

Principle of *locus standi* before Competition Commission of India

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Abstract: The general meaning of the term 'locus standi', in law, is 'by what right' or 'by what authority' one has appeared before the Court(s) of Law. In the Indian Law, a person who is aggrieved has the only right to appear before the courts of law and to contest his case. A person who is not aggrieved but want to contest on behalf of someone who is socially, educationally and economically backward person can file a public interest litigation or PIL. In this paper, I will be addressing the general principle of locus standi, the meaning that has been attributed to it and how the *Locus Standi* principle has been shifted when one approaches before the Competition Commission of India by way of filing information with regard to contravention of the provisions of Competition Act, 2002. The nexus of the person and legal injury that was necessary before one approach the courts of law has been expanded in the competition matters by the Hon'ble Supreme Court by way of its judgment in *Samir Agrawal vs CCI*. The judgment upholds the order passed by Competition Commission of India on merits, however, upon the limited issue that 'whether a person having no legal injury can also approach the Competition Commission' or 'who has the right to approach the Competition Commission' it clearly held that 'any person', even if not aggrieved, can file information before the Commission. This paper clearly contrasts the general principle of Locus Standi before the courts of law and the one that has been attributed to it by Hon'ble Supreme Court when one approached the Competition Commission of India. The general principle has been expanded and 'any person' irrespective of the legal injury caused has been given the right to file information before the Competition Commission of India by Hon'ble Supreme Court.

Keywords: *locus standi*, aggrieved person, anti-competitive, fair competition, investigation, *prima facie*.

I. INTRODUCTION

Generally, the person who has suffered a specific legal injury by reason of violation of his legal right can knock at the door of the court for enforcement thereof. [1] An exception to the same was Public Interest Litigation *i.e.* litigation initiated on behalf of the individual for welfare of the aggrieved people. Any person can move the court(s) on behalf of socially, educationally and economically backward/ suppressed class of people who are unaware of their rights and are unable to move the court(s) of law in case of violation of their rights. Here the authority to move the court was given to an individual who is working for public benefit for redressal of their grievances. However, this has been only an exception to the tradition rule which provides that any person suffering with legal injury 'only' has right to move the court(s) against violation of his rights.

II. MEANING OF THE TERM '*LOCUS STANDI*'

Legally speaking, any third person or an unknown person is not allowed to interfere in any legal proceeding, unless he proves before the adjudicating authority that he falls within the category of aggrieved persons or that he has suffered a legal injury. It is only an individual who has suffered any legal injury can challenge the action of contravening/violating party before the courts of law. In other words, only the aggrieved person has legal right to move the courts of law. The legal right that can be enforced must ordinarily be the right of the

individual who approaches the court of law against the violation of such right seeking it to grant relief with regard to the violation of his legal right. [2] Literally, the term '*locus standi*' means that by what right or in what capacity a person has brought an action or has appeared before the court(s) of law? The answer to which may be that a person moves the court(s) of law when any of his legal right is violated thereby causing him a legal injury.

Legal right means a privilege arising out of the legal rules. It can be defined as a benefit that is bestowed upon an individual by the rule of law. The term "person aggrieved" never means to include any person with a psychological or an imaginary injury; however, it is an individual whose rights or interests have been altered or jeopardised. [3] In another matter, Hon'ble Supreme court adopted a similar view observing that where a person who claims any relief before the courts of law is found not eligible then he cannot be termed/ called a person aggrieved with regard to election/selection of other persons. [4]

Hon'ble Supreme Court accepted that the term 'aggrieved person' connotes the elastic and an elusive concept which cannot be narrowed down to the boundaries of a strict, precise and all-inclusive definition. The very scope and meaning of the term depends on various factors *for example* what is the basic substance and actual connotation of the statute regarding which the contravention is alleged, the facts and circumstances of that particular case, the nature and extent of the i) aggrieved person's interest and the wrong that has been suffered by the

individual who is before the court seeking redressal. [5]

Even with regard to the habeas corpus writ petition which can be through a next friend, Hon'ble Supreme Court clarified that even the term, 'next friend' would mean a person who is not a complete stranger. Even such writ petitions seeking to bring the illegally detained person before the court cannot be filed by someone who is not known to the person in illegal custody. [6]

Even many at times through its decision Hon'ble Supreme Court has warned the public at large to entertain even the public interest litigation filed by any dishonest or corrupt person just for his personal benefit and to only abuse the procedure of the court. The right of access to justice ought to be used to aid basic human rights, which aim to ensure legal rights. Whenever there is mention of any public interest, the court(s) of law must investigate the matter in depth and thoroughly to see that a genuine public interest is involved.

