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JASBHAI MOTIBHAI DESAI

v.

ROSHAN KUMAR, HAJI BASHIR AHMED & ORS.

December 19, 1975

[A. N. RAY, C.J., M. H. BEG, R. S. SARKARIA AND P. N. SHINGHAL, JJ.]

B

Constitution of India—Art. 226—*Scope of the power of writ of "certiorari".*

Rule of practice—Usefulness of English decisions and when can be considered.

"Aggrieved persons"—Tests for deciding.

"Locus standi"—Whether a rival in trade and an owner of an existing C *cinema theatre is an "aggrieved person" within the meaning of s. 8A of the Bombay Cinema Rules,* 1954 *entitling him to invoke the certiorari jurisdiction "ex-debito justitiae" of the High Court for quashing the order granting a "no objection certificate" under rule* 6 *of the Bombay Cinema Rules,* 1954.

Damnum sine injuria—Principle of.

Under the Bombay Cinema Rules, 1954, the District Magistrate, after inviting the objections under r. 4 from the public and also the opinions of the District D Superintendent of Police, Chairman Nagar Panchayat and the Executive Engineer (Roads & Buildings), and after considering them, may grant under rule 5 a "no objection certificate" to the appellants for the location of a cinema theatre under his jurisdiction, or in case of his not granting the certificate, he must refer under s. 6 of the Rules, the matter to the State Government with his reasons, therefor.

In respect of the application of the respondents, not being satisfied of the opinions of the District Superintendent of Police, Nagar Panchayat Chairman, E Executive Engineer (Roads & Buildings) favouring the grant of certificate to the appellants herein, the District Magistrate personally visited the site and submitted a report to the State Government, to the effect that the proposed site was not fit for the location of a cinema house. On the directions of he State Government, which did not agree with the report submitted by him, the District Magistrate granted the certificate to the respondents.

The appellant being a rival in the cinema trade, though he did not prefer F any objections at the time when they were called for, filed a writ petition in the Bombay High Court alleging that (i) the impugned certificate issued by the District Magistrate was not in the exercise of his own discretion and with due regard to the principles in the Bombay Cinematographic Act, 1918 and the Rules and (ii) Since as a Licensing Authority, the power has not be objectively exercised in a quasi judicial manner, the grant of the certificate suffered from lack of jurisdiction.

The High Court, dismissed the writ petition on the ground that no right G vested in the appellant, had been infringed or prejudiced or adversely affected as a direct consequence of the order impugned by him, and as such, he was not an "aggrieved person" having a *locus standi* in the matter.

On appeal by special leave to this Court, the appellant contended that (i) apart from a right in common with the general public to object to the grant before the District Magistrate, the appellant being a rival in the same trade had a particular commercial interest to see that the permission was not granted to another in contravention of law to start the same business, entitling him to a H writ of certiorari *ex-debito justitiae;* and (ii) The concept of "aggrieved person" being wide, any one who is personally interested and genuinely grieved by an act of usurpation of jurisdiction or lack of jurisdiction on the part of an administrative tribunal or body would fall within the category of an "aggrieved

person" even if such usurpation or lack of jurisdiction had not resulted in infringement of a legal right or legal interest vested in him; nor would such a person be denied *"locus standi"* for the purpose of *"certiorari"* merely because he had not lodged any objection or joined the proceedings before the tribunal.

Dismissing the appeal, the Court,

HELD : (1) The founding fathers of the Constitution have designedly couched Article 226 in comprehensive phraseology to enable the High Court to reach injustice, wherever it is found. In a sense, the scope and nature of the power conferred by the Article is wider than that exercised by the writ courts in England.

Dwarka Nath v. *Income Tax Officer, Kanpur* [1965] 3 SCR 563, referred to.

(2) The adoption of the nomenclature of English writs with the prefix "nature of" superadded, indicates that the general principles grown over the years in the English courts, can shorn of unnecessary technical procedural restrictions, and adapted to the special conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by this court, be usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well recognised rules of practice. [64 D—F]

(3) 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 shall 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 exceptional circumstances. [64 F—G]

(4) 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 prejudice or injury suffered by him. English courts have sometimes put a restricted and sometimes a wide construction on the expression, "aggrieved person". [64 H, 65 A]

(5) In order to have the *'locus standi'* to invoke the extraordinary jurisdiction under Art. 226 an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though in the case of some of the writs like *habeas corpus* or *quo warranto,* this rule is relaxed or modified. 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 pre-judicially affected by an act or omission of an authority, even though he has no propriety 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. [10 A, C—D]

