

(1989) 04 MAD CK 0022

In the Madras High Court

Case No : W.A. No's. 387, 491 and 500 of 1980

M.L. Krishnamurthy and etc.

APPELLANT

Vs

The District Revenue Officer, Vellore and another, etc.

RESPONDENT

Date of Decision : 04-04-1989

Acts Referred:

Constitution of India, 1950 — Article 141, 19(1), 226, 300

Rice Milling Industry (Regulation) Act, 1958 — Section 13, 3, 5, 6, 7

Citation : AIR 1990 Mad 87

Hon'ble Judges : Nainar Sundaram, J;K.M. Natarajan, J;E.J. Bellie, J

Bench : Full Bench

Advocate : K. Doraisamy, for P. Sathasivam and A. Authukrishnan, T.D. Vasu, N. Chinnu and Vijay Anand, for S. Chandrasekaran, for the Appellant; P. Samuel, Govt. Advocate, M.K. Sampath, for T.R. Rajagopalan, K.P. Jagadessan, K. Muthukumaraswamy and A. Shakir Ali, for the Respondent

Judgement

Nainar Sundaram, J.—The matters arise under the Rice Milling Industry (Regulation) Act 21 of 1958, hereinafter referred to as the Act. The

question that arises for consideration and answer by us is as to whether an existing rice mill owner could be stated to be "an aggrieved person" in

respect of a grant of a permit or a licence under the Act to another, so as to agitate the matter before this Court under Article 226 of the

Constitution of India. In R. Lakshminarayanan Vs. V.A. Maruthappa Nainar and Others, , a Full Bench of this Court took a generous view and

upheld the locus standi of a licensee of an existing rice mill to apply for Writ of Certiorari to quash the grant of a permit for establishment of a new

rice mill in the locality. The question was looked at and answered differently by the Supreme Court in The Nagar Rice and Flour Mills and Others

Vs. N. Teekappa Gowda and Bros. and Others, case which arose under the Act.

This view of the Supreme Court was reiterated by it in *Jasbhai*

Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , which was a case under the Bombay Cinemas Regulation Act, 1953 and the

Bombay Cinema Rules, 1954. Taking note of the pronouncements of this Court, which came to be rendered subsequent to the decision of the Full

Bench of this Court in *R. Lakshminarayanan Vs. V.A. Maruthappa Nainar and Others*, , a Division Bench of this Court in *Thangathammal*,

Proprietrix v. Secy. Food Dept., (1977) 90 MLW 396 held that the decision of the Full Bench of this Court in *R. Lakshminarayanan Vs. V.A.*

Maruthappa Nainar and Others, is no longer good law.

2. In all these Writ Appeals, the learned single Judge followed the pronouncement of the Division Bench of this Court in *Thangathammal*,

Proprietrix v. Secy., Food Dept., (1977) 90 MLW 396 and dismissed the Writ Petitions at the instance of existing rice mill owners, challenging the

grant in favour of others under the Act. The Writ Appeals stand referred to a Full Bench since a doubt has been expressed as to whether the

decision of the Full Bench of this Court in *R. Lakshminarayanan Vs. V.A. Maruthappa Nainar and Others*, continues to be good law or ceased to

be good law, in view of the two decisions relied on by the Division Bench, namely *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa*

Gowda and Bros. and Others, and *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . This doubt has been felt on the

simple ground that the Supreme Court has not referred to the decision of the Full Bench of this Court in *R. Lakshminarayanan Vs. V.A.*

Maruthappa Nainar and Others, in the above two pronouncements of it.

3. The principles were set down broadly by the Full Bench in *R. Lakshminarayanan Vs. V.A. Maruthappa Nainar and Others*, , and it would be

sufficient if we extract below the summing of ratio of the Full Bench, as we find in the Headnote of the Reports, which in our view, has been

properly done.

Article 226 of the Constitution confers powers on High Courts in language of the widest amplitude to issue to any person or authority, including in

appropriate cases any Government Orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and

certiorari, or any of them not only for enforcement of fundamental rights but also

for any other purpose. The Article does not in terms, provide as to who can supply for writs or orders thereunder.

