



**Advanced Contracts, Tendering and Public Procurement**  
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**Writ Reliefs in Government Contracts - Part 02**

(Refer to Slide Time: 00:15)

### PRINCIPLES TO DETERMINE GOVT. ENTITY AND AGAINST WHOM – WRIT REMEDY WILL LIE

- Entire share capital of the corporation is held by the government.
- Financial assistance is almost meeting the entire expenditure of the corporation.  
*Eg. Jawaharlal Nehru University.*
- The Corporation enjoys monopoly status in the particular sector. *Eg. Indian Oil Corporation.*
- Deep rooted state/government control.
- Functions of the entity closely related to government functions.
- If an arm of the government is transferred to a corporation. *Eg. Delhi Transport Corporation.*

\* These principles were enunciated by J. Bhagwati in *Ajay Hasia v. Khalid Mujib's case (AIR 1981 SC 487)*.



  


Now that we have understood the principles to determine government entity and against whom writ remedy will lie, let us understand what are writ remedies.

(Refer to Slide Time: 00:23)

### WHAT ARE WRIT REMEDIES?

- **Article 226** – Art. 226 has a broader jurisdiction than Art. 32 since it does not require the violation of a Fundamental Right to be invoked.
- **Article 32** – Art. 32 requires the Fundamental Right to be violated in order to be invoked.
- As a general rule - Writ petitions are beyond the domain of contractual matters since they are largely concerned with private law however they become crucial when the state becomes an entity in a contract.
- Therefore, where there is an element of 'State' and a 'public element' involved in a matter, writ remedies come handy to be invoked.

Simply put, a writ remedy is a constitutional remedy available to any person to bring his or her complaint, concern or grievance against an administrative action before the notice of the court. An administrative action may be an action taken up by the executive body of the government while awarding a contract while forming the principles of the various structures in which a government contract would be awarded.

And to understand better what are writ remedies, there are two articles in the constitution that give individuals the scope to invoke a writ remedy against a particular government organization or a state that is Article 222. Article 222 relates to the jurisdiction of any and all the high courts in the country and Article 226 has a broader jurisdiction, because it is only under Article 226 that a writ remedy will lie.

Under Article 32, which is the writ jurisdiction of the Supreme Court, a writ remedy will lie under Article 32 only if there is a breach and also a breach of fundamental rights that have been violated. So, in order to invoke Article 32, a fundamental right also should have been violated. However, with respect to Article 226, that is not the case. In case there is fraud or there is any breach or the principles of natural justice have not been followed while awarding a contract, the jurisdiction under Article 226 that is any person can approach any of the High Court in order to get a remedy and in order to invoke a writ remedy.

Therefore, as a general rule, writ petitions generally are beyond the domain of contractual matters since they are largely concerned with private law because contractual matters are generally governed by the Indian Contract Act of 1872 which is a private law between two parties. However, they become crucial when the state entity or government entity becomes involved or enters into that contract. Therefore, we say when an element of state and a public element is involved in a matter, writ remedies come in handy in a way that they can be invoked.

Therefore, the broad principle that could be culled out is that if a government executed exercises its power in an arbitrary manner, which leads to an element of unfairness, then that would be amendable to writ jurisdiction. In an interesting case, in Haryana, in Ram v. Sham Company versus the state of Haryana, a writ petition was allowed against the government in the matter in which the Chief Minister of the Government of Haryana had accepted a secret bid in a contract made to him personally via the tendering process.



In this case, a writ jurisdiction under Article 226 was exercised. For the proper enforcement of Article 226, there has to be a breach in the case in which we just saw that the Chief Minister had accepted a bid personally and not through the tendering process, which was actually advertised by the government. Generally writ remedies of matters that are entered prior to entering the contract that is pre-contract period, where the tender process is out, where people are giving in or bidding for the process.

And therefore, for the execution of a writ remedy, there has to be a violation of any of the principles of natural justice when a writ remedy is being invoked.