(6) 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 or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories inasmuch as they interfere in things which do not concern them, masquerading as crusaders for justice in the name of *pro bono publico,* though they have no interest of the public or even of their own to protect. The distinction between the first and second categories 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

A from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outerzone may not be "persons aggrieved". [71 A—C, D—E]

(7) To distinguish such applicants from "strangers" among them, some broad tests may be deduced from case law, the efficacy of which varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are : (1) Whether the applicant is a person whose legal right has been infringed ? (2) Has he suffered a legal wrong or B 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 ? (3) Is he a person who has suffered a 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 ? (4) 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 ? (5) Was he entitled to object and be heard by the authority before C it took the impugned action ? If so, was he prejudically affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? (6) Is the statute, in the conext of which the scope of the words "person aggrieved" is being considered, a special welfare measure designed to lay down ethical or professional standards of conduct for the community ? (7) Or is it a statute dealing with private rights of particular individuals ? [71 E—H, 72 A]

Rex v. *Taunton St. Mary* (1815) 3 M & S 465. *King* v. *Groom & Others Ex parte* [1901] 2 K.B. 157. *King* v. *Richmond Confirming Authority Ex parte* D *Howitt* [1921] 1 K.B. 157; *R. Thomas Magistrates Court Ex Parte Green Baum* (1957) 55 LCR. 129, 135, 135-136 in *Yardley's* Book of English Administrative Law 2nd Edition p. 228; *Rex* v. *Manchester Legal Aid Committee* [1952] 2 QBD 413; *Attorney General of Gambia* v. *N's Jie* [1961] A.C. 617; *Maurice* v. *London County Council* [1964] QB 362, 378; *Regina* v. *Liverpool Corporation Ex Parte Liverport Taxi Fleet Operator's Association* [1972] (2) QB 299; *Regina* v. *Paddington Valuation Officer Ex parte Peachy Property Corporation Ltd.* [1966] 1 QB 860; *Bar Council of Maharashtra* v. *M. V. Dabhotkar* [1976] 1 SCR p. 306 *Rex* v. *Butt I Another Ex parte Brooke* E vol. xxxviii (1921-22) Times Law Reports 537; *Regina* v. *Brighton Borough Justices Ex parte Jarvis* (1954) 1 Weekly Law Reports 203; *Burton & others* v. *Minister of Housing & Local Government* [1961] 1 QBD 278; *In re Side bottom* (1880) 14 ChD. 458 @ 465; *Ex parte Scott* [1916] 1 KB 7; *King* v. *Middlesex Justices* (1832) 37 FR 594—(1832) 3 B & AD 938; *R. Bradford an Avan Urban Dt. Council Ex parte Balton* [1964] 2 All ER 492; *Gregorrey* v. *Comden London Borough Council* (1966) WLR 899; *R.* v. *London O.B. Ex parte West Minster Corporation* [1951] 2 K.B. 508; *Regina* v. *Cardiff Justices* F *Ex parte Cardiff Corporation* [1962] 2 Q.B. 436; *State of Orissa* v. *Madan Gopal Bangta* [1952] SCR 28; *Calcutta Gas co.* v. *The State of West Bengal* [1962] Supp. 3 SCR 1; *Rameshwar Suthoo* v. *Member. Board of Revenue Orissa* [1967] 2 SCR 172; *State of Orissa* v. *Rajashah Chandamall* AIR 1972 S.C. 2114; *Dr. Satyamarayana Sinha* v. *M/s. Lal & Co.* [1974] 1 SCR 615; *Colamen* v. *Miller* [1939] 307 Q.B. 433; *Chapman* v. *Sheriden Wyoming Coal Co.* 338 U.S. 621; American Jurisprudence Vol. 2 Ld. at 575 p. 334 *Joint Anti Fascist Refugee Committee* v. *Melarth* 341 U.S. 123; *United States Cane Sugar Refiners' Asson.* v. *McNutt* 138 F 2nd 116 : 158 ALR 849; *United States* v. G *Storer Broadcasting Co.* 351 U.S. 192 and *Kansas City Power & Light Co.* v. *McKay* 350 U.S. 884, considered.

