

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 12TH DAY OF JUNE 2020 / 22ND JYAISHTA, 1942

WA.No.738 OF 2020

AGAINST THE JUDGMENT IN WP(C) 30010/2019(A) OF HIGH COURT OF
KERALA

APPELLANT/PETITIONER IN WPC:

K.G.PURUSHOTHAMAN,
S/O GOVINDAN, AGED 51 YEARS,
(GENERAL SECRETARY KERALA CONGRESS (JACOB)),
KONNAMPARABIL HOUSE, MEEPARA P.O.,
PUTHENCRUZ (VIA), ERNAKULAM DISTRICT - 682 038.

BY ADVS.

SRI.PAUL K.VARGHESE

SRI.K.P.S.JALALUDEEN MOHMED

RESPONDENTS/RESPONDENTS IN WPC:

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY,
LOCAL SELF GOVERNMENT INSTITUTION,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 THE SECRETARY,
PUBLIC WORKS DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 3 THE ASSISTANT ENGINEER,
PUBLIC WORKS DEPARTMENT (ROAD SECTION OFFICER),
THRIPUNITHURA - 682 301.
- 4 THRIPUNITHURA MUNICIPALITY,
MUNICIPALITY BUILDING, THRIPUNITHURA,
REPRESENTED BY ITS SECRETARY - 682 301.

5 THE SECRETARY,
THRIPUNITHURA MUNICIPALITY, MUNICIPALITY
BUILDING, THRIPUNITHURA - 682 301.

6 THE PUBLIC INFORMATION OFFICER,
HEALTH DEPARTMENT,
THRIPUNITHURA MUNICIPALITY - 682 301.

7 THE PUBLIC INFORMATION OFFICER,
REVENUE DEPARTMENT,
THRIPUNITHURA MUNICIPALITY - 682 301.

SR GP SURIN GEORGE IPE FOR R1 TO R3,
SRI.C.V.MANUVILSAN, SC FOR R4 TO R7

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
12.06.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 12th day of June, 2020

S.Manikumar, C.J.

Being aggrieved by the judgment dated 11.12.2019 in W.P. (C)No.30010 of 2019, instant writ appeal is filed. Short facts leading to the writ petition are as hereunder:

The petitioner/appellant is conducting a small textile shop by name “Pavithra Garments” near to Tripunithura Sree Poornathrayeesha Temple for the last few years. Tripunithura area is a thickly populated one and one of the busiest city in Ernakulam District. The peculiar feature of Tripunithura, especially town area, is that the public roads therein are very narrow one, resulting in heavy crowd and has no capacity to accommodate the vehicles and the people coming there. The town area in Tripunithura is owned by the Public Works Department. The Public Works Department has provided small footpath on either side of the road for the use of the pedestrians. It is learnt by the petitioner that the respondent Municipality is intending to give the public roads, footpaths, etc. for rent for doing street vending business. If any of the public roads and footpaths in the area are given on rent, the traffic block in that area will be unpredictable and the pedestrian has no other means even to

walk. If the public roads and footpaths are given on rent by the Municipality, the shop owners and their respective customers have no means to enter into the shop rooms from the public road. Hence, the petitioner/appellant has filed the writ petition for the following relief:

“i. Issue a writ of mandamus or any other appropriate writ or any direction commanding the respondents not to give the public roads and the footpaths under their limits for rent to anybody for doing street vending business.”

2. The writ court, after considering the pleadings and the material on record, closed the writ petition by observing thus:

“3. I have considered the afore submissions and am certainly of the view that the declarations of this Court in Vasanth Nagar Allottees' Association (supra) covers the field and that the Municipality will have to abide by the directions therein. That said, since it is asserted before me by the Municipality - and which is not controverted by the petitioner - that even during the festival time, the area in front of his business had not been obstructed or occupied by any other person, I am certainly of the view that this writ petition has now become purely academic in nature, particularly because the said festival is now over and the allegations made in this writ petition are no longer relevant.

Resultantly, I close this writ petition, however, leaving full liberty to the petitioner to approach this Court as and when any violation is found by him to the declarations of this Court in **Vasanth Nagar Allottees' Association (supra)**; for which purpose all contentions impelled by him in this writ petition are

left open.

This writ petition is thus closed. ”

Being aggrieved, the instant writ appeal is filed.

3. Though Mr.Paul K.Varghese, learned counsel for the appellant made submissions on the grounds raised, going through the impugned judgment, it is amply clear that the Municipality, by filing Ext.R4(B) photographs, has substantiated the stand before the writ court that the appellant's shop has not been obstructed in any manner, nor its ingress and egress impeded on account of the ongoing temple festival. Writ court has also observed that public road and pavement were not allotted to the street vendors permanently, but they were allowed to do small business during temple festival and that the same was also over. That apart, on consideration of the material on record, writ court has also found that even during the temple festival time, the area in front of the appellant's shop was not obstructed or occupied by any other person.

