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SooperKanoon Citation : sooperkanoon.com/385702

Court : Karnataka

Decided On : Dec-15-2005

Reported in : ILR2006KAR632; 2006(1)KarLJ518

Judge : H.L. Dattu and ;H.N. Nagamohan Das, JJ.

Acts : Bangalore Municipal Corporations Services (General) Cadre and Recruitment Regulations, 1971; ;Karnataka Municipal Corporation Rules, 1977 - Rule 20; ;Karnataka Municipal Corporation (Amendment) Rules, 2005; ; [Constitution of India](#) - Articles 14, 16 and 226

Appeal No. : W.A. Nos. 3112 and 3113/2005

Appellant : Ramegowda

Respondent : The State of Karnataka Represented by Its Secretary and ors.

Advocate for Def. : A.G. Shivanna, Addl. Govt. Adv. for R1 to R3, ;Ashok Haranahalli, Adv. for R4 and ;Subramanya Jois, Sr. Adv. for ;Vagdevi A/S., Adv. for R5

Advocate for Pet/Ap. : V. Lakshminarayana, Adv.

Judgement :

H.L. Dattu, J.

1. These appeals arise from Writ Petition No. 16077/2005 and Writ Petition No. 16351/2005 filed by Sri R. Ranganath and Sri L. Sathyanarayana respectively. Respondent No. 5 in the writ petition Sri. Ramegowda was the contesting respondent. By a judgment dated 22.7.2005, the Learned Single Judge has allowed the writ petitions and has quashed the Government Order bearing No. 182. MNV. 2005, Bangalore, dated 13.6.2005. Feeling aggrieved by the said order, the 5th respondent in the writ petitions has filed these appeals.

2. The Bangalore Mahanagara Palike is the fourth respondent in the writ petitions (hereinafter referred to as 'Corporation' for short). Recruitment to the various posts in the services of the Corporation is regulated by the Rules called 'The City of Bangalore Municipal Corporations Services (General) Cadre and Recruitment Regulations, 1971'. The Rules contain schedule of various posts in the services of the Corporation. The highest post provided in the schedule in the cadre of Engineers is the post of Chief Engineer. The method of recruitment to the said post is by promotion from the cadre of Superintending Engineer and if no suitable candidate is available for promotion, by deputation of an officer of the rank of Chief Engineer from the Karnataka Public Works Department, Engineering Services. The qualification prescribed for the post in the schedule is that the candidate must possess a degree in Civil or Mechanical Engineering or a Certificate of Diploma from the institute of Engineers for having passed parts 'A' and 'B' of the Associate Membership Examination of Institute of Engineers and must have put in service of not less than two years in the cadre of Superintending Engineer.

3. In the services of the Corporation, there is no cadre or post of Engineer - in-Chief. Therefore, in the administrative exigencies, the Corporation had sought for sanction or creation of the post of Engineer-in-Chief. Pursuant to the request so made, the State Government had passed an order dated 9.2.2000, creating the post of Engineer-in-Chief for a period of one year. The Corporation based on the permission accorded by the State Government, had appointed one Sri R. Jayaprasad, a retired Chief Engineer to function as Engineer-in-Chief on contract basis on deputation from Public Works Department. After the expiry of the initial

contract period, the State Government by an order dated 3.9.2001 extended the services of Sri. R. Jayaprasad for a further period of one year. The term of his appointment came to an end on 26.2.2003. Thereafter, Sri G.N. Rasqueena was appointed as Engineer-in-Chief on deputation from Public Works Department (P.W.D) and was relieved from the services of the Corporation on being appointed as Secretary in the Public Works Department. Thereafter, Sri. Ramegowda, who was working as Chief Engineer in the Corporation was appointed to the said post on 'in charge arrangement'.

4. The post of Engineer-in-chief was created by the State Government in the services of the Corporation by an order dated 22.6.2002 and subsequently, by an order dated 19.2.2004, prescribed the method of recruitment to the post of Engineer-in-Chief. The criteria provided therein was, by promotion from the cadre of Chief Engineer in the Bangalore Mahanagara Palike on the basis of seniority and if no suitable candidate is available for promotion, by deputation of an Officer of the rank of Engineer-in-Chief from the Karnataka Public Works Department, Engineering Services. The other criteria that was prescribed is that, the aspirant must have put in a service of not less than two years as Chief Engineer. Since the 5th respondent in the writ petitions fulfilled the eligibility criteria prescribed in the Government Order dated 19.2.2004, he was regularly appointed as Engineer-in-Chief. He retired from service on 31.5.2005 on attaining the age of superannuation.

