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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 11.12.2020

+ W.P. (C) 5921/2020, CM Nos. 28555/2020, 21590/2020

PROFESSOR RAJIV SAXENA Petitioner

Through: Mr. Abhik Chimni and Mr. Mayank
Goyal, Advocates.

versus

JAWAHARLAL NEHRU UNIVERSITY,
THROUGH ITS REGISTRAR

..... Respondent

Through: Ms. Monika Arora, Advocate for JNU.
Mr. Kabir Singh Ghosh, Advocate for
R-2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Petitioner holds the position of Chairperson of Centre of Spanish, Portuguese, Italian and Latin American Studies (hereinafter referred to as the 'Centre') and has headed the Centre since February, 2017. Respondent No.2 who holds the post of Assistant Professor at the Centre was admitted as a Ph.D Degree candidate at the Respondent No.1 University (hereinafter referred to as 'University') and has been awarded the Ph.D degree and the Notification has been issued on 28.07.2020. Petitioner was appointed as Supervisor of Respondent No.2 for Thesis/ Ph.D on 18.07.2017, has filed the present petition to quash the order of the University awarding the Ph.D degree as well as the viva-

voce/Committee constituted for conducting the viva-voce examination on 03.06.2020 amongst other reliefs which are as follows:

“(i) Issue an appropriate writ quashing the order of the Respondent University to award Ph.D. degree to Mr. Gaurav Kumar;

(ii) Issue an appropriate writ quashing the viva voce board/committee constituted for conducting the viva voce examination of Mr. Gaurav Kumar on 03.06.2020;

(iii) Issue an appropriate writ quashing the RAC constituted for conducting the viva voce examination of Mr. Gaurav Kumar on 03.06.2020;

(iv) Issue an appropriate writ directing Respondent University to set aside the removal of Petitioner from the post of Supervisor for Mr. Gaurav Kumar;

(v) Issue an appropriate writ directing the Respondent University to set aside the appointment of 2 Supervisors for conducting the online viva voce examination of Mr. Gaurav Kumar on 03.06.2020;

(vi) Issue an appropriate writ directing the Respondent University to constitute a new RAC as per rules followed and practised in the Centre for conducting the viva voce examination of Mr. Gaurav Kumar;

(vii) Issue an appropriate writ directing the Respondent University to conduct viva voce of Mr. Gaurav Kumar as per the provisions of JNU Act, Schedules, Ordinances and Regulations;

(viii) Award the Petitioner costs related to the filing of the present Petition;

(ix) Pass any such further orders as this Hon’ble Court may deem fit in the facts and circumstances of the instant case and/or in the interest of justice.”

2. The brief narrative of facts as set out in the petition is that vide Notification dated 18.07.2017 Petitioner was appointed as Supervisor of Respondent No.2 for his Thesis/ Ph.D for the topic “Analysis of Grammatical Errors in the Written Expression of Indian Learners of Spanish as Foreign Language” and remained so till 31.05.2020.

3. Petitioner certified on 23.10.2019 that he had supervised the Thesis and forwarded the same to the Examiners for evaluation. The Examiners Dr. Ravi Kumar and Professor Thakur Dass issued recommendations on 27.01.2020 and 07.02.2020, respectively, to grant the Degree to the candidate subject to his passing the viva-voce examination. The Assistant/Deputy Registrar sent a letter to the Dean of the Centre on 18.02.2020 containing the evaluation report, asking the Dean to send the reports together with recommendations of the viva-voce Board.

4. The Dean of the Centre sent an email to the Petitioner on 09.05.2020, asking him to schedule the viva-voce examination with immediate effect and assured that all logistics support shall be extended to do so. Petitioner avers that he was surprised at the urgency in conducting the viva-voce and sent three emails pointing out the Centre’s reservations regarding technical infrastructural requirements as well as documentation as per UGC Guidelines in conducting a viva-voce.

5. Petitioner states that the University issued a notice dated 01.06.2020 scheduling the viva-voce on 03.06.2020 and also mentioned Dr. Sovon Kumar Sanyal (CSPILAS) and Dr. Lipi Biswas Sen (CSPILAS) as Supervisors of Respondent No.2. Being the Chairman of the Centre and the Supervisor of Respondent No.2, Petitioner ought to

have been informed, in advance, of the appointment of the two Supervisors. Petitioner through his letter dated 02.06.2020 pointed out various issues with regard to the Thesis submitted by Respondent No.2, as well as, the evaluation report including other aspects in conducting the viva-voce.

