



IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 03RD DAY OF JUNE, 2021

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR. JUSTICE HANCHATE SANJEEVKUMAR

WRIT APPEAL No.1242/2019 (GM.CC)

BETWEEN:

Sri.R.S.Mahadev,
S/o Sanna Ramaiah,
Aged about 49 years,
S.Koppal Village,
Periyapatna Taluk,
Mysore District-571 108.

... APPELLANT

(By Sri.A.Nagarajappa, Advocate,
through V/C)

AND:

1. B.R.Gopamma,
W/o Govindaiah,
Aged about 60 years,
Residing at No.1255,
Paduvana Road, Kuvempu Nagar,
Mysore – 570 001.
2. The Deputy Commissioner-cum-
Chairman,
The District Caste Verification Committee,
Mysore District,
Mysore – 570 010.
3. District Social Welfare Officer,
Officer of the District Social Welfare,
Mysore District.
Government General Boys Hostel,
Opp. Sri.Murgdevi Temple,
Nazarabad, Mysore – 570 010.

4. Tahsildar,
Mysore Taluk,
Mysore – 570 001.
5. Police Inspector,
Civil Rights Enforcement Directorate
Cell, Mysore District,
Mysore – 570 008.
6. The Deputy Director of Public
Instruction,
Department of Public Instructions,
Mysore District, Mysore.
7. The Police Inspector,
Nazrabad Police Station,
Mysore – 570 008.

... RESPONDENTS

(By Sri.V.R.Sarathy, Advocate,
Through V/C for C/R1
Smt.Vani H., AGA, for R2 to R7)

This writ appeal is filed under Section 4 of the Karnataka High Court Act praying to set aside the order of the learned Single Judge in W.P.No.8209/2016 disposed of on 26.03.2019.

This appeal coming on for Preliminary Hearing, this day, **NAGARATHNA J.**, delivered the following:

J U D G M E N T

The legality and correctness of order dated 26/03/2016, passed in W.P.No.8209/2016 is called in question in this intra-court appeal, by respondent No.6 in the writ petition.

2. Briefly stated, the facts are that respondent No.1 herein/petitioner had assailed the correctness of

order dated 26/12/2015, passed by respondent No.2 herein, by which the caste certificate issued in her favour to the effect that she belongs to the Scheduled Caste community, was cancelled on the ground that she had failed to produce any document in order to substantiate the fact that she belongs to "Adi Karnataka Caste" notified as a Scheduled Caste. It is not in dispute that respondent No.1 married Govindaiah who belongs to Scheduled Caste. Consequently, respondent No.1 sought and was issued a caste certificate in the year 1979 that she belongs to the Scheduled Caste community. She was, thereafter, appointed as Kannada Teacher on 05/11/1979 in JSS High School, which is an aided institution, on the basis of the said caste certificate. She served in the said institution and has retired from service on 30/09/2015 on attaining the age of superannuation.

3. Just prior to her retirement, on 08/09/2011, the appellant herein filed a complaint against respondent No.1 seeking action against her on the premise that she had obtained the caste certificate by making false averments and was enjoying the benefits of a Scheduled Caste person and had also obtained employment as a Kannada teacher on that basis. Respondent No.3 herein

issued notice to respondent No.1 herein on 25/06/2012 calling upon her to participate in an enquiry as per Circular dated 30/06/2007. Respondent No.1 herein/petitioner attended the enquiry and submitted her reply on 13/07/2012. By order dated 28/06/2013, the caste certificate issued in her favour was cancelled. Respondent No.1, thereafter, submitted her representation and challenged the said order on the ground that he had no jurisdiction to cancel the caste certificate by filing W.P.No.33848/2013 before this Court. That writ petition was allowed by order dated 12/06/2014 and the matter was remitted to the District Caste Verification Committee. It is the case of respondent No.1 that the District Caste Verification Committee without issuing notice to respondent No.1 herein by order dated 11/09/2014 once again cancelled the caste certificate issued in her favour. Also, a criminal case was registered against her for the offence under Section 3(1)(9) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on 18/12/2014, which order was assailed by respondent No.1 herein in W.P.No.55478/2014 before this Court. The aforesaid writ petition was allowed on 13/01/2015 and the matter was remitted for fresh disposal.

