

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

(Appellate Side)

MAT 1213 of 2022

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IA CAN 1 of 2022

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IA CAN 2 of 2022

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IA CAN 3 of 2022

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IA CAN 4 of 2022

Suvendu Adhikari

-Versus-

Rakesh Diasi & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants	: Mr. Joydip Kar, Sr. Adv. Mr. Bikram Banerjee, Adv. Mr. Sudipta Dasgupta, Adv. Mr. Arkadeb Biswas, Adv. Ms. Dipa Acharyya, Adv.
For the Writ Petitioner/ Respondent No.1.	: Mr. Milan Bhattacharya, Sr. Adv. Mr. Balailal Sahoo, Adv. Mr. Kaustav Mishra, Adv.
For the State	: Mr. Raja Saha, Adv. Mr. S. P. Lahiri, Adv.

For the Respondent Nos.3, : Mr. Pradip Kr. Roy, Adv.
4. Mr. Ankit Sureka, Adv.

Mr. Biplab Das, Adv.
Ms. Suparna Shyam, Adv.
For the Respondent No.5 : Mr. D. K. Sengupta, Adv.
& 6 Ms. Sweta Saha, Adv.

For the Respondent No.7 : Mr. Uttam Kumar Bhattacharya, Adv.
Mr. Surajit Samanta, Adv.

Judgment on : 19.10.2023

Arijit Banerjee, J. :-

1. The Judgment and order dated April 8, 2022, whereby the writ petition of the respondent no. 1 herein being WPA No. 5454 of 2022, was allowed by a learned Single Judge, is sought to be challenged by the present intending appellant. An application for leave to appeal has been filed by the intending appellant being CAN 1 of 2022, since he was not a party to the writ petition.

2. When the application for leave to appeal was moved on August 26, 2022, a Coordinate Bench recorded as follows:-

“There is strong opposition from the respondents to leave being granted to the appellant to file this appeal. Let affidavits-in opposition be filed by the respondents to the application for leave to appeal, the application for condonation of delay as also the stay petition, within four weeks from date i.e. September 23, 2022. The petitioner would be at liberty to file his replies by November 9, 2022.

List the matter under the same heading on November 11, 2022.

The affidavits that the respondents may file will be without prejudice to their contention that this appeal is not maintainable.”

3. After exchange of affidavits the parties were heard at length on several days not only on the point of locus standi of the intending appellant to maintain the appeal but also on points touching the merits of the case.

4. The brief factual background of the case is that pursuant to a process of recruitment for appointment in Grade III posts of the Vidya Sagar Central Cooperative Bank Limited (in short “the bank”), five successful candidates from the prepared panel were appointed in the Schedule Cast category. The panel was treated as a waiting list in so far as the other candidates named in the panel were concerned. One of the five original appointees in the Schedule Cast category tendered resignation. The writ petitioner claimed that since he was the 6th person named in the panel, he was to be appointed in the post that fell vacant. Since such appointment was not coming through, he approached the learned Single Judge.

5. Before the learned Single Judge it was submitted on behalf of the bank that due to certain reasons beyond the control of the bank, no steps could be taken for appointing the writ petitioner who is the first candidate in the waiting list. The learned Judge held on the basis of documents disclosed that the panel still subsisted and was valid. Accordingly the learned Judge disposed of the writ petition with the following direction:-

“In such view of the matter, WPA No. 5454 of 2022 is allowed, thereby directing the respondent no. 6, the Chairman, Vidyasagar Central Co-operative Bank Ltd., to take steps as expeditiously as possible, preferably within a fortnight from date, for granting appointment to the petitioner in the vacant post, out of the five candidates of the final list initially published for recruitment to the Grade –III category under the SC category.”

6. The writ petitioner was appointed in the concerned post in terms of the learned Single Judge’s order.

7. The applicant in CAN 1 of 2022 tried to establish his locus standi to maintain the appeal by saying that he was a member of the Board of Directors of the Bank. The appointment of the Respondent no. 1 is illegal which is likely to tarnish the reputation of the bank. Hence he should be permitted to assail the order of the learned Single Judge pursuant to which the respondent no. 1 was appointed.