6. On 03.06.2020 University issued the Minutes of the Final Meeting of the Ph.D viva-voce, recording that the viva-voce was held on 03.06.2020 at 12:30 pm online and also mentioning the names of the External Examiner therein. The Minutes also recorded the names of the other members of the Committee constituted for the said purpose. Report was submitted by the External Examiner stating therein that the Thesis submitted were Respondent No. 2's own work and that his grasp in the field was satisfactory. Finally the University convened the 154th (B) Meeting of the Academic Council on 22.06.2020 and placed Respondent No.2 in the list of students whose Thesis for Ph.D was to be evaluated by a panel of Examiners and the name of the Petitioner was mentioned as the Supervisor of the Respondent No.2.

7. The challenge of the Petitioner to the award of Ph.D degree to Respondent No.2 is on manifold grounds which can be aptly summarized as follows:

- a. Petitioner was appointed as Supervisor for the Thesis of Respondent No.2 vide Notification dated 09.07.2017 for the topic "Analysis of Grammatical Errors in the Written Expression of Indian Learners of Spanish as Foreign Language" from 2017 till 31.05.2020. Petitioner was the only Supervisor and responsible for

guiding the Thesis and ensuring that it meets the required academic standards in the field of languages, which concerns the Centre. Petitioner has been, however, removed in an arbitrary manner as the Supervisor, without communicating the decision to that effect, despite the fact that he was appointed as a Supervisor because of his expert and domain knowledge in Spanish language.

- b. University arbitrarily appointed Dr. Sanyal and Dr. Sen as Supervisors, though none of them had any history of working with Respondent No.2, on its Thesis and none participated in the viva-voce on 03.06.2020. Neither of the two are expert in teaching Spanish as a foreign language. Process of appointment of Supervisor for a Ph.D candidate is laid down in Clause 3(a) of the Ordinance relating to the Committee for Advance Studies and Research (CASR) and the procedure required under the said Clause was not followed for appointment of the Supervisors. The Ordinance relating to CASR provides the constitution of the CASR which requires the Dean of the School, Heads of Centers and Departments in the School, one Professor/Senior Fellow, one Associate Professor/Fellow and one Assistant Professor/Associate Fellow as part of the Committee. Petitioner being a Chairman of the Centre is the member of the CASR and yet was kept out of the process of the appointment of Supervisors of Respondent No.2.
- c. Clause 16 of the Ordinance provides that viva-voce shall be conducted by Board of Examiners comprising of one of the External Examiners of the Thesis and the Supervisor(s). The

University undermined and diluted Clause 16 by removing the Petitioner as Supervisor. Additionally, this was a deliberate attempt to circumvent the objections raised by the Petitioner to the holding of the viva-voce.

- d. University has violated Regulations 24 and 25 of the Academic Rules and Regulations which prescribe as follows:

“S 24. *Viva-Voce through SKYPE.

The Executive Council resolved to approve that all M.Phil. Viva-Voce will be conducted through SKYPE only. Ph.D. Viva-Voce may also be conducted preferably through SKYPE. However, in case the Ph.D. Viva-Voce needs to be held by inviting experts to the School or Centre, due justification may be forwarded through Chairperson/Dean to the competent authority for prior permission in this regard. It was also resolved to constitute a Committee to frame guidelines to hold Viva-Voce through SKYPE. The Committee has submitted the following guidelines.

Guidelines

- 1. The schedule and details of the Viva-Voce to be held should be circulated to all concerned in advance.*
- 2. The Viva-Voce shall be held in a hall/room which is equipped with necessary infrastructure to hold Viva-Voce examination through Video-conferencing. Wherever necessary, the CIS, JNU will provide the necessary technical help for conducting the viva-voce examination.*
- 3. Members of the Research Advisory Committee of the concerned student should be present in person during the Viva-Voce. However, in exceptional circumstances, if a RAC member is unable to attend the Viva-Voce, he/she, in consultation with Supervisor and with the approval of the Dean of the concerned School/Chairperson of the concerned Special Centre, may nominate some other faculty (as per the*

composition of RAC). At least two RAC members, including the supervisor, should be present in person during the Viva-Voce examination.