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### Kinds of Writs

KINDS OF WRITS		
TYPE OF WRIT	MEANING OF THE WRIT	PURPOSE OF THE WRIT
Habeas Corpus	You may have the body	To release a person who has been detained unlawfully whether in prison or in private custody.
Mandamus	We Command	To secure the performance of public duties by lower court, tribunal or public authority.
Certiorari	To be certified	To quash the order already passed by an inferior court, tribunal or quasi-judicial authority.
Prohibition	Halt the proceedings	To prohibit an inferior court from continuing the proceedings in a particular case where it has no jurisdiction to try.
Quo Warranto	What is your authority?	To restrain a person from holding a public office which he is not entitled.

What are the kinds of writs in the Indian constitution? While there are many kinds of writs in the Indian Constitution that are defined under Article 32, there are around five clear types of writs that are written in the Indian Constitution as per Article 32. The first type of writ is a writ of Habeas Corpus. The literal meaning of this writ is ‘you may have the body’. In case a person is kidnapped or has been confined not via a legal process, that person or any of his close kin or legal representatives, they may approach the court with a writ of habeas corpus to release such person who has been detained unlawfully in prison or in private custody.

The next writ that is of crucial importance generally in government contracts is the writ of Mandamus, which literally translates to ‘we command’. The purpose of this writ is to secure the

performance of public duties by a lower court tribunal or public authority. So, by virtue of this writ, any person can approach the High Court or the Supreme Court and the High Court or the Supreme Court will command the lower court tribunal or public authority to ensure that this duty is carried out by that public organization, government entity or state entity.

The next kind of writ is the writ of Certiorari which is 'to be certified'. This writ is also issued by a higher court to a lower court in order to quash the order already passed by an inferior court, tribunal or quasi-judicial authority. This is generally done when the decision of the lower courts or the tribunal or quasi-judicial authorities is not in line with the principles of justice.

The next writ is the writ of Prohibition which literally translates to halt the proceedings. So, this is again issued by a higher court when an inferior court over a lower court from continuing the proceeding in a particular case where that particular lower court does not have the jurisdiction to entertain that matter.

The next type of writ is the writ of Quo Warranto. This literally translates to 'what is your authority?' In this writ also a higher court sends an order or a question to a particular individual holding government office that by virtue of what authority are you entitled to hold this office. Apart from these five writs, writs can be concluded or they can be mixed. For example, they can be a writ of habeas corpus plus mandamus, a writ of mandamus plus certiorari.



In this way, there are many kinds of writs in the Indian constitution. However, the focus of today's session is on the writ of mandamus, because this comes very handy in case of government contracts.

(Refer to Slide Time: 08:27)

## Writ of Mandamus

**WRIT OF MANDAMUS**

- It is issued by the Court to direct a public authority to perform the legal duties which it has not or refused to perform.
- It can be issued by the Court against a public official, public corporation, tribunal, inferior court or the government.
- It cannot be issued against a private individual or body, the President or Governors of States or against a working Chief Justices.
- It cannot be issued in the following circumstances:
  1. *The duty in question is discretionary and not mandatory.*
  2. *For the performance of a non-statutory function.*
  3. *Performance of the duty involves rights of purely private nature.*
  4. *Where such direction involves violation of any law.*
  5. *Where there is any other remedy available under the law.*



As we just learned about it, a writ of mandamus is a writ issued by a higher court to a public authority to perform legal duties which it has not or has refused to perform. This writ can be issued by the court against a public official, against a public corporation, against a tribunal, against an inferior court or the government. So, a person approaches the court seeking a writ of mandamus when a particular legal duty has not been carried out by a public authority that should have been carried out.

It is important to note that a writ of mandamus cannot be issued against a private individual or body. Individuals like you and me in a personal capacity against us, a writ of mandamus cannot be issued. Further, a writ of mandamus cannot be issued against the President or the Governor or against the Chief Justice of India or the Chief Justices of any of the Indian states.

It is also crucial for us to note that it cannot be issued in the following circumstances. For instance, a writ of mandamus will not be issued if the duty in question or the person who has gone to the court is asking or invoking the writ of mandamus against a duty that is discretionary in nature and not mandatory.