4. Though the learned counsel for the appellant made submissions relying on the decision of this court in **Vasanth Nagar Allottees' Association v. District Collector** (2000 (1) KLT 148), we are not inclined to interfere with the decision made in the writ petition for the reason that on facts, the petitioner has projected the case as if he was an aggrieved person, in allowing street vending to be done, in front of his

shop. On the aspect as to a person can be said to be aggrieved, we deem it fit to consider few decisions:

“(i) In **Bar Council of Maharashtra v. M.V.Dabholkar and Others** reported in (1975) 2 SCC 702, while considering Sections 37 and 38 of the Advocates Act, 1961, the Hon'ble Supreme Court observed thus:

"28. Where a right of appeal to Courts against an administrative or judicial decision is created by statute the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved." Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or

denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which pre judicially affects his interests." It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

38. The term "lis" is not confined to litigation by means of a suit in a Court of law. In *Butler v. Mountgarret (1859) 7 HLC 633 at p. 641*, it was held that a "suit is not necessary to constitute lis". It was pointed out there that "a family controversy capable of being litigated is a lis mota". In *B. Johnson & Company (Builders) v. Minister of Health (1947) 2 All ER 395 at p. 399* Lord Greene, M.R. Said:

"Lis implies the conception of an issue joined between two parties. The decision of a lis...is the decision of that issue".

57. In the well-known case of *Attorney-General of the Gambia v. Pierr Sarr N. Jie, 1961 AC 617*, Lord Denning observed about the Attorney-General's standing thus:

"...The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests. Has the Attorney-General a sufficient interest for this purpose? Their Lordships think that he has. The Attorney General in a colony represents the Crown as the

guardian of the public interest. It is his duty to bring before the judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action."

(ii) In **Jasbhai Motibhai Deasi v. Roshibi Kumar, Haji Bashir Ahmed and Others** reported in (1976) 1 SCC 671, the question posed by the Hon'ble Supreme Court was as follows:

"Whether the proprietor of a cinema theatre holding a licence for exhibiting cinematograph films is entitled to invoke the certiorari jurisdiction ex debito justitiae to get a 'No Objection Certificate', granted under R.6 of the Bombay Cinema Rules, 1954 (for short, the Rules) by the District Magistrate in favour of a rival in the trade, brought up and quashed on the ground that it suffers from a defect of jurisdiction, is the principal question that falls to be determined in this appeal by special leave."

While considering the expressions "aggrieved person" and a "stranger" to the list, taking note of a catena of foreign and Indian decisions, the Hon'ble Apex Court held as follows:

12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question : Who is an "aggrieved person"? And what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to

an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been, devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction.

13. We will first take up that line of cases in which an "aggrieved person" has been held to be one who has a more particular or peculiar interest of his own beyond that of the general public, in seeing that the law is properly administered. The leading case in this line is 1870 (5) QB 466 *Queen v. Justices of Surrey* decided as far back as 1870. There, on the application by the highway board the Justice made certificates that certain portions of three roads were unnecessary. As a result, it was ordered that the roads should cease to be repaired by the parishes.

30. *Ex Parte Stott*, 1916 (1) KB 7 is another illustration of a person who had no legal grievance, nor had he sufficient interest in the matter. A licensing authority under the Cinematograph Act, 1901, granted to a theatre proprietor a licence for the exhibition of cinematograph films at his theatre. The license was subject to the condition that the

licensee should not exhibit any film if he had notice that the licensing authority objected to it. A firm who had acquired the sole right of exhibition of a certain film in the district in which the theatre was situated entered into an agreement with the licensee. for the exhibition of the film at his theatre. The licensing authority having given notice to the licensee that it is objected to the exhibition of the film, the firm applied for a writ of certiorari to bring up the notice to be quashed on the ground that the condition attached to the licence was unreasonable and void, and that they were aggrieved by the notice as being destructive of their property. It was held that whether the condition was unreasonable or not, the applicants were not persons who were aggrieved by the notice and had no locus standi to maintain the application.

34. The expression "ordinarily" indicates that this is not a cast iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from

those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the past time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

37. The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has, as it were, two concentric zones: a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outerzone may not be "persons aggrieved".

38. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the

circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered as legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute, dealing with private rights of particular individuals?

39. Now let us apply these tests to the case in hand. The Act and the Rules with which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression "person aggrieved" must receive a strict construction.

48. It is true that in the ultimate analysis the jurisdiction under Art.226 is general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well established self devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.