5. The Corporation has taken up several major projects like Construction of Underpass at Rajajinagar Entrance, Construction of Sub-way near Sujatha Talkies, Construction of Dr. Ambedkar Stadium and other major projects of the value of more than 476 crores and since the Corporation felt that it would be very difficult for the Corporation to complete these projects in as much as all the posts of Chief Engineers were remaining vacant and without there being Engineer-in-Chief, which would result in serious disruption of public works and the same would be detrimental to public interest, and in anticipation of such eventuality, the Commissioner of the Corporation had written a letter to the State Government on 29.4.2005, stating that a person can be deputed from the Public Works Department for being appointed as Engineer-in-Chief on contract basis, as no

qualified or eligible Chief Engineers are available for promotion to the post of Engineer-in-Chief in the Corporation. The State Government accepting the proposal of the Commissioner, has passed the order dated 13.6.2005 permitting the Corporation to appoint 5th respondent in the writ petitions as Engineer-in-Chief on contract basis for a period of one year or till a Corporation Engineer acquires eligibility for promotion or an eligible person is available for deputation whichever is earlier or until further orders. In view of the pendency of litigation before this Court, the Corporation has not acted upon the permission/ approval granted by the State Government.

6. Petitioners in the writ petitions are presently holding substantive post in the cadre of Superintending Engineers in the services of the Corporation and they are also given additional charge of Chief Engineers. As per the Government Order dated 19.2.2004, the post of Engineer-in-Chief is required to be filled up by promotion from the cadre of Chief Engineer and Chief Engineer to be eligible for promotion to the cadre of Engineer-in-Chief must have put in service of not less than two years as Chief Engineer. As per the Rules, the post of Chief Engineer is required to be filled by promotion from the cadre of Superintending Engineer and a Superintending Engineer to be eligible to be considered for promotion to the cadre of Chief Engineer must have put in a service of not less than two years in the cadre of Superintending Engineer. Since these petitioners are promoted to the cadre of Superintending Engineers only very recently, they have to wait for few more years for consideration of their cases, firstly, for promotion to the post of Chief Engineers and nextly, to become eligible to be considered for promotion to the cadre of Engineer-in-Chief. At the time of filing of the petitions, they were nowhere within the zone of consideration for appointment to the post of Engineer-in-Chief in the Corporation. As a matter of fact, these petitioners have to wait atleast few more years even to be considered their cases for appointment to the post of Chief Engineers and another two years thereafter for consideration of their cases to the post of Engineer-in-Chief.

7. The order passed by the State Government dated 13.6.2005 was questioned by the petitioners on several grounds, namely, that the appointment of the 5th respondent in the writ petitions is tainted with malafides; the same is in violation of

Rule 20(b) of the Rules; the draft rules prepared and published for the appointment of retired person has not been taken note of by the State Government; the representations were not considered; the decision maker has committed a serious error in not considering the relevant material before passing the impugned order.

8. The contesting respondent, the State Government and the Corporation, apart from others, had contended that the persons, who were not even qualified for appointment to the post has no 'locus standi' to question the appointment of the 5th respondent in the writ petitions on contract basis and therefore, they cannot be termed as aggrieved person. On merits, they had contended that on the day when the State Government accorded permission to the Corporation to appoint 5th respondent in the writ petitions as Engineer-in-Chief on contract basis, the same was in accordance with the existing provision in the Rules.

9. The Learned Single Judge had framed four issues for his consideration and decision. They were:

i) Locus standi/aggrieved person

ii) Judicial review

iii) Malafides/allegations

iv) Merits of the matter/Rule 20(b) of the Rules.

10. While considering issue No. (1) namely, locus standi aggrieved person, the Learned Single Judge gives a positive finding after referring to several decisions relied on by the Learned Counsels, that 'the facts of the case no doubt show that the petitioners are not prima facie eligible for the post of Engineer-in-Chief. It is equally true that the petitioners cannot challenge promotion of 5th respondent to the post of Engineer-in-Chief. It is equally true that the petitioners cannot challenge promotion of an individual to the post of Engineer-in-Chief'. Having said all this, the Learned Single Judge has proceeded further to observe that 'the present set of circumstances would show that the petitioners are not challenging any promotion as such in the case on hand. What they are challenging is that