It means that it is not mandatory for the government to ensure that you have a beautiful garden and that you have 10 types of trees in your garden. So, if a person invokes the writ of mandamus

and approaches the court by saying that I should have 10 types of trees in my garden, this is not a duty of the government and against this, a writ of mandamus will not lie.

For the performance of a non-statutory function; that is if there is a function that is not mandated by any of the statutes or in any of the legislations, then a writ of mandamus will not lie. Third, the performance of duty involves rights of a purely private nature. Something that is purely private in nature, for instance, painting your house if it has undergone a lot of wear and tear or in order to ensure that your house remains in habitable condition, is a purely private matter and against this writ of mandamus will not lie.

The fourth point is where such discretion involves any violation of any law. If you approach the court with the writ of mandamus and you are asking a duty in which if the court grants you that there will be a violation of a law. So, in this case, also a writ of mandamus will not lie. The next point is where there is any other remedy available under the law. So, we need to understand that to invoke a writ of mandamus it should be the last resort that should be there.

For instance, if there is a tender that has been floated by the government and the last date to receive all bids is the tenth of August, and one bid was received on the eleventh of August. So, in this case, the person who submitted his tender on the eleventh of August if he gets the contract, so in this case there is no other remedy involved because this is the last chance. And if a writ of mandamus is not invoked in this particular matter, that person would go ahead with the contract and out here there is no other remedy involved under the law, and therefore, a writ of mandamus will lie.

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## Understanding Government Contracts



The slide is titled "UNDERSTANDING GOVERNMENT CONTRACTS" and features the NPTEL logo in the top right corner. It contains three bullet points: "A Government contract is a contract in which one of the parties is the Government.", "The State, as well as the Central Government, maybe the party in a Government contract.", and "All the Government contracts are made in the name of President of India." Below the text, there are two images: one showing a piece of paper with "GOVERNMENT CONTRACT" written on it, and another showing a man speaking.

- A Government contract is a contract in which one of the parties is the Government.
- The State, as well as the Central Government, maybe the party in a Government contract.
- All the Government contracts are made in the name of President of India.

We have understood what a state entity is, what a government entity is, we also understood the writ of mandamus will lie against a public authority, against a public official, and so on and so forth. But it will only lie when there is a government contract. A government contract is a contract in which one of the parties is the government.

For example, a contract entered between the Indian Oil Corporation and Reliance Industries. Now, Reliance Industries is a private entity. On the other hand, Indian Oil Corporation is a government entity. So, this contract is a government contract.

Second, the state as well as the central government may be the party in a government contract. For example, in the construction of a road, a road that is connecting interlinking between cities, there is a contract between the Municipal Corporation and gold developers. So, gold developers is a private entity. On the other hand, the Municipal Corporation that has actually tendered the contract, process the tendering process, it is a government entity. So, this also becomes a government contract.

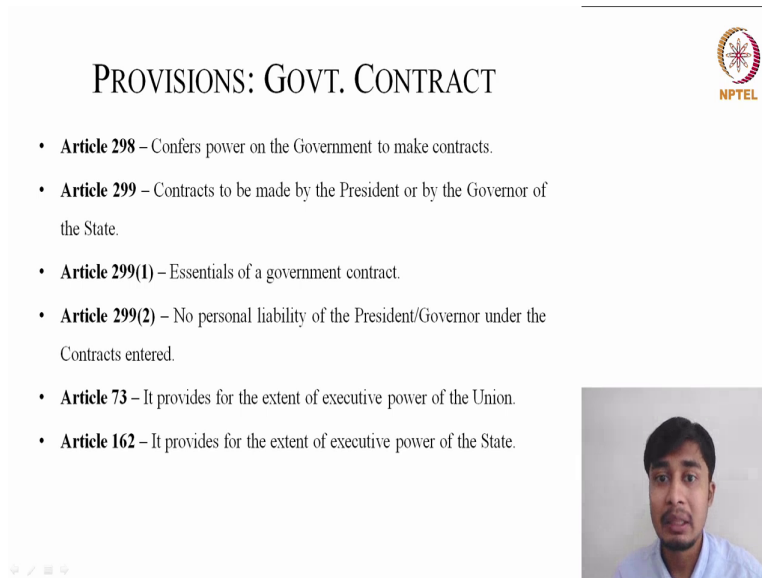
It is essential for us to note that all government contracts are made in the name of the President of India. It cannot be made against, it cannot be made without the President of the government of any state. Now, this is not the case that the government, that the President of India will come and

execute every contract. The President has delegated powers to various organizations, to various individuals, and they are carrying out the contract on behalf of the President.