8. Learned Senior Counsel representing the applicant referred to the final merit list of successful candidates pertaining to Grades II, III and IV. The present case is concerned with Grade III posts. Serial numbers 50 to 78 of the list pertain to SC category in connection with Grade III posts. The name of the respondent no. 1/writ petitioner appears at Serial No. 55.

9. Our attention was drawn to the minutes of the relevant meeting approving the final merit list. The candidates against Serial Nos.50 to 54 of the final merit list were selected for appointment in the 5 vacant posts.

10. It was then submitted that the candidate mentioned against Serial No. 53, i.e., Shantanu Bar, joined on September 2, 2020, and resigned on August 25, 2021. His resignation was accepted on the same date.

11. Learned Senior Counsel referred to extracts of the proceedings of the Board of Directors of the bank held on August 25, 2021. The relevant portion of the minutes reads as follows:-

“Agenda No. 1/h) The House accepted the resignation letter of one newly recruited employee named Sri Shantanu Bar, Grade – III staff of Paniparul branch. Sri Shantanu Bar has joined in this service of the Bank on 02/09/2020. The House requested the General Manager to look into the matter whether new candidate from the panel may allow to join or not in place of Sri Shantanu Bar. He is requested by the house to enquire all the legal provisions in this respect.”

12. Learned Senior Counsel submitted that the panel that was prepared, automatically lapsed once all the vacant posts were filled up from the panel.

13. Learned Counsel submitted that there was no waiting list as is claimed by the bank management. Reference was made to an application made under the Right to Information Act, 2005, and the bank’s reply thereto wherein it is stated: “There was no waiting list as per resolution of the BOD dated 29.08.2020”.

14. Learned Counsel further submitted that the Board of Directors of the bank did not accord approval to any waiting list after the recruitment process was over by filling up the vacant posts.

15. On the point of locus standi of the applicant to maintain an appeal against the impugned order, learned Counsel relied on the decision in ***M.S. Jayaraj v. Commissioner of Excise, Kerala & Ors., reported at (2000) 7 SCC 552***. In particular, reference was made to paragraphs 12 to 14 of the reported judgment which read as follows:-

“12. In this context we noticed that this Court has changed from the earlier strict interpretation regarding locus standi as adopted in Nagar Rice & Flour Mills and ors. vs. N. Teekappa Gowda & Bros. and ors. [(1970)1 SCC 575] and Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & ors.,[(1976)1 SCC 671] and a much wider canvass has been adopted in later years regarding a person’s entitlement to move the High Court involving writ jurisdiction. A four Judge Bench in Jasbhai Motibhai Desai (supra) pointed out three categories of persons vis-à-vis the locus standi: (1) a person aggrieved; (2) a stranger; and (3) a busybody or a meddlesome interloper. Learned Judges in that decision pointed out that anyone belonging to the third category is easily distinguishable and such person interferes in things which do not concern him as he masquerades to be a crusader of justice. The Judgment has cautioned that the High Court should do well to reject the petitions of such busybody at the threshold itself. Then their Lordships observed the following:- (SCC p. 683, para 38)

“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.

13. A recent decision delivered by a two Judge Bench of this Court (of which one of us is a party - Sethi, J.) in *Chairman, Railway Board & ors. v. Chandrima Das & ors.* [(2000) 2 SCC 465] after making a survey of the later decisions held thus: (SCC pp. 478-79, para 17)

“17. In the context of public interest litigation, however, the Court in its various judgments has given the widest amplitude and meaning to the concept of locus standi. In *People's Union for Democratic Rights v. Union of India* [(1982) 3 SCC 235] it was laid down that public interest litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access to Court. [See also *Bandhua Mukti Morcha v. Union of India* [(1984) 3 SCC 161] and *State of H.P. v. A Parent of a*

Student of Medical College [(1985) 3 SCC 169] on the right to approach the Court in the realm of public interest litigation.] In Bangalore Medical Trust v. B.S. Muddappa [(1991) 4 SCC 54] the Court held that the restricted meaning of aggrieved person and the narrow outlook of a specific injury has yielded in favour of a broad and wide construction in the wake of public interest litigation. The Court further observed that public spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of public nature. They cannot be ignored or overlooked on a technical or conservative yardstick of the rule of locus standi or the absence of personal loss or injury. There has, thus, been a spectacular expansion of the concept of locus standi. The concept is much wider and it takes in its stride anyone who is not a mere busybody.