4. During the pendency of the said proceeding before the District Caste Verification Committee, respondent No.1 attained the age of superannuation in September, 2015 and retired from service on 30/09/2015. Thereafter, by order dated 26/12/2015, the caste certificate issued in favour of respondent No.1 was cancelled. Hence, respondent No.1 filed W.P.No.8209/2016 before this Court.

5. Learned single Judge, on considering the respective contentions of the parties, has allowed the writ petition and quashed the impugned order dated 26/12/2015 as well as the FIR dated 18/12/2014 registered against respondent No.1 herein. Learned single Judge directed that respondent No.1 is entitled to terminal benefits on the basis of the caste certificate issued in her favour. However, she shall not be entitled to claim benefits of a person belonging to the Schedule Caste in future. Being aggrieved by the said order, this appeal has been preferred.

6. We have heard Sri A.Nagarajappa, learned counsel for the appellant and Sri V.R.Sarathy, learned counsel for caveator/respondent No.1 through video

conference and learned Additional Government Advocate by way of assistance on behalf of respondent Nos.2 to 7 and perused the material on record.

7. Appellant's counsel did not dispute the fact that respondent No.1 was not born as a Scheduled Caste. However, she got married to Govindaiah-a person belonging to the Scheduled Caste Community. It is also not in dispute that she has obtained Caste Certificate in the year 1979 to the effect that she belongs to the Schedule Caste Community. Learned counsel for the appellant contended that when respondent No.1 belonged to Vokkaliga community which is not a Scheduled Caste community and merely because she married Govindaiah-a person belonging to the Schedule Caste, she could not have had the benefit of the Caste Certificate being issued to her that she belongs to the Schedule Caste community.

8. He contended that the Hon'ble Supreme Court in its latest judgment in ***Chairman and Managing Director, Food Corporation of India & others vs. Jagdish Balaram Bahira & Others [(2017)8 SCC 670]*** (*Jagdish Balaram Bahira*) has categorically held, if, the claim of being a member of the Scheduled Caste or

Schedule Tribe on verification is found to be false, the same would have to be treated as invalid and any appointment made on that fact would be *void ab initio* and *non est*. Thereafter, cancellation of the appointment would follow as a necessary corollary. The rationale behind withdrawal of benefits secured is on the basis that a false caste certificate would have been obtained by misrepresentation or by fraud.

9. Learned counsel for the appellant also contended that in the instant case, admittedly, the appellant belonged to Vokkaliga community and did not belong to the Scheduled Caste community by birth. Therefore, she could not have obtained a caste certificate to the effect that she belonged to the Scheduled Caste community and on that basis being appointed as a Kannada Teacher in an aided high school. As a result, respondent No.1 has derived illegally the benefits, which were available to a person belonging to the Scheduled Caste community. Learned Single Judge has failed to appreciate the aforesaid aspects of the case and has allowed the writ petition. In the aforesaid context, learned counsel for the appellant also placed reliance on ***Sobha Hymavathi Devi vs. Setti Gangadhara Swamy &***

others [(2005)2 SCC 244] (*Sobha Hymavathi Devi*) and submitted that the impugned order of the learned single Judge may be set aside and the writ petition filed by respondent No.1 may be dismissed.

