

## Chapter 6

### QUO WARRANTO

#### 6.1 Objectives

The quo warranto is used to scrutinize whether a person is competent to hold said public office. Now question arise, why quo warranto is filed. It protects a citizen from being deprived of a public office to which he may have a right.<sup>1</sup> An action in quo warranto is the statutory legal device available to challenge the eligibility of a sitting president or article 102 can be invoked even when there is a 'knocking at the door' for occupation. Sub article (2) (b) (ii) of article 102 reads thus:

- (2) The High Court Division may, if satisfied that no other equally efficacious remedy is provided by law
  - (b) on the application of any person, make an order
    - (ii) requiring a person holding or purporting to hold a public office to show under what authority claims to hold that office.

Article 102 (2) (b) (ii) provides that on the application of any person the High Court Division may inquire whether a person holding or purporting to hold any public office is holding it under a legal authority.

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<sup>1</sup> *University of Mysore v. Govinda Rao*, AIR (1965) SC 491.

## 6.2 Development of Quo Warranto

In *Zabedul Islam Khan (Md) and others v. H. M. Ershad and Others*,<sup>2</sup> in order to perform the functions of the public duty of citizens to demand removal of all usurps in public interest anyone can file a writ of quo warranto and the writ petition is quite maintainable when the objection regarding alternative remedy cannot also be raised under the facts and circumstances of the present case.

In *Farid Mia v. Amjad Ali*,<sup>3</sup> leave to appeal was granted to consider whether in view of the alternative remedy of going to the election tribunal the writ petition was maintainable and whether the High Court Division, in view of the background history of the disputed loan in question, acted properly in deciding a disputed question of fact under the writ jurisdiction, and the election of a candidate could not be challenged under article 102 of the Constitution but when the candidate after being elected assumes the office of the Chairman or other public office then any person can invoke the provision of sub-article 2 (b) (ii) of article 102 and leave was granted to consider another law point that whether in view of the alternative remedy of going to the Election Tribunal the writ petition was maintainable and whether the High Court Division, in view of the background history of the disputed loan in question acted properly in deciding a disputed question of fact under the writ jurisdiction. High Court Division failed to taken into consideration the defaulters list which has been supplied by the Bank. The Appellants name was not mentioned and that an application for renewal of the working capital loan had already been made under the agreement before the expiry of the date of repayment. The High Court Division took the view that admittedly the loan was not repaid and therefore, Appellant was a defaulter.

In *Mostafa Hossain v. S. M. Farque*,<sup>4</sup> the crucial question in this case was whether the Appellant had any pecuniary interest of the affairs of the Kathalia Upazilla Parishad when his bill for payment was pending after his election as Chairman of the Upazilla Parishad. The respondent is also an ex-officio member of the said Upazilla Parishad. So there cannot be any doubt that he had *locus standi* to lodge the information which led the the High court Division to exercise its constitutional jurisdiction. Remedy by a quo warranto proceeding

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<sup>2</sup> 6 BLC 301.

<sup>3</sup> 42 DLR 1990 (AD)13.

<sup>4</sup> 40 DLR 1988 (AD)1.

in which the title to public office may be questioned is independent of remedy available to a limited numbers having personal grievances. After hearing, the High Court Division is, therefore, found to have correctly interpreted the law and concluded that the Appellant is a party to a contract for a work to be done or has otherwise pecuniary interest of the Upazilla Parishad, and he got no authority to hold the office.

In *Abdur Rab Mia v. District Registrar and Others*,<sup>5</sup> the petitioner did not come before the writ court to establish any public right but only to serve his selfish end, a writ of quo warranto cannot be indulged in for such a purpose.

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<sup>5</sup> 4 BLC (AD) 8.