The broad principles are well established. The interest of the applicant need not be proprietary, but as a claim for certiorari implies a grievance,

there must be a grievance a grievance that the Court would take cognizance of. Having regard particularly to the amplitude of the power of the

Court that may be invoked under Article 226, a scrutiny of the locus standi of an applicant for certiorari is clearly necessary to keep off middle

interlopers and professional litigants invoking the jurisdiction of the Court in matters that do not in the least concern them.

The decided cases show that when certiorari is sought, the Court generally looks for some personal interest of the applicant in the matter,

something more substantial and related to the applicant than due observance of law by authorities, and do not countenance a mere excess of zeal in

the observance of law by others. A person who is denied a permit or one who is wrongfully deprived or refused something to which he is entitled

or on whom a legal burden is cast are obvious cases. But that does not exhaust the list. Other persons may be affected and genuinely aggrieved

by excess or abuse of powers. The requirements as to the standing of an applicant for certiorari cannot be circumscribed by any narrow definition,

of necessity it would vary according to the law administered, the illegality alleged, and the grievance suffered. The right to apply for relief deeming

himself aggrieved if that is the test is one thing; making out a case for the issue of certiorari is a different thing. That would depend on the judicial

scrutiny of the record in relation to and his establishing one or other of the recognised grounds for quashing. The necessity for judicial scrutiny,

when a person comes to court complaining against an act of commission or omission of an administrative authority regulating trade, business or

occupation under law which prejudicially affects him, springs from our concept of the supremacy of the Rule of law and the authority of the court to

determine the legality of the act. The fact that the licensing law vests the authority with some discretion in the matter does not take the act of the

authority out of judicial scrutiny. When an authority is entrusted with discretion, the authority must direct himself properly in law. He must direct his

attention to matters which he is bound to consider and he must exclude from

consideration matters which are irrelevant to what he has to consider.

If he does not obey those rules, then he oversteps the bounds of his jurisdiction. In matters that could vitally affect citizens in their normal

avocation, trade and business, there is no such thing as absolute discretion in administrative authorities. The law on these matters, to be valid, has

to provide guidelines and the discretion has to be controlled by the guidelines.

If the law is wrongly administered and an existing rice mill owner is prejudicially affected in consequence, his interest in due observance of the law

is personal and sufficiently substantial. An existing rice mill owner who has objected to the installation of a fresh rice mill in the locality and contends

that he has been prejudicially affected by the grant of permit for installation of a fresh rice mill, has sufficient interest to give him locus standi to

make an application for certiorari under Art. 226.

4. In *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, an entirely different note has been struck. As

already noted, that was a case which arose under the Act. The facts of the case have been set out in paragraphs 2 to 5 of the pronouncement and

they stand extracted as follows :

The appellants established a rice mill many years ago in village Madugoppa, District Shimoga, in the former Indian State of Mysore and carried on

milling operations. The respondents - N. Teekappa Gowda and Bros. -- established in 1963 a rice mill in village Kelandur at a distance of about 1

1/4 miles from the site of the appellant's mill. A notification under the Land Acquisition Act, 1894, was issued in Madras 1966 for compulsory

acquisition of the land and buildings on the site of the appellant's rice mill for use in the Sharavathi Hydro-Electric Project. In October, 1967 an

award acquiring the land and buildings was made. The award expressly recited that the appellants were entitled to remove the machinery of the

rice mill.

The appellants in the meanwhile applied to the special officer for Rehabilitation of the State of Mysore to allot them a suitable new site in which

their rice mill may be located. The Special Tahsildar for Rehabilitation sanctioned that the rice mill building may be shifted to a site in Survey No.

233 of Mudugoppa granted to the appellants by the State of Mysore. By order dated January 20, 1960, the Director of Food and Civil Supplies

passed an order sanctioning the change in the location of the appellants' rice mill from its original site to the new site as per the provisions

contained in Section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958, and rejected the objection raised by the respondents.

