

(2007) 06 AP CK 0062

In the Andhra Pradesh High Court

Case No : WA No's. 1805 of 2005 and 270 of 2007 and WP No. 24953 of 2005

M. Vanaja

APPELLANT

Vs

B. Balaseshanna and Others

RESPONDENT

Date of Decision : 14-06-2007

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 24, 3
Advocates Act, 1961 — Section 37, 38
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 128, 128A, 129(1), 129A(1), 129A(2)
Essential Commodities Act, 1955 — Section 3
Representation of the People Act, 1951 — Section 109, 110, 111, 112, 113

Citation : (2007) 4 ALD 388 : (2008) 1 ALT 520

Hon'ble Judges : G.S. Singhvi, C.J.;G.V. Seethapathy, J;G. Bhavani Prasad, J

Bench : Full Bench

Advocate : J. Janakirami Reddy, for E. Ayyapu Reddy, in WA No. 1805 of 2005, I. Koti Reddy, in WA No. 270 of 2007 and T. Niranjana Reddy, in WP No. 24953 of 2005, for the Appellant; J. Janakirami Reddy, for E. Ayyapu Reddy, in WP No. 24953 of 2005, V. Venkatarami Reddy, in WA No. 1805 of 2005, Government Pleader for Civil Supplies for Respondent Nos. 2 to 5 in WA No. 1805 of 2005, for Respondent Nos. 1 to 4 in WA No. 270 of 2007 and for Respondent Nos. 1 to 3 in WP No. 24953 of 2005, for the Respondent

Judgement

G.S. Singhvi, C.J.—Whether a temporary fair price shop dealer falls within the ambit and scope of the expression "any aggrieved person" used in Clauses 20 and 21 of the Andhra Pradesh State Public Distribution System Control Order, 2001 (for short, "the Control Order") is the question, which has been referred by the Division Bench to the Larger Bench in view of apparently conflicting opinions expressed by the two Division Benches in B. Maheswaramma Vs. Smt. M. Ramasubbamma and Others, and judgment dated 19-3-1997 rendered in Writ Appeal No. I 146 of 1995.

2. For deciding the aforementioned question, it will be useful to notice the background facts.

Writ Appeal No. 1805 of 2005

M. Vanaja v. B. Balaseshanna and Ors.

3. Respondent No. 1-5. Balaseshanna was appointed as fair price shop dealer of U. Bollavaram Village, Mahanandi Mandal, Kurnool District prior to 1975. On 10-8-2001, his authorisation was suspended by Revenue Divisional Officer, Nandyal (respondent No. 4) on the allegations that he was absent at the time of inspection on 1-8-2001, that he sold 30 quintals of Rice in black market, that he contravened the conditions of authorisation and that he did not take release order for essential commodities. After six months, the appellant was appointed as temporary fair price shop dealer vide proceedings dated 7-2-2002. Respondent No. 1 challenged his suspension by filing an appeal under Clause 20 of the Control Order, which was disposed of by Joint Collector, Kurnool (respondent No. 3) vide his order dated 9-12-2004. Respondent No. 3, restored the authorisation of respondent No. 1 after imposing fine of Rs. 800/- and forfeiting the security deposit. The appellant challenged that order by filing revision under Clause 21 of the Control Order. She also filed an application for stay. By an order dated 22-1-2005, respondent No. 2 suspended the operation of order dated 9-12-2004.

4. Respondent No. 1 challenged that order in Writ Petition No. 1463 of 2005. He pleaded that respondent No. 2 did not have the jurisdiction to entertain the revision filed by the appellant because she cannot be treated as a person aggrieved by the order passed by respondent No. 3 under Clause 20 of the Control Order. The learned Single Judge allowed the writ petition and declared that the District Collector did not have the jurisdiction to entertain revision filed by non-petitioner No. 4 (the appellant herein) under Clause 21 of the Control Order. The learned Single Judge referred to Clauses 20 and 21 of the Control Order and held:

The above clause is in pari materia with clause 18 of 1973 Control Order. Said clause enables any person aggrieved by any order under clause 20(1)(i) to prefer a revision to the District Collector within thirty days. Clause 21(1) gives right of appeal to any person who is aggrieved by any order under clause 5. Fourth respondent is not a person who can be said to be aggrieved by order passed by Joint Collector. When she cannot be said to be aggrieved person, qua order passed by Revenue Divisional Officer, she has no locus standi. Indeed, this question is no more res Integra....

5. The appellant challenged the aforementioned order by contending that the view expressed by the learned Single Judge on her locus to file revision under Clause 21 is erroneous. During the course of hearing the writ appeal, the Division Bench felt that the issue of locus of the temporary fair price shop dealer to file revision under Clause 21 of the Control Order deserves to be considered by the Larger Bench and this is how the matter has been placed before the Full Bench.