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

strictly no locus standi. So we proceed to consider the contentions on merits.”

16. On the point that a panel survives only till the recruitment process is complete, learned Counsel relied on the Hon’ble Supreme Court’s decision in the case of ***State of Punjab v. Raghubir Chand Sharma & Anr., reported at (2002) 1 SCC 113*** and in particular paragraph 4 thereof which reads as follows:-

“4. We have carefully considered the submissions of the learned Counsel on either side. In our view, the judgment rendered by the learned Single Judge as well as the Division Bench of the Punjab and Haryana High Court cannot be sustained. As rightly contended for the appellant-State, the notification issued inviting applications was in respect of one post and the first candidate in the select panel was not only offered but on his acceptance of offer came to be appointed and it was only subsequently that he came to resign. With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The Circular Order dated 22.3.1957, in our view, relates to select panels prepared by the Public Service Commission

and not a panel of the nature under consideration. That apart, even as per the circular orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before Courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies.”

17. On the same point learned Counsel referred to the decision of the Hon’ble Supreme Court in the case of ***Raj Rishi Mehra & Ors. v. State of Punjab & Anr., reported at (2013) 12 SCC 243***. In that case reference was made to the decision of the Hon’ble Supreme Court in ***State of Punjab v. Raghubir Chand Sharma & Anr., (supra)***. Reference was also made to the decision in ***Mukul Saikia & Ors. v. State of Assam & Ors., reported in (2009) 1 SCC 386***, wherein it was held that once the appointments are made against the advertised posts, the select list gets exhausted and those who are placed below the last appointee cannot claim appointment against the posts which subsequently become available.

18. Finally learned Counsel relied on the decision of the Hon’ble Supreme Court in the case of ***Vijoy Kumar Pandey v. Arvind Kumar Rai & Ors., reported at (2013) 11 SCC 611***. This decision is also on the same point as discussed in the preceding two paragraphs of this judgment.

19. Appearing for the respondent no. 1/writ petitioner, Mr. Milan Bhattacharya, learned Senior Counsel, referred to paragraph 11 of CAN 1 and submitted that the only averments in respect of the applicant's *locus standi* to maintain the appeal are made in that paragraph. The said paragraph reads as follows:-

“11. Your petitioner states that the order dated 08.04.2022 is adversely affecting the petitioner because an illegal appointment have been made through the Chairman of the Co-operative Society by a common majority decision of the Board of Directors, though the petitioner have categorically made a note of dissent and have stated in the meeting dated 30th April, 2022 to prefer appeal against the order dated 08.04.2022 passed by the Hon'ble Single Judge, in as much as the bank did not adjudicate the case properly and have deliberately not pointed out the proper facts before the Hon'ble Single Bench and as such the illegal act of appointment have been given approval by the majority “Board of Directors” in complete violation of the principles of law did laid down by the Supreme Court of India and as such the appointment is based on nepotism and favoritism.”

20. Learned Senior Advocate submitted that in corporate democracy, majority decision must prevail. The applicant's request to prefer appeal against the learned Single Judge's order was considered by the Board of Directors of the bank at its meeting dated March 22, 2022, and the majority decided not to prefer appeal and abide by the decision of the learned Single

Judge. The General Manager of the bank disagreed with the decision of the Board and apart from opining in favour of preferring appeal before the Division Bench, requested the house to record his views and to refer the matter to the Registrar of Co-operative Societies, Co-operation Directorate, Government of West Bengal.