10. *Per contra*, learned counsel for respondent No.1 supported the order of the learned single Judge and submitted that the facts in this case are not in dispute. Admittedly, respondent No.1, who did not belong to a Scheduled Caste community, married Govindaiah-a person belonging to the Schedule Caste community and on the basis of the law prevailing at the relevant point of time was entitled to caste certificate that she belonged to the Schedule Caste community. In that context, reliance was placed on the judgment of the Hon'ble Supreme Court in ***N.E. Horo vs. Smt. Jahan Ara Jaipal Singh [AIR 1972 SC 1840]*** (*N.E. Horo*) and submitted that respondent No.1 was issued caste certificate that she belonged to the Scheduled Caste community. On that basis she was appointed as a Kannada teacher in an aided institution on 05/11/1979. That, this is not a case where respondent No.1, on the basis of false averments or by playing fraud, had sought and was granted a false caste certificate.

11. The judgments relied upon by the learned counsel for the appellant in the case of *Jagdish Balaram Bahira* is not applicable to the present case. Learned counsel further submitted, it is only thereafter in ***Smt.Kalavathi S.Nergi vs. District Commissioner, District Caste Verification Committee & others [ILR 2010 Kar. 443]*** (*Smt.Kalavathi S.Nergi*) that a distinction was made between the issuance of a caste certificate to a person who is by birth a Scheduled Caste and a person who was issued such a caste certificate on the basis that though, such a person was not born as a Scheduled Caste, nevertheless, was entitled to the benefit of such a caste certificate owing to his/her marriage with a Scheduled Caste person. He submitted that there is no infirmity in the detailed order of the learned single Judge and therefore, the appeal does not call for any interference and the same may be dismissed.

12. Learned counsel for respondent No.1 also submitted that the appellant had no reason to file the complaint against respondent No.1, that too in the year 2011 i.e., three to four years prior to the retirement of respondent No.1. He submitted that the appellant is a busybody and had no *locus standi* to file such a complaint

against respondent No.1 herein. He was not competing for the post of Kannada teacher in the aided institution along with respondent No.1 and therefore, he is not at all an aggrieved person. However, at the instance of the appellant, the caste certificate issued in favour of respondent No.1 has been cancelled. Consequently, despite her retirement in September, 2015, respondent has been deprived of her terminal benefits and pensionary benefits owing to the cancellation of the caste certificate by order dated 26/12/2015, which is subsequent to her superannuation. Learned counsel for respondent No.1 also submitted that there was no reason for a FIR being registered against respondent No.1 on 18/12/2014. He contended that the judgments relied upon by the learned counsel for appellant do not apply to the facts of the present case. Hence, there being no merit in the appeal and the appeal may be dismissed.

13. By way of reply, learned counsel for the appellant drew our attention to the Government of India, Ministry of Home Affairs' Circular of April 1975 and also the State Government's Order No.SWL 213 SAD 85, dated 23/03/1987 and also Circulars dated 30/06/2007 and 31/07/2010 and contended that respondent No.1 has

obtained an illegal benefit on the basis of her false caste certificate being issued to her and therefore, the proceedings instituted against her were just and proper and the learned single Judge ought not to have allowed the writ petition. He submitted that the impugned order may be set aside and the writ petition may be dismissed.

14. Learned Additional Government Advocate assisted the Court on behalf of respondent Nos.2 to 7 and submitted that there is no merit in this appeal and the same may be dismissed.

15. Having heard learned counsel for the respective parties, the points that arise for our consideration are:

- (1) *Whether the order of the learned single Judge would call for interference in this appeal?*
- (2) *What order?*

16. The undisputed facts are that the first respondent herein by birth did not belong to the Scheduled Caste. However, she married Govindaiah — a person belonging to the Scheduled Caste community. It is also not in dispute that she was issued a caste certificate stating, she belonged to the scheduled caste community in the

year 1979 and thereafter, was appointed as a Kannada Teacher in J.S.S. High School which is an aided institution on the basis of the said caste certificate. It is also not in dispute that she retired from service on attaining the age of superannuation on 30.9.2015. The appellant herein filed a complaint against the first respondent herein on 08.9.2011 on the premise that she had obtained a caste certificate by making a false averment and had suppressed true facts and illegally obtained the benefits available to a person who belonged to Scheduled Caste and had also obtained employment on that basis. The said complaint ultimately resulted in order dated 26.12.2015 being passed which was after the first respondent retiring from service by which, the caste certificate issued to her in the year 1979 was been cancelled and also First Information Report was registered against her on 18.12.2014.