Annexure 'K' as arbitrary and void and in violation of Rule 20(b) of the Rules. They are also questioning the impugned order on the ground of malafides'. In view of the above, the Learned Single Judge holds that 'the facts of the case would show that the petitioners are not wayfarers or officious interveners as held by the Apex Court and therefore, it cannot be said that the petitions are totally foreigners having no concern with regard to the post of Engineer-in-Chief. The Learned Single Judge by placing reliance on the judgment of the Apex Court in the case of E.P. Royappa v. State of Tamil Nadu and Anr. : (1974)ILLJ172SC - Fertilizer Corporation Kamagar Union (Regd.), Sindri v. Union of India AIR 198 ISC 344 - and in the case of M.S. Jayaraj v. Commissioner of Excise Kerala : 2000(72)ECC7 has concluded that 'it cannot be said that the petitioners are not aggrieved persons and as such they cannot maintain the petitions'.

11. In regard to the second issue, namely, judicial review, the Learned Single Judge comes to the conclusion that this Court cannot sit in appeal over the selection of a person or creation of a post or having a policy to suit the administrative work. However, has proceeded to observe that 'though the decision is not amenable to judicial review, the decision making process has to conform to the test of Article 14 of the [Constitution of India](#)'. Having said so, the Learned Single Judge has considered in depth the allegation of malafides made by the petitioners against known and unknown persons without even making them as parties and on that issue has observed that 'the present set of facts would show that there exists no material details and acceptable proof with regard to the allegation of malafides made in the petitions'.

12. The Learned Single Judge on the last issue, namely, merits of the matter/Rule 20(b) of the Rules has ruled, that the impugned order issued by the State Government is contrary to Rule 20(b) of the Rules. Accordingly, has allowed the writ petitions. It is the correctness or otherwise of this order is called in question by the contesting 5th respondent in the writ petitions in these appeals.

13. Sri. V. Lakshminarayana, Learned Counsel for the appellant firstly would contend that persons who are not even qualified for appointment to the post have no 'locus standi' to question the appointment of the appellant to the post of

Engineer-in-Chief and therefore, petitioners in the writ petitions cannot be 'aggrieved persons' and therefore, they cannot question the order passed by the State Government in exercise of its powers under Rule 20(b) of the Rules, in permitting the Corporation to appoint the appellant to the post of Engineer-in-Chief on contract basis for a period of one year or till the eligible candidate is available or till a person is available on deputation basis whichever is earlier. It is further contended that the writ petitioner are not even eligible for consideration of their case for promotion to the post of chief Engineers in the services of the Corporation in view of the eligibility criteria prescribed in the Rules framed by the Corporation and therefore, they cannot be aggrieved person, so as to permit them to question the appointment of the appellant to the post of Engineer-in-Chief. Alternatively, it is contended that having concluded that the petitioners have no locus standi to present the writ petitions, the Learned Single Judge could not have entertained the petitions holding that the petitioners are questioning the impugned order on the ground of malafides and arbitrary action of the State Government and violation of statutory provision, particularly, in view of the fact that the Learned Single Judge after considering the entire material available on record, has concluded that the petitioners have failed to prove the allegation of malafides and arbitrary action of the State Government. Therefore, requests for appropriate order.

14. Sri Subramanya Jois, Learned Senior Counsel for the respondents contended that since the petitioners had questioned the impugned order of the State Government on the grounds of malafides, violation of statutory provision and arbitrary action of the State Government, the Learned Single Judge was justified in holding that the petitioners are 'aggrieved persons' and therefore, they have locus standi to maintain the writ petitions.

15. On other issues, at the time of hearing of the appeals, the Learned Senior Counsel for the contesting parties adopted 'touch and go' attitude, may be realising that the case would primarily rest on the preliminary and primary issue of 'locus standi' of the petitioners to present the petitions under Article 226 of the Constitution for a relief sought in the petitions.

16. In view of the above, the basic question that requires to be decided in these appeals is, whether the Learned Single Judge was right in entertaining the writ petitions at the instance of petitioners, who are not even eligible and qualified for consideration of their case to the post of Engineer-in-Chief in the services of the Corporation, since the petitions filed by the petitioners is not by way of public interest litigation?