21. The matter was accordingly referred to the Registrar of Cooperative Societies. By an order dated July 26, 2022, the Registrar of Cooperative Societies held that the note of dissent of the General Manager of the bank on the issue of complying with the Learned Single Judge's order rather than challenging the same by way of appeal, is not tenable. Learned Senior Counsel submitted that the General Manager has suppressed the aforesaid order of the Registrar of Cooperative Societies in his affidavit.

22. Mr. Bhattacharya submitted that the applicant herein had no option but to accept the majority decision not to appeal against the learned Single Judge's order and comply with the same. In a collateral proceeding he cannot challenge the majority resolution.

23. Mr. Bhattacharya referred to Black's Law Dictionary, 5th Edition, and submitted that the applicant was in no manner injured or prejudiced by the learned Single Judge's order. He was not a candidate for the post in question. He could not be legitimately aggrieved by appointment of the writ petitioner in that post.

24. Learned Senior Counsel then referred to a decision of the Hon'ble Supreme Court in the case of ***Shobha Suresh Jumani v. Appellate Tribunal, Forfeited property & Anr., reported at AIR 2001 SC 2288*** in

support of his contention that the applicant is not a 'person aggrieved'. In particular, paragraphs 5 and 9 of the reported Judgment were relied upon. I will advert to this decision later in this judgment, if necessary.

25. On this point, Mr. Bhattacharya also referred to the decision of the Hon'ble Supreme Court in the case of ***Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & Ors., reported at AIR 1976 SC 578*** and in particular placed reliance on paragraph 12, 27, 36 and 37 of the reported Judgment which read as follows:-

"12. According to most English decisions in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person", and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question: Who is an "aggrieved person"? And what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the

petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression, "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction.

27. In *Bar Council of Maharashtra v. M. V. Dabholkar* (1975) 2 SCC 703=(AIR 1975 SC 2092), 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:

"The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for

the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background 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 or financial interests.

36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody of meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of *Pro Bono Publico*, though they have no interest of the public or even of their own to protect. They indulge in the past-time of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the

wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

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

26. Referring to the decision of the Hon'ble Supreme Court in the case of ***Daman Singh & Ors. v. State of Punjab & Ors., reported in AIR 1985 SC 973***, Mr. Bhattacharya submitted that once a person becomes a member of a Cooperative Society, he loses his individuality qua the Society and, he has no independent rights except those given to him by the statute and the bye-laws. He must act and speak through the Society. The Society alone can act and speak for him *qua* rights or duties of the Society as a body. He submitted that the applicant has no independent right to assail the order of the learned Single Judge. He must abide by the decision of the Cooperative Bank taken by its Board of Directors.

27. As regards the selection process, Mr. Bhattacharyya submitted that the applicant was the Chairman of the Board of Directors from April, 24, 2014, till November 15, 2021. He initiated the selection process. The final list was to be valid up to “next one year”. The Board of Directors at the meeting held on August 26, 2020, approved the final merit list placed by the Selection Committee. The appointment of the respondent no. 1/ writ petitioner was during the validity period of the panel.

28. In this connection learned Senior Counsel relied on the following decisions:-

(i) ***State of Jammu & Kashmir & Ors. v. Sat Pal, reported at (2013) 11 SCC 737.***

(ii) ***R.S. Mittal v. Union of India, reported at (1995) Supp (2) SCC 230.***

iii) ***K. Thulaseedharan v. Kerala State Public Service Commission Trivandrum & Ors. reported at (2007) 6 SCC 190.***

I will come back to these decisions later, if necessary.

29. On the issue of delay in presenting the appeal, Mr. Bhattacharya submitted that even the delay of 79 days has not been sufficiently explained. The applicant previously was a member of the Parliament. Now, he is a member of the Legislative Assembly of West Bengal. He is supposed to know the law. There cannot be mechanical condonation of delay in filing an appeal. In this connection Mr. Bhattacharya relied on the decision of the Hon'ble Supreme Court in ***Amalendu Kumar Bera & Ors. v. State of West Bengal, reported at (2013) 4SCC 52.***

30. Appearing for the General Manager of the bank, Mr. D.K. Sengupta, learned Advocate, adopted the submission made on behalf of the applicant.