The respondents then moved a petition in the High Court of Mysore for a direction quashing the order dated January 20, 1969 passed by the

Director of Food and Civil Supplies on the plea that the appellants' mill was moved to a place in the vicinity of their rice mill in the Kelandur village

in contravention of Sections 5 and 8 of the Rice Milling Industry (Regulation) Act, 1958, and in consequence of the removal of the appellants mill

their business was likely to be adversely affected.

The High Court held that permission u/s 8(3)(c) was a condition precedent to the shifting of the location of the rice mill, and since the appellants did

not obtain the previous permission to shift the mill, the order of the Director was liable to be "struck down as ultra vires. "In the view of the court

by the shifting of the appellants rice mill the respondents' business was directly affected and they had a right to challenge the legality of the order.

The High Court upheld the claim of the respondents on the sole ground that the order of the Director was made in violation of the mandatory

injunction of the Rice Milling Industry (Regulation) Act 21 of 1958 and it prejudicially affected the business of the respondents as rice millers.

5. In order to appreciate the ultimate ratio laid down by the Supreme Court, we feel obliged to extract in extenso passages from the

pronouncement. The Supreme Court thereafter referred to the relevant provisions of the Act in the following terms : (Para 6)

The Parliament enacted the Rice Milling Industry (Regulation) Act 21 of 1958 to regulate rice, milling By Section 3(a) a "defunct Rice Mill is

defined as meaning a rice mill in existence at the commencement of this Act but in which rice-milling operations have not been carried on for a

period, exceeding one year prior to such commencement". By Section 3(b) "existing rice-mill" means "a rice-mill carrying on rice milling operations

at the commencement of this Act, and includes a rice mill in existence at such commencement which is not carrying on rice-milling operations but in

which in rice-milling operations have been carried on at any time within a period of one year prior to such commencement". By Section 3(e) "new

rice mill" means "a rice mill other than an existing rice mill or a defunct rice mill". By Section 3(i) "rice mill is defined as meaning "the plant and

machinery with which and the premises, including the precincts thereof in which or in any part of which, rice milling operation is carried on." By

Section 5 provisions is made for grant of permits in respect of new or defunct rice mills. By sub-section (1) of Section 5 it is provided that any

person or authority may make an application to the Central. Government for the grant of permit for the establishment of a new rice mill, and any

owner of a defunct rice mill, may make a like application for the grant of a permit for recommencing rice-milling operation in such mill. By sub-

section (3) if, on receipt of any such application for the grant of a permit, the Central Government is of opinion that it is necessary so to do for

ensuring adequate supply of rice, it may subject to the provisions of sub-section (4) and sub-section (5) grant the permit specifying there the period

within which the mill is to be established. Sub-section (4) provides;

"Before granting any permit under sub section (3), the Central Government shall cause a full and complete investigation to be made in the

prescribed manner in respect of the application and shall have due regard to-

(a) the number of rice mills operating in the locality.

(b) the availability of paddy in the locality.

(c) the availability of power and water supply for the rice mill in respect of which a permit is applied for;

(d) whether the rice mill in respect of which permit is applied for will be of the huller type, sheller type or combined sheller-huller type.

(e) Whether the functioning of the rice mill in respect of which, a permit is applied for would cause substantial unemployment in the locality;

(f) such other particulars as may be prescribed;

By sub-section (6) a permit granted u/s 5 is effective for the period specified therein or for such extended period as the Central Government may

think fit to allow in any case. Section 6 provides for grant of licences. Any owner of an existing rice-mill or of a rice mill in respect of which a

permit has been granted under Section-5 may make an application to the licensing officer for the grant of a licence for carrying on rice-milling

operations in that rice mill. By sub-section (3) of Section 6 the licensing officer is obliged to grant of the licence on payment of the fee and on

deposit of such sum as may be prescribed as security for due performance of the conditions. By sub-section (4) a licence granted u/s 6 is valid for the period specified therein, and may be renewed from time to time for such period and on payment of such fees and on conditions as may be prescribed. Section 7 provides for revocation, suspension and amendment of licences. By Section 8 restrictions are placed on rice-mills. Under subsection (1) no person or authority shall, after the commencement of the Act, establish any new rice mill except under and in accordance with a permit granted u/s 5. By sub-section (2) no owner of a rice mill shall, after the commencement of the Act, carry on rice-milling operation except under and in accordance with a licence granted u/s 6. By sub-section (3) in so far as it is relevant it is provided:

No owner of a rice mill, --

(a) & (b)

(c) shall, without the previous permission of the Central Government, change the location of the whole or any part of the rice mill in respect of

which a licence has been granted u/s 6; Section 13 provides for penalties for contravention or attempts to contravene or abetting the

contravention of any of the provisions, inter alia, of Section 8. Power of the Central Government to issue a permit u/s 5 and u/s 8(3)(c) to change

the location of rice mill is delegated to the Director of Food and Civil Supplies.

6. Adverting to the objection that want of previous sanction as per Section 8(3) (c) would vitiate the order, it was observed in paragraphs 9 and 10

:

The Parliament has by the Rice Milling Industry (Regulation) Act, (1958, prescribed limitations that an existing rice-mill shall carry on business only

after obtaining a licence and if the rice mill is to be shifted from its existing location, previous permission of the Central Government shall be

obtained. Permission for shifting their rice mill was obtained by the appellants from the Director of Food and Civil Supplies. The appellants had not

started rice milling operations before the sanction of the Director of Food & Civil Supplies was obtained. Even if it be assumed that the previous

sanction has to be obtained from the authorities before the machinery is moved from its existing site, we fail to appreciate what grievance the

respondents may raise against the grant of permission by the authority

permitting the installation of machinery on a new site. The rights to carry on business being a fundamental right under Art. 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Art. 19(6)(i).

Section 8(3)(e) is merely regulatory; if it is not complied with, the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice-mill of the appellants be regarded as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Art. 19(c), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed.

7. A contention was raised before the Supreme Court that while granting permission u/s 8(3)(c), the authority was bound to take into account matters which govern the issue of a permit u/s 5(4) of the Act, and it was met in paragraph 11 as follows :--

But Mr. Gokhale for the respondents contended that in granting the permission u/s 8(3)(c) the authority was bound to take into account matters which govern the issue of a permit u/s 5(4) of the Act. Counsel submitted that sub-section (3)(c) of Section 8 was enacted with a view to ensure adequate milting facilities and to prevent unfair competition and oh that account it is provided that when the location of an existing rice-mill has to be shifted, the authority had to take into consideration the number of rice mills operating in the locality; the availability of power and water supply for the rice mill in respect of which a permit is applied for; whether the functioning of the rice mill in respect of which a permit is applied for would cause substantial unemployment in the locality; and such other particulars, as may be prescribed. According to counsel, since the Act was intended

to regulate the carrying on of business of rice mills in the country, it was implicit in Section 8(3)(c) that the authority sanctioning the change of location of a rice mill shall consider whether another person was by the shifting likely to be prejudiced thereby. This, counsel says, the Director did not consider, and on that account the order is liable to be set aside because the right of the respondents is infringed. This argument was not advanced before the High Court, and, in our judgment, has no substance. The considerations which are prescribed by sub-section (4) of Section 5 only apply to the grant of a permit in respect of a new rice mill or a defunct rice mill. They have no application in considering the shifting the location of an existing rice mill. In respect of a new or defunct rice mill a permit and a licence are both required; in respect of an existing rice mill only licence is required. The conditions prescribed by sub-section (4) of Section 5 only apply to the grant of a permit and not to licence. By Section 8(3)(c) it is made one of the conditions of the licence that the location of the rice mill shall not be shifted without the previous permission of the Central Government. It is true that the appropriate authority clothed with the power must consider the expediency of permitting a change of location. But there is no statutory obligation imposed upon him to take into consideration the matters prescribed by sub-section (4) of Section 5 in granting the permission to change the location.