(8) The Bombay Cinematographic Act and the Rules are not designed to set norms of moral or professional conduct for the community at large or even a section thereof and hence, the expression "person aggrieved" must receive a strict construction. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option in common with the rest of the public to lodge an objection in response to the notice published H under Rule 4. Section 8A of the Act confers a right of appeal to the State Government, only on any person aggrieved by an order of a licensing authority refusing to grant a licence or revoking or suspending any licence under s. 8. [72 B, C—E]

Section 8B of the Act provides that the State Government may either of its own motion or upon an application made by "an aggrieved person" call for and examine the record of any order made by a licensing authority under this Act and passes such order thereon as it thinks just and proper. [72 F—G]

(9) Such harm or loss in business arising out of setting up of a rival cinema house adversely affecting the monopolistic, commercial interest of the applicant is not wrongful in the eye of law because, it does not result in injury to a *legal* right or a *legally* protected interest the business competition causing it being a lawful activity. Juridically harm of this type is called *"damnum sine injuria"* the term *injuria* being here used in its true sense of an act contrary to law. The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it is that such harm done to an individual is a gain to society at large. [73 E—F]

Salmondon *Jurisprudence* referred to.

(10) In the instant case, none of the appellant's rights or interests recognised by the general law has been infringed as a result of the grant of 'No objection certificate'. He has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a "person aggrieved" within the meaning of s. 8A or 8B of the Bombay Cinema Rules, 1954 and has no *locus standi* to challenge the grant of the 'No objection certificate'. [73 C, F—G]

Rice & Flour Mills case [1970] 3 S.C.R. 846 applied.

(11) 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 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 seriously injure the fundamental rights of respondents 1 and 2 which they have under Article 19(1)(g) of the Constitution to carry on trade or business subject to "reasonable restrictions imposed by law". [74 C—D]

(12) It is true that in the ultimate analysis, the jurisdiction under Art. 226 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 coupled with other well-established, self-devised rules of practice, such as the availability of an alernative 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. 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 cicumstances involving a grave miscarriage of justice having an adverse impact on public interests.
[73H, 74 A—B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2035 of 1971.

Appeal by Special Leave from the Judgment and Order dated the 11th November, 1971 of the Gujarat High Court in S.F.A. No. 1584 of 1970.

V. N. Tarkunde and Mrs. S. Gopalakrishnan for the Appellant.

Vimal Dave and Miss Kailash Mehta for Respondents 1-2.

G. A. Shah and M. N. Shroff and Girish Chandra for Respondent Nos. 3-4.

A The Judgment of the Court was delivered by

SARKARIA, J.—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 Rule 6 of the Bombay Cinema Rules, 1954 (for short, the Rules) by the District Magistrate in favour of a rival in the B 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.

The circumstances giving rise to this appeal are as follows :

Respondents 1 and 2 are owners of a site, bearing Survey No. 98 in the town of Mehmadabad. They made an application under Rule C 3 of the Rules to the District Magistrate, Kaira, for the grant of a Certificate that there was no objection to the location of a cinema theatre at this site. The District Magistrate then notified in the prescribed Form, the substance of the application by publication in newspapers, inviting objections to the grant of a No-Objection Certificate. In response thereto, several persons lodged objections, but the appellants, who are the proprietors of a cinema house, situated on Station D Road, Mehmadabad, were not among those objectors. Some of the objections were that a Muslim graveyard, a Durgah, a compost depot, a school and public latrines were situated in the vicinity of the proposed site.

The District Magistrate (Res. 3 herein) invited the opinions of the Chairman of Nagar Panchayat, Executive Engineer Roads and E Buildings, and the District Superintendent of Police. These three authorities opined that they had no objection to the grant of the Certificate applied for. The District Magistrate visited the site on 27-7-1970 Thereafter he submitted a report to the State Government (Res. 4) that the proposed site was not fit for the location of a cinema house. He recommended that the 'No-Objection Certificate' should be refused. The State Government did not agree with the re- F commendation of the District Magistrate and directed the latter to grant the Certificate. Accordingly, the District Magistrate granted the 'No-Objection Certificate' on 27-11-1970 to Res. 1 and 2.

On 16-12-1970, the appellants filed a writ petition in the High Court under Articles 226/227 of the Constitution praying for the issuance of a writ of *certiorari, mandamus,* or any other appropriate writ or order directing the Respondents to treat the No-Objection Certifi- G cate granted to Respondents 1 and 2 as illegal, void and ineffectual. They further asked for an injunction restraining Respondents 1 and 2 from utilising the certificate for the purpose of building a cinema theatre.