31. Appearing for the respondent no. 7 i.e. the Chairman of the bank, Mr. Surajit Samanta, learned Advocate, made submission in the same lines as that of Mr. Bhattacharya, learned Senior Advocate representing the respondent no. 1/writ petitioner. Mr. Samanta also questioned the locus standi of the applicant to maintain the proposed appeal. He submitted that the Administrative sub-committee of the Bank, at its meeting dated January 9, 2019, took the following resolution:-

“As the concerned section raised the matter whether the waiting list will be valid for another period or not. The House unanimously decided that the final list, in accordance with the direct recruitment vide Notification No. PD/1153 dated 26/11/2018 will be valid up to next one (01) year and any post if vacant in due time, will be filled up from the waiting list of the panel.”

32. The aforesaid resolution was ratified by the Board of Directors of the Bank at its meeting dated February 2, 2019.

33. Referring to the relevant extract of the proceedings of the BOD meeting dated August 25, 2021, learned Counsel submitted that the Board accepted the resignation letter of Shantanu Bar and the Board requested the General Manager to look into the matter as to whether a candidate from the panel may be allowed to join in the post that fell vacant by reason of Santanu Bar's resignation. The minutes of the said meeting was signed by the applicant as Chairman of the Board.

34. Mr. Samanta then drew our attention to the application dated August 27, 2021, made by the respondent no. 1/ writ petitioner for being appointed in the post that fell vacant by reason of resignation of Shantanu Bar in view of the fact that he was the first candidate in the waiting list.

35. In reply, Mr. Kar, learned Senior Advocate representing the applicant submitted that the applicant was a member of the Board of Directors at the relevant point of time. The matter concerns public employment. There was departure from the law laid down by the Supreme Court in relation to recruitment in public service. This resulted in back door entry. Majority of the board are wrong doers. They purported to overrule the applicant's suggestion to prefer appeal against the judgment and order of the learned Single Judge. Strict rules of locus standi will not apply in such a situation.

36. On merits, Mr. Kar submitted that a Board resolution whereby an illegality is sought to be perpetrated, can always be challenged. Referring to agenda no. 1/(g) of the proceedings of the BOD meeting dated August 25, 2021, Mr. Kar submitted that if there indeed was a waiting list or a valid panel at the time of resignation of Shantanu Bar, then, the Board should have straight away given appointment to the respondent no. 1/ writ petitioner. However, the Board itself was in doubt and therefore requested the General Manager to look into the matter as to whether or not a new candidate from the panel may be allowed to join in the place of Shantanu Bar.

Court's View

37. The principle of locus standi has no doubt undergone relaxation but has not suffered obliteration. The principle basically means that a person must be sufficiently interested in a matter or must be aggrieved in a real sense by a decision before he can carry the same to Court by way of a legal proceeding. In other words, he must have sufficient standing to maintain a legal action. This principle was developed in common law to keep away meddlesome interlopers from Court. The two most popular tests applied for deciding whether or not a litigant has locus standi to maintain a particular lis are the tests of “person aggrieved” and “sufficiency of interest”. Let me hasten to add that I make these observations in the context of a private interest litigation like the present one and not what has come to be known as public interest litigation, in which the concept of locus standi has suffered erosion almost to a vanishing point.

38. Speaking on “STANDING IN JUDICIAL REVIEW ACTIONS”, the celebrated jurist, Paul Craig, in his book Administrative Law, 9th Edition says as follows:-

“To describe the common law as unnecessarily confused would be to pay it a compliment. While the general trend was towards liberalisation of standing, particularly in the context of the prerogative orders, the stricter test for injunctions and declarations remained. There were, moreover, differing tests even within the prerogative remedies.

The Law Commission disapproved of the restrictive formulations of the legal right test, and of the different requirements that governed each remedy. It recommended that any person adversely affected by a decision should have locus standi. In its subsequent report the Law Commission adopted the general flexible approach favoured by the earlier Working Paper and proposed that a person should have standing when there was a sufficient interest in the matter to which the application relates. This was felt to represent the existing position with regard to the prerogative orders. The law relating to declarations and injunctions was to be liberalised by the application of the sufficiency of interest test.