WA No. 270 of 2007

Boda Venkateshzvarlu v. District Collector, Prakasam and Ors.

6. The appellant was appointed as fair price shop dealer for Chapalamadugu Village, Pullalacheruvu Mandal, Prakasam District in 2002. On 1-1-2005, he applied for six months' leave on the ground of ill-health. By an order dated 11-1-2005, Revenue Divisional Officer, Kandukur (respondent No. 3) granted leave to the appellant and, at the same time, appointed respondent No. 5 - G. Nageshwar Rao as temporary fair price shop dealer. After five months and twenty days, the appellant submitted joining report, but the same was not accepted by respondent No. 3. Subsequently, respondent No. 3 passed order dated 7-12-2005 and cancelled the appellant's authorisation as fair price shop dealer. The appeal preferred against that order was allowed by Joint Collector, Prakasam vide his order dated 22-7-2006, but that order was set aside by Collector, Prakasam District, Ongole (respondent No. 1) by entertaining the revision filed by respondent No. 5.

7. The appellant challenged the order of respondent No. 1 in Writ Petition No. 5426 of 2007 by contending that respondent No. 5 did not have the locus to file revision against the order passed by the Joint Collector under Clause 20 of the Control Order. The learned Single Judge did not decide the issue of locus standi of respondent No. 5, but dismissed the writ petition by recording the following observations:

Even without going into the issue whether the 5th respondent has locus standi to maintain a revision before the 1st respondent, it requires to be considered that the Control order does incorporate any provision for application for grant of leave by a permanent authorisee of a Fair Price Shop. Authorisation of a Fair Price Shop is not in the nature of public employment which has the several perquisites appended to public employment, like, casual or earned leave, medical leave and the like. Merely because the petitioner had submitted an application and had also gratuitously suggested that the 3rd respondent was at liberty to appoint any other person during the period he was not running the shop, it was not open to the 3rd respondent to have exercised an authority which was not available under the Control order and grant leave. Leaving the shop unattended in the absence of any provision for grant of leave for six long months is an eventuality which calls for treatment of the authorisation as surrendered or abandoned and for a permanent arrangement to be made or to treat it as a vacancy for an initial temporary authorisation and thereafter regular notification for grant of a permanent authorisation. But to keep the shop reserved for the petitioner's convenience to return after a sabbatical appears inconsistent with the scheme of grant of authorisations, under the provisions of the Control order. On this analysis the ultimate decision of the 1st respondent to declare that a vacancy is deemed to have arisen in respect of the shop in question and directing the 3rd respondent to issue a notification calling for applications for grant of authorisation, suffers from no substantive error warranting interference in exercise of the discretionary jurisdiction of mandamus under Article 226 of the

Constitution. This Court discerns no revisable error warranting interference.

8. In the writ appeal, the appellant has reiterated his challenge to the locus standi of respondent No. 5 by contending that he does not fall within the ambit of the term "aggrieved person".

WP No. 24953 of 2005

Smt. A. Nagalakshamma v. Joint Collector, Kurnool and Ors.

9. Petitioner, Smt. A. Nagalakshamma, was appointed as fair price shop dealer of Gajulapalli Village, Mahanandi Mandal, Kurnool District in 1995. By an order dated 6.8.2005, her authorisation was suspended on the allegation that she had committed several irregularities including non-supply of Rice to "AAY" card holders and supplied less kerosene oil and charged higher price. Simultaneously, respondent No. 4 was appointed as temporary fair price shop dealer. At the conclusion of enquiry, respondent No. 2 passed order 5-11-2005, whereby he imposed fine of Rs. 500/- on the petitioner and directed that she be allowed to continue as fair price shop dealer. Respondent No. 4 challenged that order by filing an appeal under Clause 20 of the Control Order. Joint Collector, Kurnool (respondent No. 1) entertained the appeal and passed an order dated 8-11-2005, whereby he stayed the implementation of order dated 5-11-2005 passed by respondent No. 2. The petitioner has questioned that order mainly on the ground that respondent No. 4 does not have the locus to file appeal and the Joint Collector committed a jurisdictional error by entertaining the same.

10. At this stage, we may notice the relevant provisions of the Control Order. The same read as under:

(2) Definitions:

(6) "Authorised Fair Price Shop" means a retail dealer appointed or authorised or approved by or on behalf of the State Government and includes a shop set up by the State Government or a State Government Undertaking or a Corporation wholly owned by the State Government or a Co-operative Society for the benefit of Scheduled Castes or Scheduled Tribes under a Government Scheme under Clause (5) for sale of all or any of the scheduled commodities.