17. It is not necessary to reiterate the proceedings that have taken place in the interregnum for, what was challenged before the learned Single Judge in Writ Petition No.8209/2016, out of which this appeal arises, was, order dated 26.12.2015 and the first information report registered against the first respondent on 19.12.2014. The same have been quashed by the learned Single Judge and

a direction has been issued that the petitioner is entitled to terminal benefits on the basis of the caste certificate issued in her favour, which means that the appointment of the first respondent on the basis of the said caste certificate is held to be valid and legal. However, learned Single Judge has stated that she would not be entitled to claim any benefit available to a person belonging to Scheduled Caste in future.

18. The learned Single Judge during the course of his detailed order, has referred to several decisions of the Hon'ble Supreme Court as well as this Court, in order to arrive at the aforesaid conclusion. We shall refer to those decisions in a chronological manner as they have been adverted to by the learned counsel for the respective parties during their submissions.

(a) In *N.E.Horo*, it was held that even if a female is not a member of a tribe by virtue of her birth, she, having been married to a tribal, after due observance of all formalities and after obtaining the approval of the elders of the tribe, would belong to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile.

In that case, the facts were that on May 1, 1970, the Election Commission of India had issued a notification for holding a poll in Khunti Parliamentary (Scheduled Tribe) Constituency in the State of Bihar. Two nomination papers were filed. The respondent therein, being the widow of late Sri Jaipal Singh and a member of the Munda Scheduled Tribe in the State of Bihar, had filed her nomination on the basis of the certificate issued in her favour. Objection was raised to her nomination and an order was passed rejecting the nomination of the respondent therein (Smt.Jahan Ara). In the election petition, filed by Smt.Jahan Ara, it was stated that she belonged to Munda Scheduled Tribe although she was a Christian by religion. That as per Munda Customary Law, when a Munda male married outside the Munda Tribe, if his marriage is accepted by the Tribe, he continues to be a member of that Tribe and his wife also acquires its membership. While considering the said issue, whether, the respondent Smt.Jahan Ara could have placed reliance on a certificate issued to her that she belonged to the Munda Tribe and therefore was entitled to contest in the reserved Constituency meant for Scheduled Tribe. It was observed as stated above, that, even if the respondent (Jahan Ara)

was not a member of a Munda Tribe by virtue of birth, she, having been married to a member of Munda Tribe after due observation of all formalities and after obtaining the approval of the elders of the Tribe would be entitled to invoke the doctrine of domicile and as she would become member of a Munda Tribe. Consequently, when a person, in the course of time, has been assimilated in the community, it is difficult to comprehend how that person can be denied the rights and privileges which may be conferred on that community even though tribal by constitutional provisions. As a result, the appeal filed by the returning candidate N.E.Horo was dismissed sustaining setting aside his election.

(b) In *Sobha Hymavathi Devi*, the question was regarding the claim that could be made by a woman of a forward caste on marriage to a man from Scheduled Tribe. It was held that such reservation can benefit only those who belong to a Scheduled Caste or Scheduled Tribe and that is by birth and not those who claim to acquire the status by marriage.