Thus, the Apex Court clearly laid down that the manifestation of the legal right of an individual which is alleged to be contravened is the basis for moving the court(s) of law. The traditional rule of interpretation regarding the principle of *locus standi* of a person to approach the court of law has experienced a big transformation with the constitutional law development. Indian Courts are adopting a liberal approach while dealing with the matters coming before them and are seen rejecting the allegation of a petitioner that is filed on hyper-technical grounds.

In other words, even if the person is found to be unknown or not so related, having no right cannot be denied justice on the ground of his not having the *locus standi*. Thus, any person who is before the court(s) of law with any grievance/complaint must reveal to the court that how he has suffered legal injury. Generally speaking, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others. [7]

III. LOCUS STANDI TO APPROACH COMPETITION COMMISSION OF INDIA (Related Provisions and Relevant Case Laws of Competition Law in India)

Section 19 of the Competition Act, 2002 ("the Act") empowers the Indian Regulator (Competition Commission of India/ the Commission) to initiate proceedings with regard to the alleged anti-competitive agreements and abuse of dominance either by itself/on its own; or upon receiving information from any person; or by way of a reference by the Central/ State Government/ statutory authority.

The provisions of the Act are very clear regarding the principle of *locus standi* for approaching the Commission by way of information and there is no prohibition under the Act as far as the allegations relate to the afore-said provisions of the Act.

Deciding upon the issue with regard to *locus standi*, the *erstwhile* Competition Appellate Tribunal (COMPAT) in *Surendra Prasad v. CCI and Ors.* [8] held that it is significant to note that the Parliament has neither prescribed any qualification for the person who wants to file an information under Section 19 (1) (a) nor given any condition that should be completed before filing information under that particular section. From the bare language of Sections 18 and 19 read together with Section 26 (1) it cannot be inferred that the Commission is having authority for rejecting the prayer to investigate into the alleged contravention of the provisions of the Act on the ground that the person filing information before the Commission is not having any personal interest in the matter and he has filed the information on behalf of someone else. COMPAT held that the Competition Commission has been empowered under the Competition Act to initiate proceedings on its own with regard to any infringement of the provisions of the Competition Act and to proceed with the inquiry which implies that the Commission ought not to for any reference from the Central/State Government or to wait for information being filed by any person to exercise its power under the Competition Act to direct investigation and inquire. It is not at all necessary for the Commission to act only when any information is being filed as per Section 19 (1) (a) of the Act but it can proceed suo motu taking note of the anti-competitive conduct and investigation may be ordered accordingly. Towards the same any reports available online/offline and any information/ complaint filed by unidentified people that suggest the violation of the provisions of the Act may be considered by the Commission and an investigation may be ordered. However, the only *pre-requisite* is that the Commission must be first of all prima facie satisfied with regard to existence of a case of contravention for directing investigation into the alleged contravention

In another matter [9] *erstwhile* COMPAT while passing an order clearly opined that the informant did not lack *locus-standi* just because the rules governing its association were binding only on the members. Infact, it was clearly held that anybody could have activated and invited the attention of the Commission to the anti-competitive agreements or actions or rules.

Not only the *erstwhile* COMPAT even Competition Commission of India by way of its decisions clearly established and explained the *locus standi* of the persons while approaching the Commission or while filing the information before the Commission. It was observed by the Commission in the matter of Saurabh Tripathy And Great Eastern Energy Corp. Ltd. [10] that in accordance with the scheme of the Act, any person can file information before the Commission with regard to alleged anti-competitive conduct and for the same it is not essential for such a person to be personally aggrieved of such a conduct. This is also the scheme of the Act.