17. It is now well settled legal position that the public interest litigation is not maintainable in service matters. Therefore, the petitions filed by the petitioners cannot be treated as public interest litigation, but only as private litigation, wherein they have questioned the action of the State Government in according permission to the fourth respondent Corporation to utilise the services of Sri Ramegowda, who is retired as 'Engineer-in-Chief for a period of one year or in the alternative till a suitable Officer is appointed as Engineer-in-Chief whichever is earlier. After going through the findings and the conclusions reached by the Learned Single Judge, it appears to us, that the Learned Single Judge has entertained the writ petitions filed by the petitioners, not because they are questioning the appointment of contesting respondents as Engineer-in-Chief, but only because, they are questioning the order passed by the State Government as arbitrary and in violation of Rule 20(b) of the Rules, and on the ground of malafides. The Learned Single Judge, rightly in our opinion, has come to the conclusion that the petitioners are ineligible for promotion as Engineer-in-Chief and at any rate, they cannot challenge the appointment of the 5th respondent to the post of Engineer-in-Chief. In our view, even assuming that the impugned order suffers from any one of the infirmities pointed out by the petitioners, still the question would be whether the Learned Single Judge could have entertained the petitions, when they were not in the nature of public interest litigation, since those petitions require to be posted for hearing before two Learned judges of the High Court, in view of the amendment of the Karnataka High Court Rules?

18. The appointment of contesting respondent as Engineer-in-Chief is not a new phenomenon nor is being done for the first time by the fourth respondent Corporation. It was in vogue right from the year 2000. Number of Officers had not only occupied that post and also had discharged their responsibilities to the

satisfaction of their employer and infact, the contesting respondent in the petition, before his retirement from service was appointed to the post on regular basis till his retirement from service on attaining the age of superannuation. All this exercise was done by the State Government only by invoking their power under Rule 20(b) of the Rules. Petitioners, who were and are working as Superintending Engineers were fully aware of this appointment, but did not feel aggrieved by that appointment. It is only now they are of the view that such appointment is in violation of Rule 20(b) of the Rules. We do not intend to hazard their motives, since it may not be much significance for deciding the issues in the writ petitions. To say the least, the petitioners will not be benefited even if the impugned order of the State Government is quashed by this Court, for the reason, that it would not enhance the chances of consideration of their cases for promotion or for appointment as Engineer-in-Chief in the services of the Corporation. Therefore, petitioners cannot be 'aggrieved persons'. It is only an aggrieved person, who has locus standi to maintain a petition can seek for the relief of 'certiorari'. In the alternative, it can be said that the petitioners are not affected by the impugned order passed by the State Government under Rule 20(b) of the Rules. Therefore, petitioners not being aggrieved persons, they have no locus standi to maintain the writ petitions. We hasten to add, however, in case of public injury, any member of the public having sufficient interest can maintain an action for judicial redress of public injury arising from the breach of public duty or violation of provisions of constitution or any of the statutory provisions, they may seek enforcement of such public duty and observance of such constitutional or legal provisions, they may file public interest litigation. Reference can be made to the decision of the Supreme Court in the case of Dr. (Mrs.) Meera Massey v. Dr. S.R. Mehrotra and Ors. : [1998]1SCR470 - In the said decision, the Court has stated that:

7. Having considered the submissions, we do not find any of the observations made hereinbefore is applicable in the present case. We find Dr. Mehrotra has filed the writ petition being concerned with the anomalies and illegalities in the procedure adopted by the University in making selection and regularising the various posts in contradiction to the Acts, Statute and Ordinances. He was aware fully of all what was happening with full grip of all the materials. Facts reveal he was genuinely concerned to rectify the wrongs without any personal animosity

against anyone. His feelings were bonafide being professor of History in the same University. He had all the details, fully equipped with facts and law pertaining to the University. It was not for any personal gain. It was neither politically motivated nor for publicity. The golden key for public interest litigation was delivered in the land mark decision of this Court in S.P. Gupta's case, : [1982]2SCR365 . This was devised for increasing citizens participation in the judicial process for making access to the judicial deli very system to such who could not otherwise reach Court for various reasons. But it is also true, since then this Court repeatedly has been cautioning its misuse laying down restriction to scuttle out undesirable persons or body. It is in this context the above observations were made by this Court as relied by the appellants but that very authority accords approval for filing such public interest litigation.

After having elaborately explained the concept of PIL, the Learned Judge held that: (SCC p. 218, para 23): (at P. 194 of AIR Para 22)....any member of the Public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty an observance of such constitutional or legal provisions. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objectives.' : 1993 CriLJ600 .