The test proposed by the Law Commission was adopted in Ord.53r.3(7). This has now been incorporated in what was previously the Supreme Court Act 1981, now renamed the Senior Courts Act 1981 (the 1981 Act) s.31(3), which states:

“No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of Court; and the Court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.”.

39. In De Smith's Judicial Review, 8th Edition, in chapter 2 it is stated as follows:-

“All developed legal systems have had to face the problem of resolving the conflict between two aspects of the public interest: the desirability of encouraging people to participate actively in the enforcement of the law, and the undesirability of encouraging meddlesome interlopers invoking the jurisdiction of the Courts in matters in which they are not concerned. The conflict may be resolved by developing principles which determine who is entitled to bring proceedings; that is who has locus standi or standing to make a claim. If those principles are satisfactory they should only prevent a would be litigant who has no legitimate reason for bringing proceedings from doing so.”

40. In Black’s Law Dictionary, 5th Edition, an “aggrieved party” has been defined as “One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly 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 or property right, or the imposition upon a party of a burden or obligation”.

41. If the decision which a person wishes to challenge interferes directly with his personal or public rights or has adverse financial or other civil consequences for him, then that will be an obvious case in which he will have standing to challenge the decision. The decision becomes more difficult when no personal right of a litigant is injured. In the case of ***M.S. Jayaraj v. Commissioner of Excise, Kerala & Ors., reported at (2000) 7 SCC 552*** the Hon’ble Supreme Court observed that the strict approach to *locus standi*

adopted in the cases of ***Nagar Rice & Flour Mills and ors. vs. N. Teekappa Gowda & Bros. and ors.*** [1970(1) SCC 575] and ***Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & ors.***, [1976(1) SCC 671], has changed and a much wider canvass has been adopted in later years regarding a person's entitlement to move the High Court involving writ jurisdiction. The Supreme Court recounted that in, ***Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & ors.***, (Surpa), a four Judge Bench pointed out three categories of persons vis-a-vis locus standi: (1) a person aggrieved; (2) a stranger; and (3) a busy body or a meddlesome interloper. The learned Judges had pointed out that anyone belonging to the third category is easily distinguishable. Such a person masquerades to be a crusader of justice and seeks to intermeddle with things which do not concern him. The Supreme Court then went on to observe in ***Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & ors.***, (*supra*) as follows;-

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

the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be persons aggrieved.”

42. In the case of ***Shobha Suresh Jumani v. Appellate Tribunal, Forfeited property & Anr.***, (supra) at paragraphs 5 and 9 of the reported judgment the Supreme Court explained the concept of *locus standi* in the follows words:-

“5.First we would reiterate that the words any aggrieved person are found in several statutes. However, the meaning of the expression “aggrieved” may vary according to the context of the enactment in which it appears and all the circumstances. In *Sidebotham, Re, ex P Sidebotham* [(1880) 14 Ch D 458, at page 465]], it was observed by James, L.J.:

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

9. From the aforesaid scheme of the Act, ‘any person aggrieved’ by an order of the competent authority would

mean person whose property is held to be illegally acquired under the Act and which is to be forfeited or whose legal rights qua the said property are adversely affected. According to Black's Law Dictionary, 'aggrieved party' refers to a party whose personal, pecuniary or property rights have been adversely affected by another person's actions or by a Court's decree or judgment - Also termed party aggrieved; person aggrieved." Therefore, a relative or associate, who has no interest or right in such property cannot be held to be a person aggrieved. It is true that wife may be aggrieved because her husband's properties are forfeited. But that would not confer a right to file an appeal against such order. There is no infringement of her legal right. For the purposes of the Act husband and wife are different entities. If the properties standing in the name of relative or associate are forfeited on the ground that smugglers or foreign exchange manipulators were holding the said properties in their names or that such properties are legally acquired, then to that extent, for challenging the said finding, the relative or associate can be held to be person aggrieved by the order of the competent authority. But, a relative or associate cannot be considered to be aggrieved if the properties belonging to

the smuggler of Foreign Exchange manipulator are forfeited under the Act.”