In another matter of *Matrix Info Systems Private Ltd. Vs. Intel Corp.* [11], wherein the Commission stated with regard to one

of the argument raised regarding Information being filed with malafide intention that the said argument does not affect the merits of the case and the proceedings before the Commission are *in rem*. Therefore the antecedents of the Informant do not restrict the Commission to proceed with the action against the abusive conduct of any entity.

The Commission in another matter held that the *locus standi* of the informant was not relevant and emphasised that since the Commission could take *suo-moto* cognizance of matters, the informant's role was not relevant as long as the goal of maintaining fair competition was met. It was further held that rather than the *locus* of a person approaching the Commission the Commission is more concerned about the facts and allegations leveled up in the information. [12]

Again, in *Vedanta Bio Sciences, Vadodara vs. Chemists and Druggists Association of Baroda* [13], the Commission held that the motive of the informant, even if driven by business rivalries, was not relevant to the functioning of the Commission as long as the goals of maintaining a competitive market were met. In another matter [14], the Commission held that the motives/ credentials of the informant were not relevant to the matter.

Thus, the scheme of the Act as well as the jurisprudence developed by the authorities as above clearly provided that it is always within the powers of Commission to dismiss the information filed if it finds the same to be frivolous or malafide, however, till the facts enumerated/ mentioned in the information make out a *prima facie* violation of the provisions of the Competition Act, the information cannot be dismissed on the ground of lack of *locus standi*.

IV. JUDGMENT IN SAMIR AGRAWAL

Despite the availability of the clear provisions in the Act with regard to the filing of information by any person as well as the clear interpretation of the same by the court(s) by way of various decisions, Hon'ble National Company Law Appellate Tribunal (NCLAT) [15] by way of its decision in *Samir Agrawal vs. Competition Commission of India & Ors.* held that the filing of information by any person under Section 19 (1) (a) means filing of information by a person whose has suffered loss/ damage of legal rights. Any other interpretation under Section 19 (1) (a) would definitely be contrary to the object and purpose of the Act. [16]

1.1 Brief Facts

Informant, an independent law practitioner was aggrieved by the pricing mechanism adopted by Ola and Uber while providing radio taxi services. It was alleged by the Samir Agrawal/ Informant that the autonomy of the individual taxi drivers to compete with each other has been carried away by the said pricing strategy that has been adopted by the cab companies amounting to price fixing thereby amounting to the violating Section 3 of the Competition Act.

Informant further alleged that Ola/ Uber and its drivers are in a vertical relationship wherein Ola/ Uber imposes a minimum price level on the drivers, resulting in a contravention of Resale Price Maintenance under Section 3 (4) (e) of the Act. The method of doing business by the cab companies was stated by Samir Agrawal to be the hub and spoke cartel as The Informant subsequently defined, alleging that the platforms of these Cab Aggregators have acted as a hub for the collusion between the spokes, i.e. drivers. It was also averred that owing to information asymmetry, i.e. Cab Aggregators possessing considerable personalised information about every rider, have been able to price discriminate to the disadvantage of the riders.

1.2 Order of the Commission

The Commission, after considering the submissions of the Informant, passed an order dated 06.11.2018 [17] and observed that determining of fares through an App algorithmically for a rider and every trip is different because of the interchange of large data sets which are popularly known as 'big data'. The said determination of pricing does not appear to be same as that of what is alleged by the Informant to be hub & spoke model. For a hub & spoke model to be present an agreement is required between all the drivers for setting pricing through a platform or there should be an agreement existing between these platforms to match up prices between them. However, noticing no such agreement, the Commission discarded the first allegation against the cab companies.

Regarding the resale price mechanism allegation, the Commission observed that resale is essential to the conduct of resale price maintenance. In the context of app- based taxi services, the Ola/Uber do not sell any good/service to the drivers that the drivers re-sell to the riders. In absence of any resale of services, the allegation of resale price maintenance is not tenable. Further, resale price maintenance is essentially setting of a floor price on resale. In case of taxi services based of the app there was n fixed floor price which is fixed and maintained. Thus, Commission observed that the allegation with regard to the price discrimination was not supported by any material placed on record. For the same to be looked into under Section 4 of the Act any allegation was not made. Thus even the allegation of price discrimination was rejected by the Commission.