(Refer to Slide Time: 14:42)

## Government Contracts: Provisions in the Indian Constitution



The slide features the title "PROVISIONS: GOVT. CONTRACT" at the top center. In the top right corner, there is the NPTEL logo, which consists of a circular emblem with a book and a lamp, with the text "NPTEL" below it. The main content is a bulleted list of six articles. At the bottom right of the slide, there is a small inset video frame showing a man with dark hair and a light blue shirt, looking towards the camera. At the bottom left of the slide, there are small navigation icons: a left arrow, a right arrow, and a refresh icon.

**PROVISIONS: GOVT. CONTRACT**

- **Article 298** – Confers power on the Government to make contracts.
- **Article 299** – Contracts to be made by the President or by the Governor of the State.
- **Article 299(1)** – Essentials of a government contract.
- **Article 299(2)** – No personal liability of the President/Governor under the Contracts entered.
- **Article 73** – It provides for the extent of executive power of the Union.
- **Article 162** – It provides for the extent of executive power of the State.


There are a few provisions in the Indian Constitution that are of vital importance in order to understand the government contract. Article 298 is the power of the government that confers power on the government to make contracts. It gives the power to any government entity to carry out trade, etcetera. So, this is the executive power of the state and the central government that is helping the entity to enter into contracts.

Similarly, there is Article 299. Article 299 specifically deals with contracts. It specifically deals with all contracts made in the executive power of the union or the state that must be expressed to be made by the President. There are some essentials that Article 299 states. Article 299(1) actually states the essentials of a government contract. First the government that the contract entered should be entered on behalf of the President or the governor. And then there is Article 299(2) that is, which states that no personal liability with regard to any contract will lie against the President or the Governor under the contracts entered.

**Article 73 and Article 162:** Article 73 of the Indian Constitution deals with the extent of the executive power of the union and Article 162 deals with the executive power of the state. So, by virtue of these articles, the government entity enters into the contract, because these are the governing articles that actually give power to a government entity to enter into a government contract.


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## Understanding Courts & Government Contracts



UNDERSTANDING COURTS & GOVT.  
CONTRACTS

- Where both parties are private entities, it falls in the private law field & governed by the usual law of contract.
- However, when one party is the Government or State (Article 12) – things change. Why?
  - A. It represents people, thus, minimum standards of fairness is a must.
  - B. Writ jurisdiction can be invoked by demonstrating that a public law remedy is being taken.
- Since, decision of the Govt. u. Art. 298 is executive – subject to Part III of the Constitution & therefore the principles of fairness comes into picture (Article 14)



It is very crucial to understand courts and government contracts. Now, firstly, when there are two entities, for example, if there is a contract between Reliance and Tata, both are private entities, so the remedy will not fall under a writ. This will be governed by private law, and the private field will operate in this contract. For example, Arbitration can be a way to solve disputes. This relates what is the scope of the contract.

However, in order to ensure that a government entity against whom a writ of mandamus will lie, in such a scenario in a contract one of the parties should be an entity as per Article 12 of the constitution. Only when a party is a government entity, the court will entertain a writ relief in that matter.

When one party is the government or state, things change. Why is it so important when a party becomes a government and a writ remedy will lie in that matter? Firstly, as we had already discussed in the first slide a government contract is a representation of the people.

That means a minimum standard of fairness should be taken care of while such contracts are being entered, because the government office or a government position is always handled for a particular time period. That is we as people are giving that power to that entity or to that officer to carry out a duty that is for the welfare of the individual.