4. After the Viva-Voce examination, the external examiner may submit his/her report/ recommendation through e-mail and include a signed scanned copy of report/recommendation as attachment to the official e-mail of the Dean of the concerned School/Chairperson of the concerned Centre/Special Centre. A printout of this report/recommendation shall be signed and certified by the Supervisor of the Viva-Voce Committee and the Dean of the concerned School/Chairperson of the concerned Centre/Special Centre.

5. No local travel expenses or any other charges/payment for hardware/software assistance/hiring/purchase etc. will be reimbursed to the external examiner or any other person for availing of video-conferencing facility for holding of M.Phil./Ph.D. Viva-Voce examination.

6. If, in any case, more than one external examiner is invited to hold the Viva-Voce, the honorarium amount shall be divided equally among them, as per Clause 3.6 of Academic Ordinance number 27 of JNU.

7. Exemption for Ph.D. Viva-Voce – In extraordinary circumstances where viva-voce cannot be held through video-conferencing, the Dean/Chairperson of the School/Centre/Spl. Centre shall take prior approval of the Vice-Chancellor, to hold viva-voce in person. However, all the M.Phil Viva-Voce will be conducted through video-conferencing only.

8. The Viva-Voce report with relevant documents must be submitted by the School/Centre in the prescribed existing format along with the recommendation of the external examiner as mentioned at point-4 above.

9. *In case any dispute arises with respect to the recommendation of the examiner and the member(s) of RAC, the Competent Authority may take appropriate measures to resolve the dispute. The decision of the Competent Authority will be final.*

S 25. *Composition of Research Advisory Committee in Schools/Centres.

The Executive Council resolved that the composition of Research Advisory Committee (RAC) for M.Phil. and Ph.D. students will be as follows:

- (a) Research Supervisor as Convener of the Committee;*
- (b) One internal expert from the concerned Centre/Special Centre/School (where no Centres exist); and*
- (c) One external expert from outside the concerned Centre/Special Centre/School (where no centres exist), but from within the University only."*

8. Perusal of the viva-voce Committee shows that it is contrary to the Regulations inasmuch as the two Professors teach at the Centre for English Studies and Indian languages, respectively and have no understanding of the Spanish language. There is also violation of Clause 3 of the JNU Ordinance 2016 inasmuch as the Supervisors were not appointed by CASR but by the Dean.

9. Petitioner is a person of repute and well-known academician throughout India with great credibility in academic arena. The impugned action of the University shall have an effect on the other students under his supervision, and would be misused as a precedent seriously undermining the efforts of the Petitioner and tarnishing his reputation.

The violations of the Ordinance in appointment of Supervisors will lead to academic chaos and adversely affect the quality of research output and the academic council of JNU shall run as per the wishes of the Dean.

10. Ms. Monika Arora learned counsel for University had appeared on advance copy of the writ petition. She submitted that the petition deserves to be dismissed at the outset as the contentions of the Petitioner are unfounded, misconceived and the Petition is an abuse of process of law. The submissions made by Ms. Arora are as follows:

- a) Respondent No. 2 who is an Assistant Professor in the Centre with effect from 28.12.2006 submitted his thesis for the award of Ph.D. Degree, under supervision of the Petitioner on 23.10.2019. The Petitioner who is the Chairperson of the Spanish Centre as well as the Supervisor of Respondent No. 2 signed his thesis and the Official Thesis Submission Form, confirming submission of his Thesis. He also provided the names of five External Examiners endorsing the Thesis to be sent to the External Examiners for evaluation.
- b) Thesis was sent to two External Examiners, one being an Assistant Professor at Mahatma Gandhi International Hindi University, Wardha and the other retired Professor of Central Hindi Institute, Agra, as per norms. Both appreciated the research work of Respondent No. 2 and recommended award of the Degree, subject to passing the viva-voce.
- c) An External Examiner has four options while evaluating a Thesis viz. (i) to recommend award of Degree and proceed for viva-voce;

(ii) suggest minor corrections before viva-voce; (iii) suggest major corrections and sent the Thesis back for incorporation and for the examiner to evaluate and (iv) rejection of the Thesis. Both the examiners followed the path of recommending the award of Degree.