49. While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a 'stranger' unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a 'stranger', and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will in effect, seriously injure the fundamental rights of respondents 1 and 2, which they have under Art.19(1)(g) of the Constitution, to carry on trade or business subject to 'reasonable restrictions imposed by law'."

(iii) In **Thammanna v. K.Veera Reddy and Others** reported in (1980) 4 SCC 62, the Hon'ble Supreme Court held as follows:

"Although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless, normally "a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." (As Per James L.J. in *Re Sidebotham* (1880) 14 Ch.D.458 referred to by this Court in *Bar Council of Maharashtra v. M.V. Dabholkar* [1975] 2 S.C.C. 703 and *J.N. Desai v. Roshan Kumar* A.I.R.1976 S.C. 576"

(iv) In **P.S.R.Sadhanantham v. Arunachalam and Another** [(1980) 3 SCC 141], the Hon'ble Supreme Court held as follows:

14. Having said this, we must emphasise that we are living in times when many societal pollutants create new problems of unredressed grievance when the State becomes the sole repository for initiation of criminal action. Sometimes, pachydermic indifference of bureaucratic officials, at other times politicisation of higher functionaries may result in refusal to take a case to this Court under Art.136 even though the justice of the lis may well justify it. While "the criminal law should not be used as a weapon in person vendettas between private individuals", as Lord Shawcross (*The Times*, 26 May 1977, 20) once wrote, in

the absence of an independent to every citizen, a wider connotation of the expression 'standing' is necessary for Art.136 to further its mission. There are jurisdictions in which private individuals - not the State alone - may institute criminal proceedings. The Law Reforms Commission (Australia) in its Discussion Paper No. 4 on "Access to Courts - I Standing: Public Interest Suits" wrote :

The general rule, at the present time, is that anyone may commence proceedings and prosecute in the Magistrate's court. The argument for retention of that right arises at either end of the spectrum - the great cases and the frequent petty cases. The great cases are those touching government itself - a Watergate or a Poulson. However independent they may legally be any public official, police or prosecuting authority, must be subject to some government supervision and be dependent on government funds; its officers will inevitably have personal links with government. They will be part of the "establishment". There may be cases where a decision not to prosecute a case having political ramifications will be seen, rightly or wrongly, as politically motivated. Accepting the possibility of occasional abuse the Commission sees merit in retaining some right of a citizen to ventilate such a matter in the Courts.

Even the English System, as pointed by the Discussion Paper, permits a private citizen to file an indictment. In our view, the narrow limits set in Vintage English Law, into the concept of 'person aggrieved' and 'standing' needs liberalisation in our democratic situation. In Dabholkar's case 1975 (2) SCC 702 this Court imparted such a wider

meaning. The American Supreme Court relaxed the restrictive attitude towards 'standing' in the famous case of *Baker v. Carr*, 1962 (369) US 186. Lord Denning, in the notable case of the Attorney General of the Gambia v. *Pierra Sarr N'jie*, 1961 AC 617 spoke thus:

..... the words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him;"

(v) In **Babua Ram and Ors. vs. State of U.P. and Ors.** reported in (1995) 2 SCC 689, the Hon'ble Supreme Court considered the expression "person aggrieved" and held hereunder:

"In Collins English Dictionary, the word "aggrieved" has been defined to mean "to ensure unjustly especially by infringing a person's legal rights". In Webster Comprehensive Dictionary, International Edition at page 28, aggrieved person is defined to mean "subjected to ill-treatment, feeling an injury or injustice. Injured, as by legal decision adversely infringing upon one's rights". In Strouds Judicial Dictionary, Fifth Ed., Vol. 1, pages 83-84, person aggrieved means "person injured or damaged in a legal sense". In Black's Law Dictionary, Sixth Ed. at page 65, aggrieved has been defined to mean "having suffered loss or injury; damnified; injured", aggrieved person has been defined to mean:

"One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a

denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation."

(vi) In **Dr. Duryodhan and Others v. Jitendra Kumar Mishra and Others** reported in (1998) 7 SCC 273, the Hon'ble Apex Court held thus:

18. The constitution of Administrative Tribunals was necessitated because of large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of 'service matters' found in S.3(q) shows that in relation to a person the expression means all service matters relating to the conditions of his service. The significance of the word 'his' cannot be ignored. S.3(b) defines the word 'application' as an application made under S.19. The latter Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word 'order' has been defined in the explanation to sub-s.(1) of S.19 so that all matters referred to in S.3(q) as service matters could be brought before the Tribunal. If in that context, S.14 and 15 are read, there is no doubt that a total stranger to the concerned service

cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated.