Next, a writ jurisdiction can be invoked by demonstrating that a public law remedy is being taken. In the construction of roads, it is for the people. If there are bad roads, people will suffer. If there is a bridge or a flyover is being constructed; all of these are public duties. When an institute of public importance is being constructed, for example, a Central University is constituted by the government.

Now, the way in which the Central University after it comes into the picture starts its construction, starts building its quarters, its classrooms, and administrative buildings, all these will come under the purview of the government contract because even if a contractor is involved, on the other hand, there is a public duty by the Central University to ensure that all the contracts are entered in a free and non-coercive atmosphere.

Now, since the decision of the government under Article 298 is an executive decision that is subject to Part III, (Part III relates to the fundamental rights of the Indian Constitution), and therefore, the principles of fairness come into the picture. That is Article 14 comes into picture. And therefore, all contracts involve an element of fundamental right when it is being executed or being awarded to a particular individual. And therefore, Article 226 and Article 32 which is the jurisdiction of the Supreme Court become handy.



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## Judicial Review: Two Spheres

### JUDICIAL REVIEW: TWO SPHERES

- There are two broad areas in govt. contractual matters:
  - A. Before/during the matters of awarding a contract on the grounds:**
    - a) Illegality
    - b) Irrationality
    - c) Procedural impropriety
  - B. Post-award matters:**
    - a) Interpretation & implementation of contract
    - b) Discharge of contractual obligations
    - c) Breach
    - d) Novation

**Note:** Generally, matters under point A. are amenable to writ jurisdiction on the well-established grounds. However, post-award matters generally fall within the private law domain, therefore, they being amenable to writ jurisdiction, depends on case to case basis.

There are two spheres in understanding government contracts and when will a judicial review lie. Very simply judicial review means, the court entertains a review of a particular matter. There are two broad areas in a government contractual matter. The first is before or during the matters of awarding a contract on the grounds.

First, when the tender is floated, if during that time, there is illegality in the manner in which a contract is being awarded, if there is irrationality, or if there is a procedural impropriety that means illegality, irrationality and procedural impropriety. When there is a foul or an element of biasness that has been going on while awarding a contract to a particular individual, for instance, if there are five people in a bidding contract wherein they have to construct an administrative building for the Government of India.

There are five people and L5, the person who got the bid quoted the highest amount that it is 200 crores and the person who quoted the lowest amount which is 100 crores, did not get the contract. So, this is somewhere that irrationality has taken place that you have awarded a contract to a person who has quoted 100 crores more price. So, this is an irrationality with respect to the prices.

Coming to illegality. Illegality could be forged papers or forged documents have been used to award a contract to a particular individual. Therefore, judicial review will lie in this particular matter. Third, the procedural impropriety, now if every contractor or every bidder had to follow five steps to submit their bid, and there is one person who directly submitted his bid without completing the five steps, there is a procedural impropriety that has taken place. And these are matters before awarding a contract and the judicial review will lie in such a matter.

Post-award matters: Generally post-award matters become the realm of private law because it deals with the interpretation and implementation of a contract, discharge of contractual obligations, breach, novation, etc. Now, generally, it is a writ jurisdiction that lie only in point A that is amenable to writ restriction on the well-established grounds of fairness, justice, equity, and so on and so forth. However, post-award matters generally fall within the purview of private law. Therefore, they being amenable to writ jurisdiction depend on a case to case basis and on the facts and circumstances of every case.

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## Principle followed by Courts



The slide features the title "PRINCIPLES FOLLOWED BY COURTS" at the top left. In the top right corner, there is the NPTEL logo, which consists of a circular emblem with a star-like pattern and the text "NPTEL" below it. The main content is a bulleted list of four points. In the bottom right corner of the slide, there is a small video inset showing a man with dark hair and a light blue shirt, looking towards the camera.