8. Mr. K. Doraiswamy, learned counsel appearing for the existing rice mill owners, would advance a submission that the observations of the Supreme Court indicate and have kept a distinction between the change of location of the rice mill u/s 8(3)(c) and the grant of a permit u/s 5(4), and in the latter case, it must be held that an existing rice mill owner is an aggrieved person over a grant, which has prejudicially affected his business. This submission, as rightly contended by Mr. R. Muthukumarasamy, learned counsel appearing for the grantees, is unwarranted. In paragraph 11, the Supreme Court was repelling the contention put forth that the considerations u/s 5(4) should be telescoped into Section 8(3)(c) and nothing more. It is not, possible to read something into the observations, which is not explicitly there, and which would militate against the categorical views on the question expressed in the other parts of the pronouncement. Equally so, the expressions "nor can the rice mill of the

appellants be regarded as a new rice mill" occurring in paragraph 10 of the pronouncement cannot be culled out of context to spell out a theory

that in the case of a new rice mill, the existing rice mill owner could be held to be an aggrieved person in respect of the grant. There is only a

discussion of the scope of the implications of Section 8(3)(c) and the result of its breach, and the above expressions are not to be construed to the

effect stated by the learned counsel for the existing rice mill owners. Such a construction would result in making the observations self contradictory.

9. The principles deducible from the above pronouncement of the Supreme Court may be summed up as follows : The right to carry on business

being a fundamental right under Art. 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interest of the

general public under Art. 19(6)(i). If Section 8(3)(c) of the Act, which is merely regulatory is not complied with, there could be imposition of

penalty, but a competitor in the business cannot seek to prevent the other, in spite of the violation, from exercising his right to carry on business,

because of the default. The lack of previous permission, as per Section 8(3)(c) will not give the existing rice mill owner a locus standi for

challenging the grant of the permission, because no right vested in him could be stated to have been infringed. The observations of the Supreme

Court could not be construed to say that if it is a case of a permit u/s 5(4) of the Act, the existing rice mill owner would have a lever to challenge

the grant on the ground it has prejudicially affected his business. The observations of the Supreme Court are founded on the fundamental right

under Art. 19(1)(g) of the Constitution, subject to the restrictions under Art. 19(6)(i) and the lack of any right vested in the existing rice-mill owner

to question the grant.

10. The view expressed by the Supreme Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*,

was categorically reiterated in its subsequent pronouncement in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . That

was a case, as already noted, which arose under the Bombay Cinemas Regulation Act, 1953 and the Bombay Cinema Rules, 1954. The facts of

the case, as we could get from paragraphs 2 to 4 of the judgment, run as follows :---

Respondents 1 and 2 are owners of a site, bearing Survey No. 98 in the town of Mehmabad. They made an application under R. 3 of the Rules

to District Magistrate, Kaire, for the grant of a certificate that there was no objection to the location of a cinema theatre at this site. The District

Magistrate then notified in the prescribed form the substance of the application by publication in newspaper, inviting objections to the grant of a

No-Objection Certificate. In response thereto, several persons lodged objections, but the appellants who are the proprietors of a cinema house,

situated on Station Road, Mohmedabad, were not among these objectors. Some of the objections were that a Muslim graveyard, a Durgah, a

compost depot, a school and public latrines were situated in the vicinity of the proposed site.

The District Magistrate (Res. 3 herein) invited the opinion of the Chairman of Nagar Panchayat, Executive Engineer, Road and Buildings, and the

District Superintendent of Police. These three authorities opined that they had no objection to the grant of the Certificate applied for. The District

Magistrate visited the site on 27-7-1970. Thereafter he submitted a report to the State Government (Res. 4) that the proposed site was not fit for

the location of a cinema house. He recommended that the "No-Objection Certificate" should be refused. The State Government did not agree with

the recommendation of the District Magistrate and directed the latter to grant the Certificate. Accordingly, the District Magistrate granted the "No-

Objection Certificate" on 27-11-1970 to respondents 1 and 2.