- d) On receipt of the Report, the Evaluation Branch forwarded the Report to the concerned Centre on 18.02.2020 for conduct of viva-voce. The Petitioner did not arrange for the conduct of viva-voce despite several requests by Respondent No. 2 vide e-mails dated 11.03.2020, 13.03.2020, 18.03.2020, 14.04.2020 and 28.04.2020. Dean of the School also requested to do the needful both telephonically and via emails dated 14.04.2020, 25.04.2020, 09.05.2020 and 14.05.2020 to schedule online viva-voce, but to no avail.
- e) Seeing the apathy of the Petitioner, the Dean apprised the University administration of the deadlock in the matter and accordingly a Committee was proposed to look into the matter, which concluded that a substitute/alternate Supervisor be appointed to conduct the viva-voce. Acting upon the recommendations and in accordance with provisions of Ordinance XVI, the University appointed two faculty members as Supervisors and finally the viva-voce was held online on 03.06.2020 as per the UGC Guidelines. The Ph.D. Notification dated 28.07.2020, nonetheless, mentions the name of the Petitioner as Supervisor, to give him credit for his supervision during the relevant period.

f) Once Respondent No. 2 submitted his Thesis and his research work was duly approved by the Examiners, there was no reason why the University should have stalled the holding of the viva-voce and delaying the award of Degree. Petitioner is incorrect in stating that he is affected by the award of the Degree and in fact he has no locus to even file the present petition and the Petition is more in the nature of a Public Interest Litigation and not maintainable. It is also notable that the Petitioner is responsible for not holding the viva-voce despite several requests and can only blame himself if the University appointed two other Supervisors.

11. Respondent No. 2 was also represented by a counsel, who adopted the stand of the University and reiterated the arguments put forth by Ms. Arora. Learned counsel submits that the Petitioner has no locus to file the present petition and challenge the award of Degree which has been awarded to Respondent No. 2 on the basis of his research work, duly recommended by the Examiners.

12. I have heard the learned counsels for the parties and examined their rival submissions.

13. The Petitioner was the Supervisor of Respondent No. 2 for his Thesis for award of Ph.D. Degree. The question however that arises for consideration before this Court is whether the Petitioner has any *locus standi* to file the present petition challenging the award of Degree to Respondent No. 2. To answer this question, I may need to examine the provisions of Article 226 of the Constitution of India. Article 226 empowers the High Court to issue to any person or Authority, including

the Government, within its territorial jurisdiction, directions, orders or writs including writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of fundamental rights and for any other purpose.

14. Going by most of the English decisions, in order to invoke certiorari jurisdiction, the Petitioner should be an ‘aggrieved person’ and the question that next arises is who is an aggrieved person. In ***Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed***, (1976) 1 SCC 671 the Supreme Court described the expression ‘aggrieved person’ as follows:

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

15. In the same decision, the Court observed 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 or individual right

in the subject matter, though in writs of habeas corpus or quo warranto, the Rule is relaxed. Para 34 being relevant is as under:

“34. 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 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 inhering in the petitioner is necessary to give him a locus standi in the matter, (see State of Orissa v. Madan Gopal Rungta [AIR 1952 SC 12 : 1952 SCR 28] ; Calcutta Gas Co. v. State of W.B. [AIR 1962 SC 1044 : 1962 Supp (3) SCR 1] ; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa [(1967) 1 SCA 413] ; Gadde Venkateswara Rao v. Government of A.P. [AIR 1966 SC 828 : (1966) 2 SCR 172] ; State of Orissa v. Rajasaheb Chandanmall [(1973) 3 SCC 739] ; Satyanarayana Sinha Dr v. S. Lal & Co. [(1973) 2 SCC 696 : (1973) SCC (Cri) 1002]).”

16. The expression ‘ordinarily’ was also explained by the Court in para 35 as follows:

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

17. Explaining the concept of *locus standi* in the context of writ of certiorari, the Court observed as follows:

“37. 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.

38. 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”.”

18. Finally, the Court examined the locus of the Appellant therein to approach the Court for an alleged legal wrong and it would be useful to refer to two passages of the Report in this regard as under:

“48. 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.