In the aforesaid case, an earlier judgment in ***Mrs. Valsamma Paul vs. Cochin University and Others***

[(1996) 3 SCC 545] (*Valsamma Paul*) was followed and the judgment referred to above in *N.E.Horo* was overruled. It was observed that, the reservation to the Lok Sabha or Legislative Assembly Constituency was made intending to benefit the really underprivileged and not those who come to the class by way of marriage. Hence, the decision in *N.E.Horo* to that extent would run counter to the above rule and was not correct. In that case it was observed that it was difficult to accept the position that a non-tribal who marries a tribal could claim to contest a seat reserved for tribals. Article 332 of the Constitution speaks of reservation of seats for Scheduled Tribes in Legislative Assemblies. The object is clearly to give representation in the legislature to Scheduled Tribe candidates, considered to be deserving of such special protection. To permit a non-tribal under cover of a marriage to contest such a seat would tend to defeat the very object of such a reservation. Neither the fact that a non-backward female married a backward male nor the fact that she was recognized by the community thereafter as a member of the backward community, was held to enable a non-backward to claim reservation in terms of Article 15(4) or 16(4) of the Constitution.

It was observed that, the recognition of a lady as a member of a backward community in view of her marriage would not be relevant for the purpose of entitlement to reservation under Article 16(4) of the Constitution for the reason that she was a member of the forward caste, had an advantageous start in life and a marriage with a male belonging to a backward class would not entitle her to the facility of reservation given to a backward community. On the basis of said analogy, the Hon'ble Supreme Court did not accept the ruling in *N.E.Horo* and consequently, the same was overruled. The said judgment was delivered on 28.1.2005.

(c) In *Valsamma Paul's* case it was observed that when a lady belonging to a non-reserved class married to a Scheduled Caste/Scheduled Tribe or other backward class citizen or a person belonging to non-reserved class transplanted by adoption or any other voluntary act to a family belonging to such reserved class, would not *ipso facto* entitle the lady/adoptee to claim reservation under Article 15(4) or 16(4), as the case may be, in view of the advantageous start in life availed by her or him.

19. Before referring to the recent judgment of the Hon'ble Supreme Court in the case of *Jagdish Balaram Bahira*, it would be useful to refer to the judgment relied upon by the learned counsel for respondent No.1 in the case of *Smt.Kalavathi S.Nergi*. In that case, it was held that the appellant/employee having made an application for employment in the belief that she was entitled to claim the status of a Scheduled Caste community on account of her marriage to a person from that community was therefore legal and tenable and in consequence of the law of the land at the relevant point of time; that a legal position was upset only in the year 1996; that the appellant/employee therein having been conferred the benefit of a person belonging to a notified community would have the benefit to claim under that category even if, at a later point of time, the change in the legal position as to a wife not being able to claim the status of the community to which her husband belonged is declared.

20. In that regard, reliance was placed on ***State of Maharashtra vs. Reshma Ramesh Meher and Another [2008(4) LLN 127]*** (*Reshma Ramesh Meher*), a Co-ordinate Bench of this Court, held that the judgment of the Supreme Court in the case of *N.E.Horo* was overruled only

in the year 1996 in *Valsamma Paul*. *Valsamma Paul* is a judgment dated 04.01.1996 and subsequently, *Sobha Hymavathi Devi* is a judgment passed on 28.01.2005.

21. Learned counsel for respondent No.1 therefore contended that the caste certificate issued to respondent No.1 in the year 1979 was, having regard to the judgment holding the field at the relevant point of time, namely *N.E.Horo* and therefore, the subsequent declaration of law which is adverse to the case of respondent No.1 cannot be applied retrospectively. We find considerable force in the contention of the learned counsel for respondent No.1, which has also been accepted by the learned Single Judge.

22. The other aspect of the matter is that in ***Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra, [(2013) 4 SCC 465]*** (*Ayaaubkhan Noorkhan Pathan*), it has been observed that it is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from a legal injury can challenge the act/action/order in a court of law. The relevant discussion

on the concept of aggrieved person is at paragraph Nos.9 to 13, which are extracted as under:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must

ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised.

11. In **Anand Sharadchandra Oka v. University of Mumbai**, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other person.