(5) Issue of authorisation to fair price shops and establishments:

(1) With a view to controlling and ensuring proper distribution of scheduled commodities owned by the State Government, the appointing authority may issue authorisations to fair price shops owned by the State Government or any State Government Undertaking or any public institution or persons including women or Development of Women and Children in Rural Areas group (DWCRA) or registered women voluntary organisations or thrift groups like Podupu Lakshmi or Co-operative Societies which are run exclusively by women (which have only women as members) either wholly or partly, subject to such preferences and reservations as may be prescribed by Government from time to

time in this regard to obtain and supply scheduled commodities in accordance with the provisions of this order.

Provided that the said authorisation shall cease to be valid when the Government undertake running of the authorised fair price shop either by themselves or through a Government Undertaking or a Corporation wholly owned by the Government or a Cooperative Society for the benefit of Scheduled Castes or Scheduled Tribes under a Government Scheme.

Provided further that the State Government may, in the public interest, replace all or any of the fair price shop dealers and entrust the distribution through a shop set up by the State Government, a State Government Undertaking or a Corporation wholly owned by the State Government or a Co-operative Society for the benefit of Scheduled Castes or Scheduled Tribes under a Government Scheme.

Provided also that any person dealing in the same commodities obtained otherwise than through Government for supply through Public Distribution System either in his own name or in the name of any member of his family shall not be issued authorisation to run the fair price shop and the Government, in cases where the fair price shop dealer has also got a licence in his own name or in the name of any of his family member to deal with the same commodities, obtained otherwise than through the Government for sale to consumers through Public Distribution System, cancel the authorisation.

Provided also that every fair price shop dealer should give an undertaking to the appointing authority concerned that he or she would relinquish the dealership if he or she is elected to any public office.

(2) Every authorised fair price shop dealer or co-operative society, as the case may be, shall deposit with the State Government or the appointing authority or any person authorised in this behalf "a sum of Rs. 4,000/- (Rupees four thousand only) in the case of urban areas and a sum of Rs. 3,000/- (Rupees three thousand only) in the case of rural areas" as refundable trade deposit in the shape of security deposit for the due performance of the conditions of the authorisation and the sum so deposited or any part thereof may, without prejudice to any other penalty, after enquiry, and after giving a reasonable opportunity to the person to whom the authorisation is issued, of stating his case and also of being heard, and for reasons to be recorded in writing, be forfeited, by the State Government or the appointing authority for contravention of any of the provisions of this order or any conditions of the authorisation issued thereunder. If, as a result of any departmental action, the sum deposited or any part thereof is forfeited, the authorised fair price shop shall forthwith pay to the Government such amount as may be required to make up the prescribed sum to be deposited as security.

Provided that where a dealer of a fair price shop is exempted from payment of the security deposit under the above clause, the Government or the appointing

authority may, in case of contravention of any of the conditions prescribed in the authorisation, after enquiry and for reasons to be recorded in writing besides cancelling the said authorisation impose penalty of a sum not exceeding the security deposit prescribed for authorised fair price shop in general.

Provided further that nothing in this clause shall apply to a shop run by the Government or a Government Undertaking or a Corporation wholly owned by Government under a Government scheme.

(4) The appointing authority may, at any time, whether at the request of the authorised fair price shop or authorised establishment or suo motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorisation issued or deemed to be issued to him under this clause.

Notwithstanding anything contained in Sub-clauses (3) and (4) above, where a fair price shop dealer has been convicted by a Court of law in respect of contravention of any order made u/s 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) relating to any of the commodities mentioned in the schedule to this order, the appointing authority, shall, by order in writing, cancel his authorisation.

Provided that such conviction is set aside in any appeal or revision, the appointing authority may, on application in Form-I made by the person whose authorisation has been cancelled, re-issue the authorisation to such person.

(5) (i) Any application for issue or renewal of authorisation shall be made in Form-I to this order and every authorisation issued, reissued or renewed under this order shall be in the Form of Authorisation prescribed in Form-II of this Order.

(ii) Every application, for renewal shall be made along with the authorisation, before expiry of the period of authorisation.

(iii) The authorisation may be renewed if the application for renewal is received within one month after the expiry of the period of its validity subject to payment of fee prescribed therefore. However, if an application for renewal of authorisation is not made within one month, after the expiry of its validity, the authorisation shall cease to be valid and the entire security deposit made under Sub-clause (2) of Clause (3) shall be forfeited.

(iv) The authorisation is not transferable.

Provided that the validity of the authorisation shall not be deemed to have expired if an application for its renewal as required under this sub-clause is pending before the appointing authority as the case may be.