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

19. Very recently a Coordinate Bench of this Court in ***Tirupati Buildings and Offices Pvt. Ltd. v. Reserve Bank of India, 2019 SCC OnLine Del 8990***, again examined the law on the expression ‘person aggrieved’ relying on the earlier judgments on the subject and I may only allude to a few paragraphs as follows:

“53. Admittedly, no petition has been filed by the respondent No. 3 Edelweiss Asset Reconstruction Company Limited; who had submitted the bid which was held to be highest. If the stand of the petition is that the said bid of the respondent No. 3 has not been decided, then it shall be grievance of the

respondent No. 3 to raise an issue. Merely because the bid is for taking over of the loan given by the Dena Bank to the petitioner even though would suggest some interest of the petitioner but that would not show locus of the petitioner to maintain the writ petition for a prayer as noted above, as it is settled law to maintain a writ under Article 226 of the Constitution of India it should be shown by the petitioner that its right has been infringed by the inaction on the part of the respondent No. 2 to decide the bid submitted by the respondent No. 3 Edelweiss Asset Reconstruction Company Limited, which according to Mr. Aggarwal it has failed. Further it is not the case of the petitioner that the present petition has been filed in public interest. Surely such cases are exception to the locus standi rule as held by the Supreme Court in various judgments including Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : AIR 1984 (SC) 802. Further, the submission of Mr. Tripathi that the Edelweiss and the petitioner have been writing to the Dena Bank for consummation of sale is concerned; the same can be a ground for Edelweiss but not the petitioner, who is not the bidder to approach the Court with relief as prayed for. So, the relief to the respondent No. 3 cannot be given at the asking of the petitioner. In other words, the cause of action is the submission of bid which has not been decided. It is surely a cause for the respondent No. 3 to approach the Court against Dena Bank and not the petitioner. So, it follows the judicial review of the inaction on the part of the Dena Bank to decide the bid on any ground at the behest of any party other than Edelweiss is impermissible. Hence, this plea of Mr. Aggarwal needs to be accepted and it must be held that the petitioner has no locus standi to seek prayer(s) as stated above in this writ petition. In support of my aforesaid conclusion, I may refer to the following judgments of the Supreme Court on the issue of maintainability of the writ petition by a person who has no locus standi to file a petition:

54. In *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal*, AIR 1962 SC 1044, in para 5 the Supreme Court has held as under:

“...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 rights 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. In *State of Orissa v. Madan Gopal*, 1952 SCR 28: (AIR 1952 SC 12) this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Art. 226 of the Constitution. In *Charanjit Lal Chowdhuri v. Union of India*, 1950 SCR 869: (AIR 1951 SC 41), it has been held by this Court that the legal right that can be enforced under Art. 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Art. 226 of the Constitution. The right that can be enforced under Art. 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...”

55. In *Mani Subrat Jain v. State of Haryana*, (1977) 1 SCC 486 : AIR 1977 SC 276, in para 9 the Supreme Court has held as under:

“..It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as

a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122); State of Haryana v. Subash Chander, (1974) 1 SCR 165 = ((1974) 3 SCC 220 : AIR 1973 SC 2216); Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed, (1976) 3 SCR 58 = ((1976) 1 SCC 671 : AIR 1976 SC 578) and Ferris Extraordinary Legal Remedies paragraph 198.”

(emphasis supplied)

56. *In Ghulam Qadir v. Special Tribunal, (2002) 1 SCC 33, in para 38 the Supreme Court has held as under:*

“38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical 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

having not 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 the locus standi.”

(emphasis supplied)

57. Further the expression “aggrieved person” has come up for consideration before the Supreme Court on many occasions wherein the Supreme Court has held, aggrieved person would mean who has suffered legal injury. In this regard reference can be made to its opinion in *Babua Ram v. State of U.P.*, (1995) 2 SCC 689 wherein, in paragraph 17, it observed as under:

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

“One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word ‘aggrieved’ refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation.”

58. The person aggrieved, therefore, must be one who has suffered a legal injury.

59. Further the Supreme Court in *Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed*, (1976) 1 SCC 671 : AIR 1976 SC 578, while dealing with the expression “aggrieved person”, has in paragraphs 12, 25, 29 and 38 observed as under:

“12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an “aggrieved person” and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfill that character, and is a “stranger”, the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question: Who is an “aggrieved person”? And what are the qualifications requisite for such a status? The expression “aggrieved person” denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression “aggrieved person”. However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or ‘standing’ to invoke certiorari jurisdiction.