Therefore, in our view, the Learned Single Judge ought not to have entertained the petitions at the first instance. In the present case, though the Learned Single Judge comes to the conclusion that it is the persons aggrieved alone can maintain a petition under Article 226 of the Constitution by way of a writ petition, still relying on the observations made by the Apex Court in the case of E.P. Roydappa v. State of Tamil Nadu and Anr.-(Supm) Fertilizer Corporation Kamagar Union (Regd.), Sindri v. Union of India - AIR 1981 SC 344 and in the case of M.S. Jayaraj v. Commissioner of Excise, Kerala (Supra) comes to the conclusion that the petitioners are aggrieved persons and they can maintain the writ petitions, since they are questioning the orders passed by the State Government as arbitrary and in violation of Rule 20(b) of the Rules. In E.P. Royappa v. State of Tamil Nadu and Anr.-(Supra) the Supreme Court while considering the concept of arbitrariness

as a part of Article 14 of the Constitution has stated:

Equality is a dynamic concept with many and dimensions and it cannot be 'cribbed, cabined and contained' within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They requires that state action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to malafide exercise of power and that is hit by Articles 14 and 16. Malafides exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

19. In Re. Fertilizer Corporation Kamagar Union(Regd.), Sindri v. Union of India-(Supra) the Supreme Court while dealing with what is termed as public injury as distinguished from 'private injury' has stated:

The view has therefore has been taken by the Courts in many decisions that whenever there is public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such public wrong or public injury.

20. In our view, the observations made in Fertilizer Corporation Kamagar Union (Regd.) Sindri v. Union of India-(Supra) is in the context of public interest litigation and that decision would in no way assist the petitioners and therefore, the Learned

Single Judge placing reliance on that decision could not have entertained the writ petitions, since the petitions filed by the petitioners are not public interest litigation.

21 In *M.S. Jayaraj v. Commissioner of Excise, Kerala - (Supra)* the facts were, a liquor licensee challenged the orders passed by the Excise Commissioner to locate a liquor shop in the range where the petitioner's shop was located. The Supreme Court while entertaining the petition has held:

In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority of permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi.

22. In our view, the fact situation noticed by the Apex Court in the aforesaid decisions is totally in variance with the facts and issues involved in the writ petitions. The observations made in the said decisions if read in the context in which they appear, in our opinion, the same would not assist the petitioners and the Learned Single Judge placing reliance on the said decisions, could not have entertained the writ petitions.

23. The High Court will not entertain petition filed under Article 226 to the Constitution, if it is filed by an incompetent person. In order of maintain a petition, the petitioner should normally be a 'person aggrieved'. The concept of 'locus standi' and the meaning of the 'person aggrieved' have been explained by the Supreme Court in several decisions. While considering the issue whether a party has a locus standi to present petition and whether the petition filed by the petitioner is maintainable or not, the Learned Counsel Sri V. Lakshminarayana submits that this Court should keep in its view the observations made by the Apex Court in several decisions. The Learned Counsel draws our attention to the law on the point stated by the Apex Court in the case of *Calcutta Gas Co. v. State of West Bengal* : AIR 1962 SC1044 wherein it is stated:

The Article in terms does not describe the classes of person entitled to apply thereunder, but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The right that can be enforced should ordinarily be a personal or individual right of the petitioner himself, though in cases of writs like habeas corpus or quo-warrantor this rule may have to be relaxed or modified.

24. In Re. State of Orissa v. Ram Chandra Dev and Anr. : AIR 1964 SC685 - the Apex Court has observed:

8. On the merits, the position is absolutely clear. Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226.

25. In Re. Gadde Venkateshwara Rao v. Government of Andhra Pradesh : [1966]2SCR172 - the Court has stated:

8. The first question is whether the appellant had locus standi to file a petition in the High Court under Article 226 of the Constitution. This Court in Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal - : AIR 1962 SC1044 , dealing with the question of locus standi of the appellant in that case to file a petition under Article 226 of the Constitution in the High Court, observed: Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply

thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.... The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

Has the appellant a right to file the petition out of which the present appeal has arisen? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The Villagers of Dharmajigudem formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Centre. The said committee collected Rs. 10,000 and deposited the same with the Block Development Officer. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Centre at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the committee, and the treatment meted out to him by the authorities concerned support the inference that he was authorised to act on behalf of the committee. The appellant was, therefore, a representative of the committee, which was in law the trustees of the amounts collected by it from the villages for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Article 226 of the Constitution. This Court held in the decision cited supra that 'ordinarily' the petitioner who seeks to file an application under Article 226 of the constitution should be who has a personal or individual right in the subject matter of the petition. A personal right need not be in respect of a proprietary interest: it can also relate an interest of a trustee. That apart, in exceptional cases as the expression 'ordinarily' indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the Constitution at his instance is, therefore, maintainable.'