(5-A) Suo-motu Review:

The Chief Rationing Officer in respect of Hyderabad City or the District Collector/ Joint Collector elsewhere may either suo motu or on application may call for,

examine the records under Clause (5) of this order relating to any order passed under Sub-clause (2) or (4) for the purpose of satisfying himself as to the legality or propriety or adequacy of the punishment imposed and for reasons to be recorded in writing, add to, amend, revise or annul the orders passed by the appointing authority. Before passing final orders under this clause, the Chief Rationing Officer, in respect of the twin cities of Hyderabad and Secunderabad, District Collector/Joint Collector elsewhere shall give the fair price shop dealer concerned an opportunity of making his representation and pass such order thereon as it may deem fit.

(20) Appeal:

1. Any person aggrieved by any order passed by the appointing authority under Clause (5) may, within thirty days from the date of receipt by him/her of such order, appeal against such order, where it is passed by:

(i) The Revenue Divisional Officer or the Sub-Collectors or the District Supply Officer (city) having jurisdiction over the area in respect of the Visakhapatnam city to the Joint Collector in the District.

(ii) The Chief Rationing Officer in Hyderabad District.

In disposing of any appeal under this clause, the appellate authority may, after giving the party an opportunity of making his representation, pass such order thereon as that authority may deem fit.

2. Pending disposal of an appeal, the appellate authority may direct that the order appealed against shall not take effect until the appeal is disposed of.

(21) Revision:

(i) Any person aggrieved by an order under Clause 20(1)(i) may, within thirty days from the date of communication to him/her of such an order, prefer a revision to the Commissioner of Civil Supplies, Andhra Pradesh, Hyderabad:

Provided that no order shall be passed under this clause unless the aggrieved person has been given a reasonable opportunity of representing his/her case.

(iii) Pending disposal of the revision, the District Collector in the districts and the Commissioner of Civil Supplies in respect of Hyderabad district, may direct that the order under revision shall not have effect until the revision is disposed of.

11. A reading of Clause 2 (6) together with Clause 5 and Forms-I and II appended to the Control Order makes it clear that an "authorised fair price shop dealer" means "a retail dealer appointed or authorised or approved by or on behalf of the State Government". This term also includes a shop set up by the State Government or a State Government Undertaking or a Corporation wholly owned by the State Government or a co-operative society for the benefit of Scheduled Castes or Scheduled Tribes under a Government scheme. A person who desires to be appointed as fair price shop dealer has to submit application in

Form-I. After scrutiny of the application, the competent authority can appoint him/her as fair price shop dealer by issuing authorisation in Form-II. Clause 5(1) postulates reservation of fair price shops for women or registered women voluntary organisations or thrift groups like Podupu Lakshmi or co-operative societies run exclusively by women. It also contains restriction on appointment of fair price shop dealers in certain contingencies. In terms of Clause 5(2), every authorised fair price shop dealer or co-operative society is required to deposit with the State Government or the appointing authority or any person authorised in that behalf a sum of Rs. 4,000/- in case of urban areas and a sum of Rs. 3,000/- in case of rural areas. This amount is refundable, but the Government or the appointing authority can forfeit the same if the dealer is found to have contravened the provisions of the Control Order or any condition of the authorisation. Clause 5(4) provides for amendment, variation, suspension or cancellation of the authorisation. This power can be exercised by the appointing authority after making appropriate enquiry. If the authorised fair price shop dealer is convicted by a Court of law for contravention of any order made u/s 3 of the Essential Commodities Act, then the appointing authority is duty-bound to cancel his authorisation.

12. Before proceeding further, we consider it necessary to observe that Clause 2(6) and various sub-clauses of Clause 5 do not make any distinction between a permanent and a temporary fair price shop dealer. The form of the application prescribed for appointment as fair price shop dealer also does not make any distinction between a permanent and a temporary fair price shop dealer and in either case, the applicant has to deposit the amount specified in Clause 5(2). The conditions of authorisation incorporated in Form-II are applicable to permanent as well as temporary fair price shop dealers.

13. Clause 20, which provides for appeal, lays down that "any person aggrieved" by an order passed by the appointing authority under Clause 5, may file appeal against such order within 30 days. In terms of Clause 20(2), the appellate authority can stay the implementation of the order appealed against. Clause 21, which provides for revision, lays down that "any person aggrieved" by an order passed under Clause 20(1)(i) or (ii), may prefer a revision within 30 days from the date of communication to him/her of such an order. Clause 21(3) empowers the District Collector and the Commissioner of Civil Supplies, as the case may be, to stay the implementation of the order under revision. The language used in these two clauses is substantially similar. The only distinction between the two clauses is that while an appeal can be filed within 30 days from the date of receipt of the order sought to be appealed against, a revision can be filed within 30 days from the date of communication of the order sought to be revised. However, this distinction does not have any bearing on the adjudication of the question referred to the Larger Bench.

14. The expression "any person aggrieved" appearing in Clauses 20 and 21 has not been defined either under the Essential Commodities Act, 1955 (for short,

"the Act") or the Control Order. Therefore, it will be useful to notice the views of some jurists as also some judicial precedents in which that expression or similar expressions have been interpreted.