12. In **A.Subash Babu vs. State of A.P.**, this Court held: (SCC pp.628-29, para 25)

"25. The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest

and the nature and the extent of the prejudice or injury suffered by the complainant.”

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression “next friend” means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody.”

23. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or abstain from doing something. Existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under Article 226. For instance, a rival in a trade has no *locus standi* to challenge the grant of licence to other trader on the ground that the licence was granted illegally or suffers from defect of jurisdiction, vide **J.M.Desai vs. Roshan Kumar, [AIR 1976 SC 578]**, (*J.M.Desai*); **Nagpur Rice and Flour Mills vs. Teekappa Gowda and Brothers, [AIR 1971 SC 246]** (*Nagpur Rice and Flour Mills*). In *J.M.Desai*, provisions of Bombay Cinemas Registration Act, 1953 and the Bombay Cinema Rules, 1954 came up for consideration and paragraphs 36 to 41 of the said judgment read as under:

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

37. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights

have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer-zone may not be "persons aggrieved".

38. To distinguish such applicants from 'strangers', among them, some board 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, recognized 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?

39. Now let us apply these tests to the case in hand. The Act and the Rules to which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, "person aggrieved" must receive a strict construction.

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

41. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an

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

(underlining by us)

Thus, a person who is not aggrieved by any discrimination complained of, cannot maintain a writ petition. **[D.Nagaraja vs. State of Karnataka, AIR 1977 SC 876]** (*D.Nagaraja*).

24. That apart, Section 4-B of the Karnataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Appointment, etc.) Act, 1990, reads as under:

“4-B. Appeal against order under Section

4-A.— (1) Any person aggrieved by an order of the Tahsildar under Section 4-A may, within thirty days from the date of receipt of the order, prefer an appeal to Assistant Commissioner of the Revenue sub-division.

(2) The Assistant Commissioner of the Revenue sub-division may after giving both parties an opportunity of being heard pass orders allowing or dismissing the appeal and in appropriate cases directing issue of a caste certificate, or as the case may be, an income and caste certificate to the applicant.”

On a reading of the same it is evident that the only a person aggrieved by an order of the Tahsildar under Section 4-A with regard to issuance of caste certificate and income certificate, can file a appeal to the Assistant Commissioner of the Revenue sub-division and not otherwise.

25. The expression “a person aggrieved/aggrieved person/aggrieved” could be further explained with reference to K.J.Iyer’s “*Judicial Dictionary*”, 16th Edition (2014), as under:

- The word ‘aggrieved refers to a substantial grievance, a denial of some personal, pecuniary or

property right, or the imposition upon a party of a burden or obligation;

- A man who has suffered a legal grievance—a man against whom a decision has been pronounced, which has wrongly deprived him of something or wrongfully affected his title. [*Re. Sidebotham (1880) 24 Ch D 458*].
- A person injured or damaged in a legal sense. The question whether a person is 'aggrieved' for the purpose of complaining against another, is to be determined by the nature of injury or offence, and the special circumstance of each case. Any fanciful or sentimental grievance does not suffice; there must be *injuria* or a legal grievance, that is, such grievance as law can appreciate and not a *stat pro ratione voluntas* reasons. [*3 CrLJ 187*].
- The expression 'aggrieved person' means a person who has got a legal grievance, i.e., a person is wrongfully deprived of anything of which he is legally entitled and not merely a person who suffered some sort of disappointment. [*Gopal Prasad Chourasia vs. Prasanna kumar Shrivastava, (1999) JLJ 478 (487) (MP) (DB)*].
- Not every person who has suffered some disappointment or whose expectations have not been realised as a result of the decision or order can claim to be an 'aggrieved person'. [*Bar Council of Maharashtra vs. M.V.Dabholkar, AIR 975 SC 2092*].