The main grounds of challenge were : that the impugned Certificate had been issued by the District Magistrate, not in the exercise of his H own discretion with due regard to the principles indicated in the Bombay Cinematograph Act, 1918 (for short, the Act) and the Rules, but mechanically at the dictates of the State Government; that Rules 5 and 6, according to an earlier judgment of the High Court being

ultra vires and void, the Government had no power to grant or refuse the No-Objection Certificate; that such power belonged to the District Magistrate who was the Licensing Authority, and had to be exercised by him objectively, in a quasi-judicial manner in accordance with the statutory principles; since it was not so exercised, the grant of the Certificate in question suffers from lack of jurisdiction.

In the affidavit filed in reply, by the District Magistrate (on behalf of Respondents 3 and 4) a preliminary objection was taken that the appellants had no *locus standi* to file the writ petition because their rights were not in any manner affected by the grant of the 'No-objection Certificate'. It was stated that the deponent had reported the case and submitted the records to the State Government under Rule 5, recommending that on account of the location of a graveyard, a church, a temple, a mosque and a school near the proposed site, the no-objection certificate be refused. It was admitted that on receipt of the order of the State Government he granted the No-Objection Certificate to Respondents 1 and 2 in compliance with the Government's directive.

The High Court, purporting to rely on this Court's decision in *State of Gujarat* v. *Krishna Cinema*(1) and an earlier decision of its own in *Kishore Chander Ratilal* v. *State of Gujarat*(2), held that Rule 5(2) in its entirety, and the words "the previous permission of the Government obtained under Rule 5" in Rule 6 being *ultra vires* and invalid, have to be ignored as *non est*, with the result that the District Magistrate had to come to his own conclusion on relevant considerations and objective norms whether a No Objection Certificate should be granted or refused; that under the Act the District Magistrate—and not the Government—is the Licensing Authority, and he was bound to exercise this power, which is an integral part of the process of licensing, in a quasi judicial manner, that since the District Magistrate exercised this power not on his own in accordance with objective principles, but solely at the dictates of the Government, his act in granting the No-Objection Certificate suffers from a patent lack of jurisdiction.

The High Court, however, dismissed the writ petition on the ground that no right vested in the appellant had been infringed, or prejudiced or adversely affected as a direct consequence of the order impugned by him, and as such, he was not an aggrieved person' having a *locus standi* in the matter.

Mr. Tarkunde appearing for the appellant, assails the finding of the High Court in regard to the *locus standi* of the appellant to maintain the writ petition. The burden of his arguments is that apart from a right in common with the general public to object to the grant before the District Magistrate, the appellant was a rival in the same trade and, as such, had a particular interest to see that permission was not granted to another, in contravention of law, to start the same business; consequently, the illegal grant of the No-Objection Certificate had prejudicially affected the commercial interest of the appellant who stood in the

(1) [1971] 2 S.C.R. 110.
(2) Special Civil Application No. 912 of 1970, decided by Gujarat High Court on 25/27th Nov. 1970.

A category of an "aggrieved person' entitled to a writ of *certiorari ex debito justitiae.* It is submitted that so far as *certiorari* is concerned, the concept of 'aggrieved person' is very wide and is not confined to a person who is grieved by an invasion of a legal right vested in him. Anyone—says Mr. Tarkunde—who is personally interested and genuinely grieved by an act of usurpation of jurisdiction or lack of jurisdiction on the part of an administrative tribunal or body, would fall B within the category of an 'aggrieved person', even if such usurpation or lack of jurisdiction had not resulted in infringement of a illegal right or *legal* interest vested in him; nor would such a person be denied *locus standi* for the purpose of *certiorari* merely because he had not lodged any objection or joined the proceedings before the tribunal (District Magistrate, in the present case). In these premises, it is maintained, the High Court was not justified in denying the remedy of C *certiorari* to the appellant. Counsel has cited a number of decisions, mostly of the English Courts, in support of his contentions.

Article 226 of the Constitution empowers the High Court to issue to any person or authority, including the Government, within its territorial jurisdiction, directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari* for the enforcement of fundamental rights and for any other D purpose.

As explained by this Court in *Dwarka Nath* v. *Income-tax Officer, Kanpur*(1) the founding fathers of the Constitution have designedly couched the Article in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. In a sense, the scope and nature of the power conferred by the Article is wider than that E exercised by the writ courts in England. However, the adoption of the nomenclature of English writs, with the prefix "nature of" superadded, indicates that the general principles grown over the years in the English Courts, can, shorn of unnecessary technical procedural restrictions, and adapted to the special conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by this Court, be usefully considered in directing the F exercise of this discretionary jurisdiction in accordance with well-recognised rules of practice.