26. In Re. Dr. Sathya Narayana Sinha v. S. Lal and Co. : [1974]1SCR615 - the Supreme Court has stated that in order to have locus standi, the petitioner should normally be a 'person aggrieved'. When an application is made by a party or by a

person aggrieved, the Court will intervene *ex debito justitiae*, injustice to the applicant and when it is made by a stranger, the Court considers whether the public interest demands its intervention. In either case, it is a matter which rests ultimately in the discretion of the Court.

27. In *Re. Ghulam Quadir v. Special Tribunal* : (2002)1SCC33 - the Supreme Court has stated:

F. [Constitution of India](#)-Article 226-Standing Recent far-reaching changes in the orthodox rule of interpretation regarding locus standi noted and explained-If impugned action impinges upon statutory right, writ petition can be filed against it.

Held: There is no dispute regarding the legal proposition that the rights under Article 226 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 Article 226. 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 India 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. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. 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 locus standi.

28. The Apex Court has also explained the meaning of the expression 'person aggrieved' in several decisions. Reference can be made to the case of *Jasbhai Motibhai Desai v. Roshan Kumar* : [1976]3SCR58 - In the said decision, the Court has stated:

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 those categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody of meddle-some interloper. Persons in the last category are easily distinguishable from these 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 spooking 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 outer-zone 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 a legal grievance, a person 'against who 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? Ordered accordingly. Is it a statute dealing with private rights of particular individuals?

29. In *Re. Gopabhandhu Biswal v. Krishna Chandra Mohanty and Ors.* : [1998]2SCR1108 - the Court has stated:

13. It is difficult to include the applicants in the review applications in the category of 'persons aggrieved'. The main applicant i.e., the present appellant Biswal had joined as party respondent all those persons who had superseded him for selection to the Indian Police Service since they would be persons affected in case he succeeded in his application. The Tribunal has directed that Biswal be considered for promotion between 1977 and 1980 and not thereafter. During this period, the two applicants in Review Application No. 16 of 1993 were nowhere within the zone of consideration for promotion to IPS. One of the applicants joined the police service only in 1974 and was not eligible for further promotion till 1982. The other applicant, though eligible for promotion, was on account of his rank in the seniority list, not within the zone of consideration at any time prior to 5.11.1980. As a matter of fact the two applicants in Review Application No. 16 of 1993 were selected for promotion to IPS only in 1993 when they were included in the select list of 1993. Therefore, they could not have been made parties in TA No. 1 of 1989. At that point of time, these applicants had only a chance of promotion in future. This does not confer any legal right on these applicants and they cannot be considered as parties aggrieved by the impugned judgment. However leniently one may construe the term 'party aggrieved', a person not directly affected cannot be so considered. Otherwise for years to come, every person who becomes eligible for promotion will be considered a 'party aggrieved' when the Tribunal interprets any service rule such as in the present case. Only persons who are directly and immediately affected by the impugned order can be considered as

'parties aggrieved' under Section 22(3) (f) read with Order 47 Rule 1.

30. In view of the settled legal position and in view of our above discussions, we are of the view that the Learned Single Judge was not justified in entertaining the writ petitions filed by the petitioners, who cannot be fit into the meaning of the expression 'aggrieved persons' and therefore, appeals filed by the appellant requires to be allowed and the order passed by the Learned Single Judge requires to be set aside and the writ petitions require to be rejected. Since the appellant succeeds on the preliminary issue of maintainability of the petitions, the other issues need not be considered by us.

31. The Learned Senior Counsel Sri Subramanya Jois for petitioners has brought to our notice that during the pendency of these writ appeals, one Sri Hari is appointed as Engineer-in-Chief of the Corporation and the Rule 20(b) of the Karnataka Municipal Corporation Rules. 1977 has been amended by the Karnataka Municipal Corporation (Amendment) Rules, 2005 with effect from 25.6.2005 and therefore the relief sought for by the appellant in these appeals has become infructuous. These developments, if any, would not prevent us from deciding the legal issues canvassed by the appellant in these appeals and therefore, we do not intend to take notice of the developments, which is said to have taken place during the pendency of these appeals and we restrain ourselves to comment on these developments, since they are not brought on record in the manner known to law.

32. In the result, the appeals are allowed. The impugned order passed by the Learned Single Judge in W.P. Nos. 16077/2005 and 16351/2005 dated 22.7.2005 is set aside. Accordingly, W.P. Nos. 16077/2005 and 16351/2005 are rejected. No order as to costs. Ordered accordingly.