Professor S.A. de Smith has observed:

All developed legal systems have had to face the problem of adjusting conflicts between two aspects of the public interest - the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper to invoke the jurisdiction of the Courts in matters that do not concern him (Quoted in *Standing and Justiciability* by V.S. Deshpande - *Journal of the Indian Law Institute* - April-June, .

Professor H. W.R. Wade has observed:

In other words, certiorari is not confined by a narrow conception of locus standi. It contains an element of the actio popularis. This is because it looks beyond the personal rights of the applicant; it is designed to keep the machinery of justice in proper working order by preventing inferior tribunals and public authorities from abusing their powers (*Standing and Justiciability* - *ibid.*, p. 775).

15. American jurisprudence has recognised, for instance, the expanding importance of consumer protection in the economic system and permitted consumer organisations to initiate or intervene in actions, although by the narrow rule of "locus standi", such a course could not have been justified {see p.807 - *New York University Law Review*, Vol. 46, 1971). In fact, citizen organisations have recently been campaigning for using legal actions for protection of community interest, broadening, the scope of "standing" in legal proceedings (see p. 403 - *Boston University Law Review*, Vol. 51, 1971). In the well-known case of *Attorney-General of the Gambia v. Pierra Sarr N."jie* (1962) 369 US 186, Lord Denning observed about the Attorney-General's standing thus:

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

16. In *Sidebotham, Re, ex p Sidebotham* (1880) 14 Ch D 458, James, L.J., gave the following meaning to the words "person aggrieved":

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.

17. In *Md. Sharfuddin Vs. R.P. Singh and Others*, , a three Judges Bench of the Supreme Court interpreted the expression "any person aggrieved" used in Section 24 of the Administration of Evacuee Property Act, 1950 and held that the same does not include custodian so as to enable him to prefer appeal against the order of a custodian releasing properties u/s 7 of the Act. While repelling the argument that a custodian other than the custodian who made the order releasing the properties can file appeal, the Supreme Court observed:

In our view, this argument is not consistent with the scheme of the Act. Though for the purpose of convenience of management or judicial determination of disputes the Act provides different categories of Custodians, all of them fall within the definition of "Custodian" in the Act. The Act further provides a hierarchy of tribunals under the superintendence and control of the Custodian-General. It would be anomalous were it to be held that a Custodian could prefer an appeal against the order of a Custodian. The Act does not contemplate one officer preferring appeals against the orders of another officer. If an Assistant Custodian or a Custodian went wrong in the matter of declaring a property to be an evacuee property the Act provides that the Custodian or the Custodian-General, as the case may be before 1956, and the Custodian-General thereafter, may set right the wrong. In the premises the words "any person aggrieved" in Section 24 of the Act can only mean a person whose properties have been declared to be evacuee properties by the Custodian, or a person who moved the Custodian to get the properties so declared or any other such aggrieved person. The words "any person aggrieved" in the context of the Act cannot include any Custodian as defined in the Act.

18. In *Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others*, , the Constitution Bench of the Supreme Court interpreted the expression "any person aggrieved" used in Section 354-RA(2) of the Bombay Municipal Corporation Act, 1888 in the backdrop of the objection raised by the appellant to the maintainability of the suit filed by the tenants against proposed demolition of the building occupied by them. The suit was dismissed by the trial Court with an observation that the same is not maintainable. The first appeal filed by the tenants was summarily dismissed by the learned Single Judge of the Bombay High Court. On further appeal, the Division Bench granted leave to the plaintiffs (tenants) to amend the plaint and remitted the case to the trial Court for recording additional evidence. While reversing the judgment of the Division Bench, the Supreme Court held that the tenants have the right to file objections u/s 354-RA(4) and also to file appeal under Clause (2) of Schedule-GG. Paragraphs 19 and 20 of that judgment, which contained discussion on this subject, read as under:

19. Sub-section (1) of Section 354R provides that if it shall appear to the

Commissioner, among other things, (a) that residential buildings in any area are by reason of disrepair unfit for human habitation or for like reason dangerous or injurious to the health of the inhabitants of the area and (b) that the conditions in the area can be effectually remedied by the demolition of all the buildings in the area without making an improvement scheme, the Commissioner can define the area and submit a draft clearance scheme for the approval of the Corporation. The Corporation can then pass a resolution declaring that the area as defined and approved by it to be clearance area. Sub-section (2) provides, among other things, that the Corporation should ascertain the number of persons who are likely to be dishoused in such area and thereafter take such measures as are practicable to ensure that as little hardship as possible is inflicted on those dishoused. The resolution is then required to be forwarded to the State Government.