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, G 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 H rigid, exact and comprehensive definition. At best, its features can be described in a broad, tentative manner. Its scope and meaning

(1) [1965] 3 S.C.R. 536.

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.

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 in *Queen* v. *Justices of Surrey*(1) decided as far back as 1870. There, on the application by the highway board the Justices 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.

E, an inhabitant of one of the parishes, and living in the neighbourhood of the roads, obtained a rule for a *certiorari* to bring up the orders and certificates for the purpose of quashing them on the ground that they were void by reason of the notices not having been affixed at the places required by law. On the point of *locus standi* (following an earlier decision *Hex* v. *Taunton St. Mary*(2), the Court held that though a *certiorari* is not a writ of course, yet as the applicant had by reason of his local situation a peculiar grievance of his own, and was not merely applying as one of the public, he was entitled to the writ *ex debito justitiae*.

It is to be noted that in this case E was living in the neighbourhood of the roads were to be abandoned as a result of the certificates issued by the Justices. He would have suffered special inconvenience by the abandonment. Thus E had shown a particular grievance of his own beyond some inconveniences suffered by the general public. He had a right to object to the grant of the Certificate. Non-publication of the notice at all the places in accordance with law, had seriously prejudiced him in the exercise of that legal right.

The *ratio* of the decision in *Queen* v. *Justices of Surrey* (supra) was followed in *King* v. *Groom and ors. Ex Parte*(3). There, the parties were rivals in the liquor trade. The applicants (brewers) had persistently objected to the jurisdiction of the justices to grant the license to one J. K. White in a particular month. It was held that the applicants had a sufficient interest in the matter to enable them to invoke *certiorari* jurisdiction.

A distinguishing feature of this case was that unlike the appellants in the present case who did not, despite public notice, raise any objection before the District Magistrate to the grant of the No-Objection Certificate, the brewers were persistently raising objections in proceedings before the Justices at every stage. The law gave them a right to

(1) [1870] 5 B. 466. (2) [1815] 3 M & S 465.
(3) [1901] 2 K. B. 157.

A object and to see that the licensing was done in accordance with law. They were seriously prejudiced in the exercise of that right by the act of usurpation of the jurisdiction on the part of the Justices.

The rule in *Groom's* case was followed in *The King* v. *Richmond Confirming Authority, Ex parte Howitt*(1). There, also, the applicant for a *certiorari* was a rival in the liquor trade. It is significant that B in coming to the conclusion that the applicant was a 'person aggrieved'. Earl of Reading C.J. laid stress on the fact that he had appeared and objected before the Justices and joined issue with them, though unsuccessfully, "in the sense that they said they had jurisdiction when he said they had not".

In *R. Toames Magistrate's Court Ex parte Greenbaum*(2) there C were two traders in Goulston St., Stepney. One of them was Gritzman who held a license to trade on pitch No. 4 for 5 days in the week an pitch No. 8 for the other two days. The other was Greenbaum, who held a licence to sell on Pitch No. 8 for two days of the week, and pitch No. 10 for the other days of the week. A much better pitch, pitch No. 2, in Gulston St. became vacant. Thereupon, both Gritzman and Greenbaum applied for the grant of a licence, each wanted D to give up his own existing licence and get a new licence for pitch No. 2. The Borough Council considered and decided in favour of Greenbaum and refused Gritzman who was left with his pitches 4 and 8.

Gritzman appealed to the magistrate. He could not appeal against the grant of a licence to Greenbaum, but only against the refusal to grant a licence to himself. Before the magistrate, the Borough Council opposed him. The magistrate held that the Council were wrong to E refuse the licence of pitch No. 2 to Gritzman. The Council thereupon made out a licence for Gritzman for pitch No. 2 and wrote to Greenbaum saying that his licence had been wrongly issued. Greenbaum made an application for *certiorari* to court . The court held that the magistrate had no jurisdiction to hear the appeal. An objection was taken that Greenbaum had no *locus standi*. Rejecting the contention, Lord Denning observed : F

> "I should have thought that in this case Greenbaum was certainly a person aggrieved, and not a stranger. He was affected by the magistrate's orders because the magistrate ordered another person to be put on his pitch. It is a proper case for the intervention of the court by means of *certiorari*."