43. In ***Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & ors., (supra)*** it was observed by the Hon’ble Supreme Court that according to most English decisions in order to have the *locus standi* to invoke certiorari jurisdiction, the petitioner should be an “aggrieved person”; if he does not fulfill that character and is a “stranger”, the Court will, in its discretion, deny him this extra ordinary remedy, save in very special circumstances. The Apex Court went on to say that 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.

44. Keeping in mind the above legal position, if we look to the facts of the instant case, we will see that a selection process was conducted for recruitment to, inter alia, Grade III posts of the concerned Cooperative Bank. Five successful candidates from the panel prepared were appointed in the schedule caste category. One of those appointees resigned. The Respondent No. 1/writ petitioner claimed that he should be appointed in the post that fell vacant since he was the 6th person named in the panel. Since such

appointment was not made, he approached the learned Single Judge who directed, by the order sought to be impugned, that the writ petitioner be appointed in the vacant post.

45. Whether or not an appeal should be preferred against the order of the learned Single Judge was dilated upon by the Board of Directors of the bank. By a majority, the Board decided not to prefer appeal and comply with the learned Single Judge's order. We further see that the General Manager of the Bank, who is supporting the applicant herein, disagreed with the majority decision of the Board of Directors. He requested the house to record his dissent and to refer the matter to the Registrar of the Cooperative Societies, Cooperation Directorate, Government of West Bengal. Upon such reference being made, the Registrar of Cooperative Societies, by an order dated July 26, 2022, held that the General Manager's note of dissent is not tenable.

46. We do not see what prejudice the applicant has suffered by reason of the order of the learned Single Judge. No legal right of the applicant has been infringed. He has not suffered any personal loss. He has not been affected adversely in any manner. Further, we agree with the submission of learned Counsel for the respondent/writ petitioner that the Board of Directors of the concerned Cooperative Bank must function in accordance with democratic principles. Majority decision would be binding on all the members of the Board. The majority having decided not to challenge the learned Judge's order before the appellate Court, in our opinion, the applicant, who was a member of the Board, is bound by such decision. He

has no independent right to assail the order of the learned Single Judge. The bank operating through its Board of Directors, having decided to comply with the learned Single Judge's order, in our considered view, the applicant has no right or locus standi to maintain an appeal against the order of the learned Single Judge.

47. The argument advanced on behalf of the applicant that the appointment of the respondent no. 1/writ petitioner is contrary to law and therefore the applicant, who was a member of the bank's Board of Directors, is entitled to challenge such illegal appointment, is not acceptable to us. This is not a public interest litigation. It may or may not be possible for the applicant to maintain a public interest litigation if he is in a position to demonstrate that the appointment of the respondent no. 1 is so patently illegal that the society at large or a significant section thereof has suffered prejudice. However, in a private litigation like the present one, the applicant, who was not a party to the writ petition before the learned Single Judge, cannot be permitted to masquerade as a public spirited citizen and seek leave to challenge an order of the learned Single Judge which does not abridge or in any manner jeopardize any right of the applicant that the law of the land recognizes. The applicant was definitely not a candidate for the post in question and he can have no legitimate reason to be aggrieved by the order of the learned Single Judge.

48. For the reasons aforestated we are not inclined to allow this application for leave to appeal against the order of the learned Single Judge. The applicant neither has the *locus standi* nor any right in law to challenge

the order of the learned Single Judge. The application is accordingly dismissed. Consequently, the proposed appeal is not admitted and is dismissed along with the connected stay application/application for appropriate orders and the application for condonation of delay.

49. Although we have recorded the submission made by the learned Advocates for the parties on the legality or otherwise of appointment of the respondent no. 1/writ petitioner in the concerned post, we have consciously not expressed any opinion on such point, since we have refused to admit the appeal on the ground that the same is not maintainable at the instance of the intending appellant.

50. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)