26. In **V.N.Krishna Murthy vs. Ravikumar, [(2020) 9 SCC 501]**, the Hon'ble Supreme Court has held as under:

"19. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised [vide **Shanti Kumar R.Canji vs. Home Insurance Company of New York, (1974) 2 SCC 387**, and **State of Rajasthan vs. Union of India, (1977) 3 SCC 592**]."

27. The appellant herein has not made out a case as to how he was aggrieved by issuance of a caste certificate in favour of respondent No.1. He was not a person who had applied to the post of Kannada Teacher in the Aided Institution, to which respondent No.1 was appointed. He has not been denied any benefit on account of issuance of the caste certificate in favour of respondent No.1, which he had claimed. Therefore, the appellant had no right to file a complaint against respondent No.1 herein and he had no *locus standi* to do so.

28. Learned counsel for the appellant drew our attention to Circular dated 30.6.2007 issued by the State

Government that Circular is contrary to the provision of law, which we have extracted above. As already noted, it is only a person who is aggrieved can file an appeal under Section 4-B of the Act. The Circular cannot be contrary to the provision of the statute. In fact, the said Circular nowhere enables the appellant herein to file a complaint, as the appellant had no *locus standi* to do so. Merely because, the said Circular enables a person to file a complaint, would not imply that, any person, although does not have the *locus standi* to do so as he is not an aggrieved person, can file such a complaint. It is only an aggrieved person who is a stakeholder, such as an employer or the person who has been denied a caste certificate or a person who has been denied of a post in Government or public service or a seat in an educational institution on account of a fraudulent caste certificate obtained by another person, who can file such a complaint. Therefore, placing reliance on the aforesaid dictum of the Hon'ble Supreme Court in *Ayaaubkhan*, we hold that the appellant herein had no *locus standi* to file a complaint against respondent No.1, as he was not a person aggrieved.

29. It is necessary to refer to the Circular issued by the Ministry of Home Affairs, Government of India, in April, 1975, which has stated that: ".....no person who was not a Scheduled Caste or a Scheduled Tribe by birth will be deemed to be a member of a Scheduled Caste or a Scheduled Tribe merely because he or she had married a person belonging to a Scheduled Caste or a Scheduled Tribe. Similarly, a person who is a member of a Scheduled Caste or a Scheduled Tribe would continue to be a member of that Scheduled Caste or Scheduled Tribe as the case may be, even after his or her marriage with a person who does not belong to a Scheduled Caste or a Scheduled Tribe."

30. The aforesaid Circular was adopted by the State by Government Order dated 23.03.1987 and hence, till then, the judgment in *N.E.Horo* held the field and was applicable to the persons who had been issued caste certificate on the basis of their marriage to a Scheduled Caste or Scheduled Tribe person, even though by birth they did not belong to the said caste.

31. This brings us to the latest judgment of the Hon'ble Supreme Court relied upon by the learned counsel

for the appellant, which is in the case of *Jagadish Balaram Bahira*. The said judgment could be distinguished even on a reading of the preface to the said judgment under the heading "A. *The perspective*". The Hon'ble Supreme Court in the said case dealt with the problem confronted by the legislatures, policy makers as well as Courts as enforcers of the rule of law, when the benefits of affirmative action programmes are captured by persons who do not genuinely belong to the beneficiary groups. For a better understanding of the same, it would be useful to extract the following passages from the judgment:

"2. But the problem which has confronted legislatures, policy makers as well as courts (as enforcers of the rule of law) is a capture of the benefits of affirmative action programmes by persons who do not genuinely belong to the beneficiary groups. This kind of capture poses a serious dimension. When a person who does not belong to a caste, tribe or class for whom reservation is meant, seeks to pass off as its member, such a stratagem constitutes a fraud on the Constitution. For one thing a person who is disentitled to the benefit of a welfare measure obtains the benefit. For another this deprives a beneficiary who is genuinely entitled to receive those benefits of a legitimate entitlement. This constitutes an egregious constitutional fraud. It is a fraud on the statutes which implement the

provisions of the Constitution. It is a fraud on state policy. Confronted with this problem, the legislatures have intervened with statutory instruments while the executive has, in implementation of law, set down administrative parameters and guidelines to prevent the usurpation of benefits.

