doctrine will disable them from getting their writ heard, until the circumstances are meeting any of the three

[7] Oyekan v. Secretary of State for the Home Department [2016] EWCA Civ 1352

contingencies , namely , the if it's a matter of fundamental right violation or the principle of natural justice or the orders/proceeding are beyond the jurisdiction or there is an instance where the vires of a legislation is being challenged .The doctrine of alternative remedies is by no way a hindrance on the writ issuing power of the courts. It is one of the important features of the common law system, as by being in place it streamlines the functioning of the courts and prevent them from being overburdened.