- Modern trend points to judicial restraint in administrative action.
- The Court does not sit as a court of appeal, however, just reviews the decision.
- The Govt. must have freedom of contract. The decision must be free from arbitrariness and not affected by bias or actuated by mala fides.
- The judicial approach manifests a simple point, that – where the dispute is within the contractual field, pure and simple, a writ petition cannot be moved under article 32 or 226.

Now that we have seen the matters and the aspects of when a judicial review will take place or when the court will take interest in a matter, let us proceed ahead and understand the principles by which the courts have come down to this proper point. Now, there are a few things that we need to keep in mind.

The first, in modern trends, the case laws that have evolved in recent years, as we will discuss in the next few slides, point to judicial restraint in administrative action. That is only in administrative action when there is an element of administrative or executive action involved, proper judicial restraint will take place in that matter.

Now, we need to understand that these courts do not sit the High Court or the Supreme Court in government contractual matters. They do not sit as a court of appeal. However, they just review the decision that has been taken by the government entity or the state entity that whether or not they follow the principles of justice, have they followed the pillars of Article 14, that is the element of fairness.

The government must have freedom of contract. And this is well recognized by our courts. And therefore, they do not interfere in every matter only and unless it is very important and if a principle is not being followed, only then do they enter the domain of the contract that the

government has entered into. And the decision must be free from arbitrariness and not affected by bias or actuated by any mala fide intent.

This is the only thing that the court considers before taking up a matter that the decision that the government entity took with respect to a particular contract is free from arbitrariness and no element of biasness was involved in it or any mala fide intent that is any bad intention was involved in that particular decision.


The last point relates to the judicial approach and manifests a very simple point that where the dispute is within the contractual field, pure and simply a writ petition cannot be moved under Article 32 or 226. For instance, if there is a contract for the supply of sugarcane, and the supply of sugarcane in the contract was 100 kgs, but only 80 kgs of sugarcane came and 20 kgs was not delivered.

So, this is an element in a contract that is of a purely contractual nature. This is not something where an administrative action took place, and so on. And therefore, in this case, a contractual element of private law gets involved and a writ petition cannot be moved under Article 226 or 32.

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## Recent Judicial Pronouncements


### RECENT JUDICIAL PRONOUNCEMENTS



- **PRAKASH SINGH V. UNION OF INDIA & ANR. (2022)**

**Background:**  
An appeal was filed against the order of a Single Judge which had dismissed the petition filed by the Petitioner laying allegations of racial discrimination & harassment against Agence France-Presse against him. The Court dismissed the plea as not being maintainable.

**Del HC division bench ruled:**  
*The Writ of Mandamus is not a remedy against private wrongs. In addition, courts cannot interfere with the internal management of a private body in a writ of mandamus.*  
*The Court observed that Agence France Press was neither created by any law passed in India nor was it entrusted with functions which can be termed as 'Governmental' or closely associated therewith, having public importance or being fundamental to the life of people.*



Now, let us look into a few case laws, the most recent being of the year 2022 in Prakash Singh v. Union of India and Anr. In this a very interesting story actually took place. The appeal was filed

before the division bench of the Delhi High Court in this matter against the order of the single judge that had dismissed the petition filed by the petitioner laying allegations of racial discrimination and harassment against *Agence France-Presse* against him. Now, the court dismissed the petition as not being maintainable. A writ, a petition under Article 226 invoking the writ of mandamus was invoked in this particular case.



The division bench the Delhi High Court ruled that a writ of mandamus is not a remedy against private firms as we have just seen in the previous slides. In addition, courts cannot interfere with the internal management of a private body in a writ of mandamus. It further went on to observe that *Agence France-Presse* was neither created by any law passed in India nor was it entrusted with the function which can be termed as governmental or closely associated therewith having public importance of or being fundamental to the life of people.

*Agence France-Presse* does not fall under Article 12 of the constitution. Since it is not a government body, it has not been created by a governing body and it does not carry out any of the function that is delegated or legislated by the government and is not even an arm of the government. Therefore, it is a private entity, not governed by any of the governments in India or local governments. And therefore, a writ petition will not lie against a body such as *Agence France-Presse* because it is not a government entity.