3. The batch of cases with which the court is confronted involves individuals who sought the benefit of public employment on the basis of a claim to belong to a beneficiary group which has, upon investigation been found to be invalid. Despite the invalidation of the claim to belong to a Scheduled Caste or, as the case may be, a Scheduled Tribe or backward community, the intervention of the Court is invoked in the exercise of the power of judicial review. The basis for the invocation of jurisdiction lies in an assertion that equities arise upon a lapse of time and these equities are capable of being protected either by the High Court (in the exercise of its jurisdiction under Article 226) or by this Court (when it discharges the constitutional function of doing complete justice under Article 142). The present batch of cases then raises the fundamental issue as to whether such equities are sustainable at law and, if so, the limits that define the jurisdiction of the court to protect individuals who have secured access to the benefit of reservation in spite of the fact that they

do not belong to the caste, tribe or class for whom reservation is intended.”

32. After reviewing a catena of judgments rendered earlier by the Hon'ble Supreme Court, certain conclusions were arrived at in paragraph No.67 thereof. The said judgment essentially deals with the directions, which were issued in the case of ***State of Maharashtra vs. Milind [(2001)1 SCC 4]*** and ***Kum.Madhuri Patil vs. Additional Commissioner [(1994) 6 SCC 241]*** in the context of the statutory framework provided regulating the issuance of a caste certificate, scrutiny or verification of the claims and cancellation of caste certificate etc. The said judgment is in the context of a false caste certificate being issued by the authority, on the basis of incorrect or false averments being made or claims to have been put-forth before the authority. That judgment does not have any relevance to the controversy in the instant case. Hence, no assistance could be drawn on the basis of the said judgment.

33. Learned counsel for respondent No.1 placed reliance on ***Kavita Solunke vs. State of Maharashtra and Others [(2012)8 SCC 430]*** to contend that, it is only in a case of a false, fabricated caste certificate being

obtained or by misrepresentation on fraud, which would disentitle a candidate from getting relief from the Court or when, on the basis of such a fraudulent caste certificate being issued, no benefits could be derived.

34. But, in the instant case, there was no falsehood, fabrication, manipulation or concealment made by respondent No.1, while being issued the caste certificate in the year 1979. The same was issued to her on the basis of the law prevailing at the relevant point of time, namely the judgment of the Hon'ble Supreme Court in *N.E.Horo*. Subsequent declaration of law by overruling the *N.E.Horo* cannot *ipso facto* result in the caste certificate issued to respondent No.1 herein being fraudulent, illegal or invalid. In this regard, we find considerable force in the submission of the learned counsel for respondent No.1.

35. We have perused the detailed order of the learned Single Judge. We do not find any merit in the appeal. Hence, the appeal is ***dismissed***.

36. Consequently, respondent No.1 is entitled to seek the terminal/retiral benefits in accordance with law. Respondent No.6 is directed to process the case of respondent No.1 for the purpose of grant of terminal

benefits on the basis of the caste certificate issued in her favour and release the terminal benefits as expeditiously as possible. However, as ordered by the learned Single Judge, respondent No.1 shall not be entitled to claim benefit of a person belonging to the scheduled caste in future. The judgment of the learned Single Judge is sustained in all respects.

37. In fact, by interim order dated 20.04.2021, a Co-ordinate bench had directed respondent No.6 to comply with the earlier interim order dated 03.05.2019 on or before 31.05.2021. Learned counsel for respondent No.1 submits that the said interim order is not yet complied with. In the circumstances, respondent No.6 to release the terminal/pensionary benefits including the arrears, if any, to respondent No.1, within a period of one month from the date of receipt of certified copy of this judgment.

Parties to bear their respective costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*S/AP**