20. Sub-section (4) provides as follows:

As soon as may be after the Corporation have declared any area to be a clearance area, the Commissioner shall, in accordance with the appropriate provisions hereafter contained in this Act, proceed to secure the clearance of the area in one or other of the following ways, or partly in one of those ways, and partly in the other of them, that is to say-

- (a) by ordering the demolition of the buildings in the area; or
- (b) by acquiring on behalf of the Corporation land comprised in the area and undertaking or otherwise securing, the demolition of the buildings thereon.

Sub-section (1) of Section 354RA requires the Corporation to submit the clearance order to the State Government for confirmation. Sub-section (4) reads thus:

Before submitting the order to the State Government, the Commissioner shall-

- (a) publish simultaneously in the Official Gazette and in three or more newspapers circulating within Greater Bombay, a notice stating the fact of such a clearance order having been made and describing the area comprised therein and naming a place where a copy of the order and of the plan referred to therein may be seen at all reasonable hours; and
- (b) serve on every person whose name appears in the Commissioner's assessment book as primarily liable for payment of property tax leviable under this Act, on any building included in the area to which the clearance order relates and, so far as it is reasonably practicable to ascertain such persons, on every mortgagee thereof, a notice stating the effect of the clearance order and that it is about to be submitted to the State Government for confirmation, and specifying the time within and the manner in which objections thereto can be made to the Commissioner.

Under Sub-section (5) objections, if any, received by the Commissioner are to be

submitted to the Improvements Committee and that Committee is entitled under Sub-section (6) to make such modifications in respect of the order as it may think fit. The matter is then to go to the Corporation and thereafter to the State Government. Sub-section (7) provides that the provisions of Schedule GG to the Act shall have effect with respect to the validity and date of operation of a clearance order. We are not concerned with the rest of the provisions of Section 354RA. Clause (1) of Schedule GG provides that as soon as the clearance order is confirmed by the State Government the Commissioner has to publish, in the same manner as a notice under Sub-section (4) of Section 354RA, a notice stating that the order has been confirmed. Clause (2) is important and we would reproduce it. It runs thus:

Any person aggrieved by such an order as aforesaid, or by the State Government's approval of a re-development plan or of a new plan may, within six weeks after the publication of notice of confirmation of the order, or of the approval of the plan, prefer an appeal to a Judge of the City Civil Court, Bombay, whose decision shall be final.

It is contended on behalf of the Corporation by Mr. Setalvad and also on behalf of the landlords by the Solicitor General that a tenant is entitled to raise an objection to the making of a clearance order not only under Clause (b) of Sub-section (4) of Section 354RA but also in his appeal under Clause (2) of Schedule GG. It is no doubt true that there is no express mention of tenants in either of these provisions but from the fact that Clause (a) of Sub-section (4) of Section 354RA requires the publication of the clearance order it would be reasonable to infer that the object of doing so is to invite objections at the instance of persons who would be affected by the order. Since tenants would be affected by it, they fall on this class. It is true that Clause (b) of that provision contemplates actual service of notice only on the persons primarily liable to pay property tax and on the mortgagees of the property but not on others and also says that the time within and the manner in which objections to the order could be made to the Commissioner should also be specified but it does not say anything regarding the tenants. But if because of this we were to hold that it would not be open to a tenant or any other person who would be affected by the order, to lodge an objection to the proposed order it would be making the publication of notice practically meaningless. Undoubtedly tenants are persons who would be affected by the Order. Sub-section (2) of Section 354R casts certain duties upon the Corporation with respect to the persons who are likely to be dishoused in consequence of the clearance order. It would, therefore, be legitimate to infer that a corresponding right was conferred upon the tenants to secure the performance of its duties towards them by the Corporation. This right would be in addition to their interest in the property itself. They must, therefore, be held to be persons who are entitled to lodge an objection to the proposed order. Mr. Shroff, however, contends that Clause (b) of Sub-section (4) of Section 354RA confines the right to lodge an objection only to the persons specified in that clause and that there is nothing in the language of Clause (a) from which a

similar right can be deduced in favour of other persons. It seems to us that in order to give full effect to the provisions of both Clauses (a) and (b) of Sub-section (4) the words "and specifying the time within and manner in which objections thereto can be made to the Commissioner" occurring at the end of Clause (b) should be read as governing not only the rest of Clause (b) but also Clause (a). We would not be re-writing the section if we did so because if the object of the Legislature was to give a right to lodge objections only to the persons specified in Clause (4)(b), Sub-section (5) would not have said that the Commissioner shall submit to the Improvements Committee the objections received under Sub-section (4), but would have said instead objections received under Clause (b) of Sub-section (4).