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## RECENT JUDICIAL PRONOUNCEMENTS

- **HARI KRISHNA MANDIR TRUST V. STATE OF MAHARASHTRA (2020 SCC ONLINE SC 631)**  
Background:  
The Court was hearing the case related to a private road in Pune being declared as being owned by Pune Municipal Corporation whilst in the property records, there was no private road. The issue at hand, the owner might obtain restoration of possession by proceeding for Mandamus against the Government.  
  
SC held:  
*The Courts are duty bound to issue a writ of Mandamus for enforcement of a public duty, where the Government or a public authority has failed to exercise or wrongly exercised discretion conferred upon it by a Statute, or rule, or a policy decision of the Government or has exercised such discretion mala fide, or in irrelevant consideration.*


Next, in *Hari Krishna Mandir v. State of Maharashtra (2020)*, the Supreme Court was hearing the case related to a private road in Pune being declared as being owned by the Pune Municipal Corporation. While in the property records, there was no private road. The issue at hand was the owner might obtain restoration of possession by proceeding for mandamus against the government.

The court held interestingly that there is a duty to issue a writ of mandamus for the enforcement of public duty where the government or public authority has failed to exercise or wrongly exercised discretion conferred upon by a statute or rule or a policy decision of the government or has exercised such discretion malafide or an irrelevant consideration.

In this case, the Supreme Court issued the writ of mandamus because it was for the purpose of construction of a road that is a public duty of the government to ensure that its citizens have a proper and safe road in the country.


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## JUDICIAL PRONOUNCEMENTS



- **GUJARAT STATE FINANCIAL CORPORATION V. LOUTS HOTELS PVT. LTD. (AIR 1983 SC 848)**
  - a) Appellant did not disburse the loan to Respondent in terms of the agreement entered.
  - b) Appellant contended that dispute within the realm of contract, therefore breach of contract thus mandamus cannot be issued.

SC held – If the appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury flowing from its unreasonable conduct, to the Respondent. In such a situation the Court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty.




The next case is *Gujarat State Financial Corporation v. Lotus Hotels Private Limited*. The broad issue in this case was the appellant, that is the Gujarat State Financial Corporation, did not disburse the loan to the respondent in terms of the agreement entered. Second, the appellant contended that the dispute was within the realm of contract, and therefore, breach of contract and therefore mandamus cannot be issued.



The Supreme Court very interestingly held that if the appellant entered into a contract in discharging the performance of its statutory duty and the respondent acted upon it, the statutory cooperation that is the Gujarat State Financial Corporation cannot be allowed to act arbitrarily so as to harm and injure flowing from its unreasonable conduct with respondents. In this situation, the court is not powerless from holding the appellant to its promise and it can enforce a writ of mandamus directing it to perform its statutory duty which is to disburse the loan amount that had been agreed between the two entities.


(Refer to Slide Time: 32:31)

## JUDICIAL PRONOUNCEMENTS



- **MAHABIR AUTO STORES V. INDIAN OIL CORPORATION (AIR 1990 SC 1031)**
  - a) Respondent a statutory body
  - b) Appellant a partnership firm
  - c) Appellant engaged as a lube distributor of the Respondent & selling all kinds of lubricants since 1965.
  - d) Receiving continuous supply, however, stopped on May 27, 1983.
  - e) Filed a writ of mandamus in the High Court. HC held writ not maintainable.
  - f) The Supreme Court – holding Respondents u. Article 12 said whether public or private law is involved depends upon facts & circumstances. SC set aside HC's judgment.

**SC held** – *IOC when without informing the parties concerned, herein on alleged change of policy & on that basis action to seek to bring an end to course of transaction over 18 years involving large amounts of money is not fair action, esp. in view of the monopolistic nature of the power of the respondent in this field ... the part whose rights and powers are affected or sought to be affected, must be taken into confidence during such decisions.*



In the case Mahabir Auto Stores v. Indian Oil Corporation, the respondent is Indian Oil Corporation which is a statutory body and the appellant Mahabir Auto Stores is a partnership firm. Now, the appellant is engaged as a lube distributor of the respondent that is Indian Oil Corporation and was selling all kinds of lubricants since 1965 of the Indian Oil Corporation. Now, they were receiving continuous supply ultimately it randomly stopped on May 27, 1983.

