

# The making the application to the high court



**ASSIGN  
BUSTER**

The writ of mandamus cannot be issued when act is within the discretion of any authority and the duty is not of an imperative character.

In an Orissa case (*Manjula Manjori v. Director of Public Instruction*, AIR 1952, Orissa 344) the publisher of a book applied for mandamus to compel the Director of Public Instruction for the inclusion of his book in the list of books approved as text-books in schools. The writ was disallowed on the ground that the matter was entirely within the discretion of the D. I.

P. and he was not bound to approve the book. The writ of mandamus may be refused by the High Court if any other legal remedy is available to the petitioner. This writ will not be issued if it is found by the High Court that its issue will be unnecessary and not effective and will not serve the purpose. The petition for the writ of mandamus may be rejected if the application makes delay in making the application to the High Court and furnishes no proper explanation for the delay. In relation to fundamental rights the mere fact that there is an alternative remedy available to the applicant will not be an absolute bar for the issue of the writ though the fact may be taken into consideration.

[*Rasid Ahmad v. Municipal Board* (1950) S. C. R.

566]. In the case other than those concerning the Fundamental Rights mandamus cannot be made to serve the purpose of Appeal or Revision

[*Vishwanath v. Addl.*

District Judge, A. I. R. 1951 Nagpur 6] or for enforcement or breach of a contract [*B. B. Light Railway v. State of Bihar*, AIR 1951 Pat.

234] or to decide titles of property or complicated questions of fact.

[Somendra v. Union of India, AIR 1953 Cal. 172], The Court does not ordinarily interfere with the exercise of administrative discretion e. g., refusal to renew license.

[Rameshwar Prasad Kedar Nath v. District Magistrate, A. I. R. 1954 All. 954], If, however, there has been an illegal exercise of discretion, that is, (i) If an order is passed without or in excess of jurisdiction, of (ii) If it is made mala fide; or (iii) If the authority is influenced by extraneous considerations, The High Court's interference may be sought for. Again a writ of mandamus cannot issue to the State Legislature for preventing it to consider a Bill which is alleged to violate the Constitution.