G It is to be noted that the Council had duly allotted pitch No. 2 to Greenbaum in the exercise of their administrative power. The Magistrate's order pursuant to which the Council cancelled the allotment and re-allotted that pitch to Gritzman, was without jurisdiction. By this illegal cancellation and reallotment Greenbaum's interest to trade on pitch No. 2, which had been duly licensed out to him was directly and prejudicially affected by the impugned action.

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(1) [1921] 1 K.B. 248.

(2) [1957] 55 L.G.R. 129-135, 135-136 extracted in Yardley's book of English Administrative Law. 2nd Edn. at p. 228.

R. v. *Manchester Legal Aid Committee*(1), is another case belonging to this group. It was held that the applicants therein were "persons aggrieved" because they were grieved by the failure of the Legal Aid Committee to give them prior notice and hearing to which they were entitled under Regulation 15(2). Thus it could be said that they had suffered a legal wrong.

In *Regina* v. *Liverpool Corporation, Ex parte Liverpool Taxi Fleet Operators' Association*(2), the City Council in exercise of its powers under the Town Police Clauses Act, 1847, limited the number of licences to be issued for hackney carriages to 300. The Council gave an undertaking to the associations representing the 300 existing licence holders not to increase the number of such licence holders above 300 for a certain period. The Council, disregarding this undertaking, resolved to increase the number. An Association representing the existing licence-holders moved the Queens' Bench for leave to apply for orders of *Prohibition, Mandamus* and *Certiorari.* The Division Bench refused. In the Court of Appeal, allowing the Association's appeal, Lord Denning M. R. observed at pp. 308, 309 :

> "The taxicab owners' association come to this Court for relief and I think we should give it to them. The writs of prohibition and *certiorari* lie on behalf of any person who is a "person aggrieved" and that includes any person whose interests may be pre-judicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him; but it includes any person who has a *genuine grievance* because something has been done or may be done which affects him : See *Attorney-General of the Gambia* v. *N'Jie* [1961] A.C. 617 and *Maurice* v. *London County Council* [1964] 2 Q.B. 362, 378. The taxicab owners' association here have certainly a *locus standi* to apply for relief."

It may be noted that in this case, the whole question turned on the effect in law of the undertaking, and whether the applicants had been treated fairly.

Emphasising the "very special circumstances" of the case, the court read into the statute, a duty to act fairly in accordance with the principles of natural justice. Thus, a corresponding right to be treated fairly was also imported, by implication, in favour of the applicants. Viewed from this standpoint, the applicants had an interest recognised in law, which was adversely affected by the impugned action. They had suffered a wrong as a result of the unfair treatment on the part of the corporation.

In *Regina* v. *Paddington Valuation Officer, Ex Parte Peachy Property Corporation Ltd.*,(3), ratepayers were held to have the *locus standi* to apply for *certiorari,* notwithstanding the fact that it could not be said that the actual burdens to be borne by the applicants fell more heavily on them than on other members of the local community.

(1) (1952) 2 W.B.D. 413.
(2) [1972] 2 Q.B. 299.
(3) [1966] 1 Q.B. 880.

A In *Bar Council of Maharashtra* v. *M. V. Dabholkar*(1), a Bench of seven learned Judges of this Court considered the question whether the Bar Council of a State was a 'person aggrieved' to maintain an appeal under s. 38 of the Advocates' Act, 1961. Answering the question in the affirmative, this Court, speaking through Ray C.J., indicated how the expression "person aggrieved" is to be interpreted in the context of a statute, thus :

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> "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
> C 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-
> D 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 "person 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
> E or financial interests."

In *Rex* v. *Butt and anr. Ex Parte Brooke*(2), a person who was merely a resident of the town, was held entitled to apply for *certiorari*. Similar is the decision in *Regina* v. *Brighton Borough Justices Ex Parte Jarvis*(3).

Typical of the cases in which a strict construction was put on
F the expression "person aggrieved", is *Buxton and ors.* v. *Minister of Housing and Local Government*(4). There, an appeal by a Company against the refusal of the Local Planning Authority of permission to develop land owned by the Company by digging chalk, was allowed by the Minister. Owners of adjacent property applied to the High Court under s. 31(1) of the Town and Country Planning Act, 1959 to quash the decision of the Minister on the ground that the proposed opera-
G tions by the company would injure their land, and that they were 'persons aggrieved' by the action of the Minister. It was held that the expression 'person aggrieved' in a statute meant a person who had suffered a *legal* grievance; anyone given the right under s. 37 of the Act of 1959 to have his representation considered by the Minister was a person aggrieved, thus section 31 applied, if those rights were infringed; but the applicants had no right under the statute, and

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(1) [1976] 1 S.C.R. 306.