A writ of mandamus was filed in the High Court by Mahabir Auto Stores and the High Court held that the writ is not maintainable. Now, eventually, Mahabir Auto Stores went to the Supreme Court and the Supreme Court held the respondents under Article 12 said, whether a public or private law is involved depends upon the facts and circumstances of the case and set aside the High Court's judgment.


The Supreme Court held, the Indian Oil Corporation when without informing the parties concerned herein of the alleged change of policy and on that basis action to seek to bring an end to the course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field.

Now, this monopolistic nature was held and was promulgated by Justice P.N. Bhagwati in Ajay Hasia's case as well. We discussed in the previous slides that when an entity is having a monopolistic nature in a field, it cannot act in an arbitrary manner. And the party whose rights and powers are affected or sought to be affected must be taken into confidence during such decisions.

So, as we saw in this case that Mahabir Auto Stores was distributing the lubes that is being generated by Indian Oil Corporation, all of a sudden IOC stopped the continuous supply to Mahabir Auto Stores. And therefore, the Supreme Court held that when a party like the Indian Oil Corporation that has held a monopolistic nature in this field cannot take decisions without taking the other party that is Mahabir Auto Stores into confidence during the enactment of such decisions.

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### **Essence of Mandamus in Government Contracts**




ESSENCE OF MANDAMUS IN GOVT.  
CONTRACTS

- Therefore the most crucial aspect for getting a writ of mandamus enforced is:

*In the matters of government contract, the Court's jurisdiction under Article 226 (or 32) does not get ousted completely.*

*However, the Court may only examine a matter if it has an element of public law or character attached to it (and this varies from case to case and upon the interpretation of the court's understanding of the matter).*

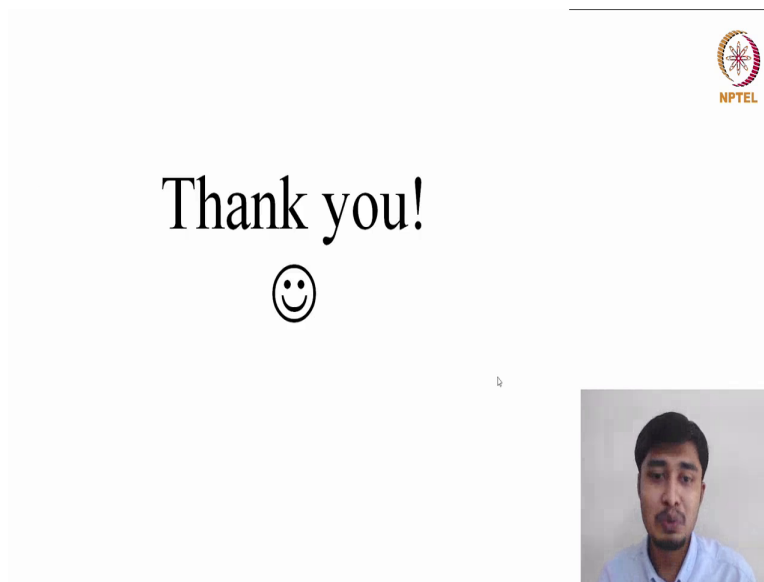


This brings us almost to the end of the session. And very interestingly let us delve into the essence of mandamus in a government contract. Now, the most crucial aspect for getting the writ

of mandamus enforced is, in government contracts the court's jurisdiction under Article 226 or 32 never gets ousted completely. The court will only examine a matter if it has an element of public law or character attached to it and this varies from case to case and upon the interpretation of the court's understanding of the matter.

When there is a construction of a road, the writ of mandamus will lie. When there is the element of constructing a hospital, a government hospital, the element of, the writ of mandamus will lie. So, when there is a public duty, public law or a public responsibility that is involved, in such scenarios the writ of mandamus will lie.

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Thank you for your time.