11. The grounds of challenge put forth before the High Court by the appellant in that case, the scope of the reply given by the concerned

respondents and the decision-of the High Court are delineated in paragraphs 5 to 8 of the pronouncement as follows:--

The main grounds of challenge were : that the impugned Certificate had been issued by the District Magistrate, not in the exercise of his own

discretion, with due regard to the principles indicated in the Bombay Cinemas Regulation Act 1953 (for short the Act) and the Rules, but

mechanically at the dictates of the State Government; that respondents 5 and 6, according to an earlier judgment of the High Court being ultra vires

and void, the Government had no power to grant or refuse the No-Objection Certificate, that such power belonged to the District Magistrate who

was the Licensing Authority and had to be exercised by him objectively, in a quasi-judicial manner in accordance with the statutory principles;

since it was not so exercised, the grant of the Certificate in question suffers from lack of jurisdiction.

In the affidavit filed in reply by the District Magistrate (on behalf of respondents 3 and 4), preliminary objection was taken that the appellants had

no locus standi to file the writ petition because their rights were not in any manner affected by the grant of the No-Objection Certificate, it was

stated that the dependent had reported the case and submitted the records to the State Government under R.5, recommending that on account of

the location of a graveyard, a church, a temple, a mosque and a school near the proposed site, the no objection certificate be refused. It was

admitted that on receipt of the order of the State Government he granted the No Objection Certificate to respondents 1 and 2 in compliance with

the Government's directive.

The High Court, purporting to rely on this court's decision in *State of Gujarat Vs. Krishna Cinema and Others*, and an earlier decision of its own in

Kishore Chander Ratilal v. State of Gujarat, Spl. Civil Application No. 912 of 1970, decided by Gujarat High Court on 27-11-1970 reported in

ILR (1971) Guj 513 held that Rule 5(2) in its entirety, and the words "the previous permission of the Government obtained under R. 5" in Rule 6

being ultra vires and invalid, have to be ignored as nonest, with the result that the District Magistrate had to come to his own conclusion on relevant

considerations and objective norms whether a No Objection Certificate should be granted or refused; that under the Act the District Magistrate --

and not the Government -- is the Licensing Authority and he was bound to exercise this power, which is an integral part of the process of licensing,

in a quasi judicial manner that since the District Magistrate exercised this power not on his own in accordance with objective principles but solely at

the dictates of the Government, his act in granting the No Objection Certificate suffers from a patent lack of jurisdiction.

The High Court, however, dismissed the writ petition on the ground that no right vested in the appellant had been infringed, or prejudiced or

adversely affected as a direct consequence of the order impugned by him, and as such, he was not an "aggrieved person" having a locus standi in

the matter.

12. The arguments advanced before the Supreme Court for and on behalf of the appellant, as we could see from paragraph 9 of the

pronouncement ran as follows:--

Mr. Sen appearing for the appellant, assails the finding of the High Court in regard to the locus standi of the appellant to maintain the writ petition.

The burden of his arguments is that apart from a right in common with the general public to object to the grant before the District Magistrate, the

appellant was a rival in the same trade and, as such, had a particular interest to see that permission was not granted to another, in contravention of

law, to start the same business; consequently the illegal grant of the No Objection Certificate had prejudicially affected the commercial interest of

the appellant who stood in the category of an "aggrieved person" entitled to a writ of certiorari ex debito justitiae. It is submitted that so far as

certiorari is concerned, the concept of "aggrieved person" is very wide and is not confined to a person who is grieved by an invasion of a legal right

vested in him. Anyone says Mr. Sen who is personally interested and genuinely grieved by an act of usurpation of jurisdiction or lack of jurisdiction

on the part of an administrative tribunal or body, would fall within the category of an "aggrieved person", even if such usurpation or lack of

jurisdiction had not resulted in infringement of a legal right or legal interest vested in him, nor would such a person be denied locus standi for the

purpose of certiorari merely because he had not lodged any objection or joined the proceedings before the tribunal (District Magistrate, in the

present case). In these premises, it is maintained, the High Court was not justified in denying the remedy of certiorari to the appellant. Counsel has

cited a number of decisions, mostly of the English Courts, in support of his contentions.