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25. *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.*

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29. *...Salmon J. quoted with approval these observations of James LJ in James LJ in Sidebotham (1880) 14 Ch D 458 at p. 465 The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something.*

(emphasis supplied)

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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 whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words ‘person aggrieved’ is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?’

(emphasis supplied)

60. In a recent pronouncement the Supreme Court in *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, (2013) 4 SCC 465, while dealing with the expression “person aggrieved” in paragraph 9 observed thus:

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The

Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12, Saghir Ahmad v. State of U.P., AIR 1954 SC 728, Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., AIR 1962 SC 1044, Rajendra Singh v. State of M.P., (1996) 5 SCC 460 and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, (2009) 2 SCC 784.]”
(emphasis supplied)

61. The Supreme Court in M.S. Jayaraj v. Commissioner of Excise, Kerala, (2000) 7 SCC 552, examined the issue of “locus standi” and held that the person should be asked to disclose the legal injury suffered by him and if he cannot, then, obviously, the person has no locus standi to file a writ petition under Article 226 of the Constitution of India.”

20. Applying the ratio of the judgments referred to above, the inevitable conclusion that can be drawn is that the Petitioner has no *locus standi* to file the present petition seeking a writ of certiorari under Article 226 of the Constitution of India. Petitioner cannot be termed as a ‘person aggrieved’ going by the law enunciated in the judgments above.

21. Petitioner was admittedly appointed as Supervisor for the Ph.D. Thesis of Respondent No. 2 vide Notification dated 25.07.2017. He had guided the Thesis and finally signed on them including endorsing the Thesis Submission Form, thereby confirming the submission of the Thesis. As per procedure and norms the Thesis was sent to the Examiners, who were from independent Universities and recommended the award of Degree, without even suggesting a minor correction in the Thesis. The recommendations were subject to the conduct of viva-voce examination. The documents placed on record by the Petitioner himself are a pointer to the fact that several emails were sent to the Petitioner to organize the conduct of viva-voce as he was the Chairperson of the Centre. However, requisite action was not taken by the Petitioner despite the fact that it was obligatory for him to hold the viva-voce as a part of his statutory duty, being the Chairman of the Centre.

22. In my view, the University rightly contends that if the Petitioner did not take timely action for conducting the viva-voce, there was no reason why the process should have been stalled, unnecessarily delaying the award of a Ph.D. Degree to a candidate who worked hard on the Thesis and even got favourable recommendations from two independent Examiners.

23. I also find force in the contention of the University that the provisions of the JNU Ordinance 2016 itself permit the University to proceed with the viva-voce examination by recommending another member of the faculty, as a Supervisor, in a situation where the appointed

Supervisor is unable to participate in the viva-voce examination, within a reasonable time. Relevant provision of the Ordinance 2016 is as under:

“Ordinance 16: Procedure for conduct of viva-voce for award of Ph.D Degree

“The viva-voce examination of candidate shall be conducted by a Board of examiners consisting of one of the external examiners of the thesis and the Supervisor(s). Provided, where neither of the examiners, who evaluated the thesis, is in a position to conduct the viva-voce examination, another examiner shall be appointed in his/her place.

Provided that where the Supervisor is unable to be present within a reasonable time to participate in the viva-voce examination, the Committee for Advanced Studies and Research may recommend another member of the faculty in his/her place.”

24. The action of the University is therefore in accordance with the provision of the Ordinance and contrary to what has been argued by the Petitioner, in the interest of academic institutions. Needless to state that research students cannot be made to suffer on account of delay caused by administrative constraints or the subjective perceptions of the Supervisors. Petitioner failed to take timely and necessary action to conduct the viva-voce and can only blame himself for the action of the University in appointing two other Supervisors.

25. During the course of hearing counsel for the University informed the Court that name of the Petitioner is shown as the Supervisor of Respondent No. 2 on the Ph.D. Notification dated 28.07.2020 and

therefore in my view the Petitioner cannot complain of any harm to his reputation.

26. For all the aforesaid reasons, the petition fails and is accordingly dismissed.

27. Pending applications are disposed of accordingly.

JYOTI SINGH, J

DECEMBER 11, 2020

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