(underlining is ours)

19. In *Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*, , the Supreme Court interpreted the expression "a person aggrieved" appearing in Section 38 of the Advocates Act, 1961. The main judgment was delivered by A.N. Ray, CJ. His Lordship referred to some of the provisions of the Advocates Act and observed:

(1) Where a right of appeal to Courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the 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 "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests."

(2) The Bar Council is "a person aggrieved" for these reasons. First, the words "person aggrieved" in the Act are of wide import in the context of the purpose and provisions of the statute. In disciplinary proceedings before the Disciplinary Committee there is no lis and there are no parties. Therefore, the word "person" will embrace the Bar Council which represents the Bar of the State. Second, the Bar Council is "a person aggrieved" because it represents the collective conscience of the standards of professional conduct and etiquette. The Bar

Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a Disciplinary Committee is entrusted with such inquiry. Once an inquiry starts, the Bar Council has no control over its decision. The Bar Council may entrust it to another Disciplinary Committee or the Bar Council may make a report to the Bar Council of India. This indicates that the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession. Fourth, a decision of a Disciplinary Committee can only be corrected by appeals as provided under the Act. When the Bar Council initiates proceedings by referring cases of misconduct to Disciplinary Committee, the Bar Council in the performance of its functions under the Act is interested in the "task of seeing that the advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar Council is vitally" concerned with the decision in the context of the functions of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics.

20. The ratio of the above noted judgment was reiterated in Bar Council of Andhra Pradesh Vs. Kurapati Satyanarayana, .

21. In Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , the Supreme Court referred to the decision of various Courts in India and England and the practice prevailing in United States about the locus standi and observed:

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 meddle some interloper. Persons in the last category are easily distinguishable from those coming under the 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 busy bodies at the threshold.

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 "person 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".

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 affected his title to something? has he a special and substantial 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 or particular individuals?

22. In *Himalaya Tiles and Marble (P) Ltd. Vs. Francis Victor Coutinho (dead)* by LR's., , the Supreme Court interpreted the expression "person aggrieved" appearing in the Land Acquisition Act, 1894 and held:

Thus, the preponderance of judicial opinion seems to favour the view that the definition of "person interested" must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital?

23. In *Thammanna Vs. K. Veera Reddy and Others*, , the Supreme Court held that a defeated person who was joined as respondent in the election petition, but did not participate in the proceedings is not an "aggrieved person" within the meaning of Sections 109 - 116 of the Representation of People Act, 1951.

24. In *Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. and Others*, , the Supreme Court interpreted Sections 128, 128-A, 129(1), 129A(1), (2) and (3), 129D(1), 129DA(1) and 129DB of the Customs Act, 1962 and held that the Union of India or a Government of India undertaking does not have the locus to challenge an order passed by the adjudicating authority.

25. The above survey of the judicial precedents shows that the meaning of the words/expression "person aggrieved" or "any person aggrieved", vary according

to the context of the statute and even a stranger may have locus standi although he may not have any personal interest of his own, provided he is not a busy body or meddlesome interloper.

26. If the expression "any person aggrieved" appearing in Clauses 20 and 21 is interpreted keeping in view the scheme of the Control Order, there cannot be any doubt that the said expression takes within its ambit a temporary fair price shop dealer and even a cardholder. The temporary fair price shop dealer is required to comply with all those conditions, which are applicable to a regular or a permanent fair price shop dealer. His/her functions are identical to that of regular/permanent fair price shop dealer. His authorisation can also be suspended or cancelled or altered in terms of Clause 5(4) of the Control Order. Once the authorisation of a permanent/regular fair price shop dealer is suspended or cancelled and a temporary fair price shop dealer is appointed in his/her place, the latter acquires a substantive interest to run the fair price shop. If the order of suspension or cancellation of authorisation of the regular/ permanent fair price shop dealer is stayed or set aside, the temporary fair price shop dealer is the immediate person who is adversely affected inasmuch as his right to operate the fair price shop will get stultified by restoration of the regular/ permanent fair price shop dealer. To put it differently, the authorisation of a temporary fair price shop dealer may not create a vested right in him, but he will certainly be a person affected by reinstatement of the regular/permanent fair price shop dealer and, therefore, he will certainly have the locus to question the reinstatement of the regular/permanent fair price shop dealer by filing an appeal under Clause 20 and revision under Clause 21, and we do not see any reason to give a restricted interpretation to the expression "any person aggrieved." It is quite possible to visualize a case in which the appellate authority may, without assigning any reason or for extraneous consideration, restore the authorisation of a permanent/regular fair price shop dealer despite the fact that he may have been found guilty of grave financial or other irregularities and gross violation of the conditions. If a narrow interpretation is placed on the expression "any person aggrieved" appearing in Clauses 20 and 21 and it is held that the temporary fair price shop dealer and/or the beneficiary of the public distribution system is not "an aggrieved person", then there will be none to challenge patently illegal or arbitrary order passed by the appellate authority. This will not at all be conducive to larger public interest. Even otherwise, we are convinced that the expression "any person aggrieved" appearing in Clauses 20 and 21 must, keeping in view the scheme of the Control Order, receive liberal construction so as to enable any affected or interested person to challenge the order made by the competent authority under Clause 5.