13. After saying that the scope and nature of the power conferred by Art. 226 is wider than that exercised by the writ certain Courts in England,

the Supreme Court indicated that the general principles grown over the years in the English Courts, can shorn of technical procedural restrictions

and adopted to the special conditions of this vast country, in so far as they do not conflict with any provisions of the Constitution or the law

declared by the Supreme Court, be usually considered in directing the exercise of

this discretionary jurisdiction in accordance with well recognised rules of practice. Then the Supreme Court adverted to the position that (Para.12) According to rest 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".

Then the Supreme Court went further to the question as to who is an aggrieved person observing :

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 divers, 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".

Then followed the discussion of the line of English Cases in which an "aggrieved person" has been held to be one who has a more particular or peculiar interest of his own beyond that of the general public in seeing that law is properly administered. There is the following extract from Bar

Council of Maharashtra Vs. M.V. Dabholkar and Others, , on the question as to how the expression "person aggrieved" is to be interpreted in the context of a statute (para 27) :

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 Ss. 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 of financial interests.

14. There was advertence of English Cases in which a strict construction was put on the expression "person aggrieved"; and as to what the

Supreme Court has laid down in a number of decisions that in order to have the locus standi to which the extraordinary jurisdiction under Art. 226,

an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application. It was pointed out that in writs

like habeas corpus or quo warranto, this rule is relaxed or modified. The general rule accepted was that there should be infringement of some legal

right or prejudice to some legal interest inhering in the petitioner to give him a locus standi in the matter. It was also pointed out that the rule is not a

cast iron one and "it is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an

authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a

person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the

proceedings will be covered by this rule.

It was taken note of that in the United States of America, also, the law on the point is substantially the same that injury resulting from lawful

competition not being a legal wrong, cannot furnish a "standing to sue" for judicial relief. Thereafter, the three categories in any one of which an

appellant for a writ of certiorari may ordinarily fall were referred to in the following terms :-- Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji

Bashir Ahmed and Others, .

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.

With regard to the distinction between the first and the second categories of applicants, the observations of the Supreme Court run as follows:--

Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, .

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".

In paragraph 38 of the pronouncement, the broad tests deducible from the preceding discussion have been set down as follows :--

To distinguish such applicants from "strangers" among them, some broad tests may be deduced from the conspectus made above. These tests are

not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls

to be considered. These are : Whether the applicant is a person whose legal right

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

Applying the tests to the case before it, the Supreme Court found that the Bombay Cinemas Regulation Act, 1953 and the Bombay Cinema Rules, 1954 with which it was concerned are not designed to set norms of moral or professional conduct for the community at large or even a section thereof and they only regulate the exercise of private rights of an individual to carry on a particular business on his property. It was opined that in that context, the expression "person aggrieved" must receive a strict construction. The Supreme Court was not prepared to give any construction other than a strict construction to the expression "person aggrieved", considering the scope and implications of the statute and the rules under it dealt with by it. Thereafter, posing the question as to whether the appellant before it had a legal right under the statutory provisions or under the general law, which had been subjected to or threatened with injury, the answer was given in the negative. The Supreme Court found no warrant to apply the rule of exceptional cases of even a stranger" to the case before it.

15. Coming to the Act, we cannot distinguish it, in substance, from the statute dealt with by the Supreme Court, though there may be some distinguishing features found in that statute recognizing special interests of certain persons; such as persons residing or concern-ed with any

institution like a school, temple, mosque, etc., located within specified distance. We must also hold that the act is not designed to set norms of moral or professional conduct for the community at large or even a section thereof, and it was intended only to regulate the exercise of private rights of an individual to carry on a particular business on his property, and hence the expression, "person aggrieved" must receive a strict construction. As observed by the Supreme Court, setting up of a rival business by another adversely affecting monopolistic commercial interest and causing loss of business and pecuniary harm to one, are not wrongful in the eye of law, because they do not result in injury to any legal right or any legally protected interest; the business competition causing it being a lawful activity; and juridically harm of this description is called *damnum sine injuria*, the term "injuria" being here used in its true sense of an act contrary to law, and the reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.