(2) Vol. XXXVIII (1921-22) Times Law Reports 537.

(3) (1954) 1. Weekly Law Reports 203. (4) [1961] 1 Q.B.D. 278.

no legal rights had been infringed and therefore they were not entitled to challenge the Minister's decision. Salmon J. quoted with approval these observations of James L. J. in *In Re Sidebothem*(1).

> "The words 'person aggrieved' do not really means 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."

Ex Parte Stott(2), 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 licence 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 objected to the exhibition of the film, the film 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.

Similarly, *King* v. *Middlesex Justices*(3), it was held that the words "person who shall think himself aggrieved" appearing in the statute governing the grant of licences to innkeepers mean a person *immediately aggrieved* as by refusal of a licence to himself, and not one who is consequently aggrieved, and that though the Justices had granted a licence to a party to open a public house, not before licensed, within a very short distance of a licensed public house, the occupier of the latter house could not appeal against such grant.

Other instances of a restricted interpretation of the expression "person aggrieved" are furnished by *R.* v. *Bradford on-Avon Urban District Council Ex Parte Boulton*(4); *Gregory v. Camden London*

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(1) [1880] 14 Ch. D. 458, at p. 465. (2) [1916] 1 K. B. 7.

(3) (1832) 37 R. R. 594-(1832) 3 B & Ad. 938.

(4) (1964) 2 All. E. R. 492.

A *Borough Council*(1); *R.* v. *London O.E. Ex parte West-Minster Corporation*(2); *Regina* v. *Cardiff Justices Ex parte Cardiff Corporation*(3).

This Court has laid down in a number of decisions that in order to have the *locus standi* to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal B or individual right in the subject matter of the application, though in the case of some of the writs like *habeas corpus* or *quo warranto* this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest in hearing the petitioner is necessary to give him a *locus standi* in the matter—[see *The State of Orissa* v. *Madan Gopal Rungta*(4); *Calcutta Gas Co.* v. *The State of West Bengal*(5); *Ram Umeshwari Suthoo* v. C *Member, Board of Revenue, Orissa*(6); *Gadda Venkateshwara Rao* v. *Government of Andhra Pradesh*(7); *State of Orissa* v. *Rajasaheb Chandanmall*(8); *Dr. Satyanarayana Sinha* v. *M/s. S. Lal & Co.*(9)].

The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enought to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, D 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.

E In the United States of America, also, the law on the point is substantially the same. "No matter how seriously infringement of the Constitution may be called into question, "said Justice Frankfurter in *Coleman v. Miller*(10) "this is not the tribunal for its challenge except by those who have some specialized interest of their own to vindicate apart from a political concern which belongs to all". To have a "standing to sue", which means *locus standi* to ask for relief in a F court independently of a statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a *legal wrong*. Courts can intervene only where legal rights are invaded(11). "Legal wrong" requires a judicially enforceable right and the touchstone to justiciability is injury to a legally protected right. A nominal or a highly speculative adverse affect(12) on the interest or right of a person has been held to be insufficient to give him the "standG ing to sue" for judicial review of administrative action(13). Again the

(1) (1966) 1 W. L. R. 899.
(2) [1951] 2 K. B. 508.
(3) [1962] 2 QB 436.
(4) [1952] S.C.R. 28.
(5) [1962] Supp. 3 S.C.R. 1.
(6) [1967] 1. S.C. Appeals 413.
(7) A.I.R. 1966 S.C. 828-[1966] 2 S.C.R. 172.
(8) A.I.R. 1972 S.C. 2112.
(9) A.I.R. 1973 S.C. 2720-(1974) 1 S.C.R 615.
(10) (1939) 307 U.S. 433.
(11) *Chapman* v. *Sheridan—Wyoming Coal Co.* 338 *U. S.* 621.
H (12) *American Jurisprudence Vol.* 2 *d ss.* 575. *p.* 334 *Joint Anti Fascist Refugee. Committee* v. *McGarth* 341 U. S. 123.
(13) *United States Cane Sugar Refiners, Assocn.* v. *McNutt* 138 F 2nd 116 : 158 A.L.R. 849.

"adverse affect" requisite for "standing to sue" must be an "illegal effect"(1). Thus, in the undermentioned cases, it was held that injury resulting from lawful competition, not being a legal wrong, cannot furnish a "standing to sue" for judicial relief(2). A

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 or 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 pastime 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. B C

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". D E

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 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 F G H

(1) *United States* v. *Storer Broadcastirg Co.* 351 U. S. 192.