19. Our attention has been drawn to a judgment of the Orissa Administrative Tribunal in Smt. Amitarani Khuntia v. State of Orissa 1996 (1) OLR (CSR) - 2. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgment is relevant:

"... A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act. Tribunals are constituted under Art.323A of the Constitution of India. The above Article empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and

powers have been well defined in the Act. It does not enjoy any plenary power."

We agree with the above reasoning.

21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

(vii) In **Shobha Suresh Jumani v. Appellate Tribunal, Forfeited Property and Another** [(2001) 5 SCC 755], the Hon'ble Supreme Court took note of a decision in *Sidebotham, Re, ex p Sidebotham* (Ch D at p.465) held as follows:

"4. At the time of hearing of this matter, learned counsel Mr. H.L. Tiku appearing on behalf of the appellant submitted that the order passed by the Tribunal is illegal and erroneous because "any person aggrieved by an order of the competent authority" is entitled to file an appeal under Section 12(4) of the SAFEMA and appellant being wife of the detenu is an aggrieved person. He also submitted that the appellant apart from being wife is also entitled to have charge for maintenance from the properties which are forfeited and, therefore, she is 'person aggrieved' by the order of the competent authority.

5. First we would reiterate that the words 'any aggrieved person' are found in several statutes. However, the meaning of the expression "aggrieved" may vary according to the context of the enactment in which it appears and all the circumstances. In *Sidebotham, Re, ex p Sidebotham* (1880) 14 Ch D 458., it was observed by James, L.J.:

"But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something".

(viii) In **Ayaaubkhan Noorkhan Pathan v. The State of Maharashtra and Others** [(2013) 4 SCC 465], the Hon'ble Supreme Court held as follows:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in

the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: *State of Orissa v. Madan Gopal Rungta* (AIR 1952 SC 12); *Saghir Ahmad and Anr. v. State of U.P.* (AIR 1954 SC 728); *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal and Ors.* (AIR 1962 SC 1044); *Rajendra Singh v. State of Madhya Pradesh* (AIR 1996 SC 2736); and *Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Ors.* (2009) 2 SCC 784)

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: *Shanti Kumar R. Chanji v. Home Insurance Co. of New York* AIR 1974 SC 1719; and *State of Rajasthan and Ors. v. Union of India and Ors.* AIR 1977 SC 1361).

11. In *Anand Sharadchandra Oka v. University of Mumbai* (AIR 2008 SC 1289), a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In *A. Subhash Babu v. State of A.P.* (AIR 2011 SC 3031), this Court held:

"The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression, 'next friend' means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Vide: *Charanjit Lal Chowdhury v. The Union of India and Ors.* AIR (1951 SC 41); *Sunil Batra (II) v. Delhi Administration* (AIR 1980 SC 1579); *Mrs. Neelima Priyadarshini v. State of Bihar* (AIR 1987 SC 2021); *Simranjit Singh Mann v. Union of India* (AIR 1993 SC 280); *Karamjeet Singh v. Union of India* (AIR 1993 SC 284); and *Kishore Samrite v. State of U.P. and Ors.* [JT (2012) 10 SC 393]

14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a

workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: *P.S.R. Sadhanantham v. Arunachalam and Anr.* (AIR 1980 SC 856); *Dalip Singh v. State of U.P. and Ors.* [(2010) 2 SCC 114]; *State of Uttaranchal v. Balwant Singh Chauhal and Ors.* [(2010) 3 SCC 402]; and *Amar Singh v. Union of India and Ors.* [(2011) 7 SCC 69])

15. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114); *Dattaraj Natthuji Thaware v. State of Maharashtra* AIR 2005 SC 540; and *Neetu v. State of Punjab and Ors.* [AIR 2007 SC 758])

16. In *Ghulam Qadir v. Special Tribunal and Ors.* [(2002) 1 SCC 33], this Court considered a similar issue and observed as under:-

"There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus

or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the Petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. ---In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.

(Emphasis added)

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others."

.....

23. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus - standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the Court, and a person, who has no personal agenda, or

object, in relation to which, he can grind his own axe, approaches the Court, then the Court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the Court, requires consideration, the Court may proceed suo-motu, in such respect."

5. In view of the uncontroverted specific stand of the Municipality and giving due consideration to the judgments, we are of the view that the appellant cannot be said to be an aggrieved person to invoke the jurisdiction of this court under Article 226 of the Constitution of India for the reliefs sought for in the writ petition. Accordingly, writ appeal is dismissed.

Pending interlocutory applications, if any, shall stand closed.

Sd/-

**S.Manikumar,
Chief Justice**

Sd/-

**Shaji P.Chaly
Judge**

vpv

/true copy/

P.A. To Judge