27. In Writ Appeal No. 1146 of 1995, decided on 19.3.1997, a Division Bench of this Court, while confirming the order passed by the learned Single Judge in Writ Petition No. 15628 of 1995, observed as under:

Having perused the impugned judgments, we see nothing which would require

reiteration of the facts or examination of the principles of law. What is stated, however, in the impugned judgments in respect of the right of the appellants to claim fair price shop dealerships shall not be extended to mean that in case the order in revision goes against them they shall have no locus standi to challenge the same in accordance with law. The petition in revision, if filed on behalf of any of the appellants, shall proceed in accordance with law. In view of the judgment of the Division Bench as well as the orders of the learned single Judge, a revision could not have been entertained by the first respondent. However, the first respondent allowed the revision petition filed by the fifth respondent and issued a direction to the third respondent to re-notify the shop. It is also brought to my notice that the third respondent cancelled the petitioner's authorisation on 27-5-1997 and issued a fresh notification on 3-6-1997.

28. In *B. Maheswaramma v. Smt. M. Ramasubbamma* (supra), the Division Bench considered the question whether a temporary dealer has a right to challenge the interlocutory order passed by the Single Bench in the writ petition filed by the fair price shop dealer and answered the same in affirmative. The Division Bench referred to the judgment of the Supreme Court in *Jasbhai Desai v. Roshan Kumar* (supra), Full Bench judgment of the Madras High Court in *Seethalakshmi Ammal v. State* AIR 1993 Mad. 1, and held:

4. It is in the light of the above that when we see the claim of the appellant herein, we have no manner of doubt that she satisfies the test of a "person aggrieved" in the true sense. Though she is not a necessary party for the adjudication of the controversy between the petitioner-respondent on the one hand and the authority who has cancelled/suspended her licence on the other, since some interest of her has been created by grant of a licence to fill in the vacancy caused by the cancellation/suspension of the licence of the petitioner-respondent, she has a locus standi to question any variation in the order of cancellation/suspension of the licence.

5. The extension of the said rule in appeals, to grant relief to a person who is otherwise not a necessary party and thus adjudication in his absence is not void altogether, in our view, will make the appellant herein a proper person who can move an appeal against the order of the learned Single Judge. We hold accordingly that the appeal is maintainable at the instance of the appellant herein.

29. In *Alapati Soma Sekhar Vs. Collector and Others*, , the learned Single Judge considered the question whether a temporary fair price shop dealer could file revision under Clause 18 of the Andhra Pradesh Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973, referred to order dated 19-3-1997 passed by the Division Bench in Writ Appeal No. 1146 of 1995 and held that temporary dealer does not have locus standi to invoke the revisional jurisdiction of the District Collector.

30. In *B. Bala Seshanna Vs. District Collector and Others*, , which is under

challenge in Writ Appeal No. 1805 of 2005, the learned Single Judge referred to Clause 21 of the 2001 Control Order and held:

9. The above clause is in pari materia with Clause 18 of 1973 Control Order. The said clause enables any person aggrieved by any order under Clause 20(I)(i) to prefer a revision to the District Collector within thirty days. Clause 21(1) gives right of appeal to any person who is aggrieved by any order under Clause 5. Fourth respondent is not a person who can be said to be aggrieved by order passed by Joint Collector. When she cannot be said to be aggrieved person, qua order passed by Revenue Divisional Officer, she" has no locus standi. Indeed, this question is no more res Integra....

31. In our opinion, the last two mentioned decisions run contrary to the well-considered judgment of the Division Bench in B. Maheswaramma v. Smt. M. Ramasubbamma (supra), and the view taken by us on the interpretation of the expression "any person aggrieved" appearing in Clauses 20 and 21 of the Control Order and, therefore, the same cannot be treated as laying down correct law.

32. The short order passed by the Division Bench in Writ Appeal No. 1146 of 1995 does not contain any discussion on the subject with reference to the provisions contained in Clause 17 of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973. Therefore, the same cannot be treated as laying down a binding proposition of law.

33. In the result, the reference is answered in the following terms:

The expression "any person aggrieved" appearing in Clauses 20 and 21 of the Control Order comprehends within itself a temporary fair price shop dealer and the latter has locus to challenge an order made under Clause 5 or under Clause 20(1) or 20(2) of the Control Order by filing appeal or revision, as the case may be.

34. The cases may now be listed before the appropriate Division/Single Benches for adjudication on merits.