16. In *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , there is a reference to and reiteration of the ratio of the earlier pronouncement of the Supreme Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, in the following terms (Para 50):

The instant case falls well-nigh within the ratio of this Court's decision in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, wherein it was held that a rice mill-owner has no locus standi to challenge under Art. 226, the setting up of a new rice-mill by another -- even if such setting up be in contravention of S. 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 -- because no right vested in such an applicant is infringed.

With great respect and reverence, we must express, that there could not be a more exhaustive and elucidative setting down of principles, than what has been done by their Lordships of the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . When there is an approval and following of the ratio of its earlier pronouncement in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, , a case under the very Act, nothing more need be

said about the declaration of law on the subject by the Supreme Court. Hence, we are obliged to hold that an existing rice mill owner whenever there is a grant of a permit or a licence in favour of another under the Act cannot be stated to have been denied or deprived of a legal right, or sustained injury to any legally protected interest; the grant does not operate as a decision against him, much less does it wrongfully affect his title to something; he has not been subjected to a legal wrong; he has suffered no legal grievance; he has no legal peg for a justiciable claim to hang on, and therefore he is not a person aggrieved and he has no locus standi to challenge the grant. Rivalry in the same trade is permissible in law and in that context, a person cannot complain that his commercial interest is prejudicially affected.

17. It is true in the case of *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, under the provisions of the Bombay Cinemas Regulation Act, 1953 and the Bombay Cinema Rules, 1954, there was an option for the owner of a rival cinema owner to put forth an objection with the rest of the public in response to the notice to be published under the Rules, and the Supreme Court in that case found that the appellant did not avail of this option, he did not lodge any objection in response to the notice; no explanation was given as to why he did not prefer any objection. But, the provision of that statute even if he had objected, did not enable a rival cinema owner to prefer an appeal as against the grant since the concerned provision enabled only a person, who has been refused the grant of a licence or whose licence has been revoked or suspended to prefer an appeal. However, there was a provision for revision by the Government either suo motu or on application. Yet, the Supreme Court pointed that in the circumstances of that case, the appellant before it could not be regarded as a "person aggrieved" having the requisite legal capacity to invoke certiorari jurisdiction, Under the Act, in contrast, there is no calling for objections at all from any section of the public before there is grant of a permit or a licence or the consideration of the question of shifting of the rice mill. The special features noted by the Supreme Court in that statute are absent so far as the Act is concerned. The expression of our view is in the context of the provisions of the Act, taking note of the principles enunciated in the two pronouncements of the

Supreme Court; that an existing rice mill owner could not complain of injury to any legally protected right or interest of his and he does not come within the ambit of any of the norms set down by the Supreme Court to find out whether a person of his category could be called "a person aggrieved". In our view, there has been a correct assessment of the ratio of the pronouncement of the Supreme Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, and in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, by the Division Bench of this Court in *Thangathammal, Proprietrix v. Secy. Food Dept., (1977) 90 Mad LW 396* when the Division Bench held that the decision of the Full Bench of this Court in *R. Lakshminarayanan Vs. V.A. Maruthappa Nainar and Others*, is no longer good law.

18. There need not be any difficulty with reference to the application of the ratio of the Supreme Court on the simple ground that the pronouncement of neither of this Court or of any other High Court in the country has not been specifically referred to, considered and overruled by the pronouncement of the Supreme Court on the subject. Where the Supreme Court deliberately and with intention of setting the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of Art. 141 of the Constitution of India. In other words, the law declared by the Supreme Court is made the law of the land. Once the law has been so declared by the Supreme Court, it is no longer possible to hang on to views expressed earlier by this Court or by any other High Court running contrary to the said law, on the simple ground that these views were not analysed, touched upon, referred to and overruled specifically by the Supreme Court, while declaring the law.

This is of no consequence at all. As already noted, the learned single Judge followed the pronouncement of the Division Bench in *Thangathammal Proprietrix v. Secy. Food Dept., (1977) 90 Mad LW 396* and dismissed the writ petitions at the instance of the existing rice mill owners. In the view, which we have taken, no exception could be taken to the decisions of the learned single Judge. These writ appeals deserve dismissal and accordingly they are dismissed. We make no order as to costs.

19. Appeals dismissed.