(2) Kansas City Power & Light Co. v. McKay 350 U. S. 884.

A 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?

B 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 partciular busness on his property. In this context, the expression "person aggrieved" must receive a strict construction.

C Did the appellant have a legal right under the statutory provisions or under the general law, which has been subjected to or threatened with injury? The answer in the circumstances of the case must necessarily be in the negative.

The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option in common
D with the rest of the public, to lodge an objection in response to the notice published under Rule 4. The appellant did not avail of this option. He did not lodge any objection in response to the notice, the due publication of which was not denied. No explanation has been given as to why he did not prefer any objection to the grant of the No-Objection Certificate before the District Magistrate or the Government. Even if he had objected before the District Magistrate and
E failed, the Act would not give him a right of appeal. Section 8A of the Act confers a right of appeal to the State Government, only on any person aggrieved by an order of a licensing authority refusing to grant a license, or revoking or suspending any licence under section 8. Obviously, the appellant was not a "person aggrieved" within the contemplation of Section 8A.

F Section 8B of the Act provides that the State Government may either of its own motion, or upon an application made by "an aggrieved person", call for and examine the record of any order made by a licensing authority under this Act, and pass such order thereon as it thinks just and proper. Assuming that the scope of the words "aggrieved person" in Section 8B is wider than the ambit of the same words as used in Sec. 8A, then also, the appellant cannot, in the cir-
G cumstances of this case, be regarded as a "person aggrieved' having the requisite legal capacity to invoke *certiorari* jurisdiction.

The Act and the Rules recognise a special interest of persons residing, or concerned with any institution such as a school, temple, mosque etc. located within a distance of 200 yards of the site on which a cinema house is proposed to be constructed. The appellant does
H not fall within the category of such persons having a special interest in the locality. It is not his case that his cinema house is situated anywhere near the site in question, or that he has any peculiar interest in his personal, fiduciary or representative capacity in any school,

temple etc. situated in the vicinity of the said site. It cannot therefore be said that the appellant is "a person aggrieved" on account of his having a particular and substantial interest of his own in the subject matter of the litigation, beyond the general interest of the public. Moreover the appellant could not be said to have been, *in fact*, aggrieved. As already noticed, he, despite adequate opportunity, never lodged any objection with the District Magistrate, nor went in revision before the State Government. Thus the present case is not in line with the decisions which are within the ratio of *Queen* v, *Justices of Surrey* (supra).

Having seen that the appellant has no standing to complain of injury, actual or potential, to any statutory right or interest, we pass on to consider whether any of his rights or interests, recognised by the *general law*, has been infringed as a result of the grant of No-Objection Certificate to the respondents? Here, again, the answer must be in the negative.

In Paragraph 7 of the writ petition, he has stated his cause of action, thus :

> "The petitioner submits that.....he owns a cinema theatre in Mehmadabad which has about a small population of 15000 persons as stated above and there is no scope for more than one cinema theatre in the town. He has, therefore, a commercial interest in seeing to it that other persons are not granted a no-objection certificate in violation of law."

Thus, in substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Juridically, harm of this description is called *demnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law(1). The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.

In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a 'person aggrieved' and has no *locus standi* to challenge the grant of the No-Objection Certificate.

It is true that, in the ultimate analysis, the jurisdiction under Article 226 in general, and *certiorari* in particular, is discretionary. But

(1) Salmond on Jurisprudence by Fitz-Gerald. p. 357 para 85.

A 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 B weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.

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 C 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 prepetuate the appellant's monopoly of cinema D 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 article 19(1)(g) of the Constitution, to carry on trade or business subject to 'reasonable restrictions' imposed by law.

The instant case falls well-nigh within the ratio of this Court's decision in *Rice and Flour Mills* v. *N. T. Gowda*(1), wherein it was held E that a ric mill-owner has no *locus standi* to challenge under Article 226, the setting up of a new rice-mill by another—even if such setting up be in contravention of s. 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958—because no right vested in such an applicant is infringed.

For all the foregoing reasons, we are of opinion that the appellant had no *locus standi* to invoke this special jurisdiction under article F 226 of the Constitution. Accordingly, we answer the question posed at the commencement of this judgment, in the negative, and on that ground, without entering upon the merits of the case, dismiss this appeal with costs.

S.R. *Appeal dismissed.*

(1) [1970] S.C.R. 846.