The Commission found no contravention of the provisions of Section 3 of the Act against Ola and Uber as there was no understanding as well as meeting of mind existing neither between the drivers and cab companies nor amongst the driver's *inter-se*. accordingly, the matter was directed to be closed under Section 26 (2) of the Act by order dated 06.11.2018.

1.3 NCLAT Judgment

Aggrieved by the said order of the Commission, the Informant filed an appeal before NCLAT. A three-member bench of NCLAT reserved the judgment on 28.01.2020 and passed final judgment in the matter on 29.05.2020. NCLAT affirmed the order of the CCI and found no legal infirmity. It also held that on the merits of the case there was no material on record.

NCLAT opined that the model adopted by the Ola and Uber for their business did not support the price discrimination as alleged by the Informant and the allegation that Cab Aggregators were facilitating a cartel was repelled since the cab companies did not work as a group of its driver partners. The allegations regarding abuse of dominance by Ola and Uber were outrightly rejected by the NCLAT observing that they were not dominant individually in the relevant market.

However, regarding a limited issue of *locus*, NCLAT held that the Informant claiming to be an Independent Law Practitioner has no *locus standi* to maintain an action *qua* the alleged contravention of Act.

1.4 Grounds of Challenge before Supreme Court

The said decision passed by NCLAT was challenged before the Hon'ble Supreme Court on the grounds that the NCLAT erred in holding that the Competition Act does not allow 'any person' to file Information under Section 19(1) of the Competition Act, and the *locus standi* before the Commission is only limited to 'person(s)' who necessarily have suffered legal injury/victimization at the hands of the enterprise committing competition law violation.

Another ground of challenge raised before the Supreme Court was that NCLAT has made a patent error in observing that there is no meeting of minds/collusion amongst the drivers, *inter-se*, under Section 3(3)(a) of the Act regarding zero competition on pricing which otherwise is a *per-se* offence under the Competition Act and that NCLAT, without proper analysis of the material before it including agreements of drivers with Uber/Ola, has incorrectly concluded that there is no prima-facie case made out under Section 3 of the Act, so much so that there is not enough merit to pass an order for investigation under Section 26(1) of the Act.

Further, NCLAT erred in holding that for a 'hub and spoke' cartel to exist under Section 3 of the Act, there must be direct sharing of information/agreement, *inter-se*, amongst the drivers of Ola also, over and above the already existing agreements of drivers with Ola.

Another, ground of challenge was that NCLAT failed to consider that the conduct complained of is presumed (*per se*) to be anti-competitive under Section 3(3) (a) of the Act.

1.5 Contentions on behalf of parties

Samir Agrawal – Informant submitted that the Ola and Uber were following the hub and spoke arrangement thereby violating Section 3 of the Act. [18]

Provisions of Sections 19 and 35 of the Act were referred to by the Informant to contend that post amendments in 2007 any person may approach the Commission. The said provisions were also differentiated with the Sections 53B and 53T of the Act wherein the term 'person aggrieved' has been used. [19]

Advocate of Uber contended that there are other apps too which are providing the taxi services similar to Ola and Uber and an individual can use any of these apps to take rides. Thus, it is the discretions of drivers to decide fares with the person choosing to ride with them and there is no restriction upon them. The question of cartelisation also could not arise as there are many drivers who are unknown to each other to show any arrangement or meeting of mind. Even the drivers have been allowed to negotiate and decide the fares which are less or below than what have been mentioned in the app, thereby improving competition and giving the passengers great flexibility and choose the rides that are economical. [20]

The said submissions made by the Uber were supported by Ola too on merits, however, in addition to the same Ola submitted that an informant under Section 19 could not be considered an aggrieved person for filing appeal as per the provisions of Section 53B of the Act. He further argued that information can be provided by individuals on the direction/request of the rival competitors that can have serious repercussion on cab companies like Ola and Uber. One such information is filed in the present case. He also stress to lay down that if that being the case, heavy costs should be imposed to discourage such persons from coming before the Competition Commission with unclean hands upon the command of its rivals. [21]

The order of the commission closing the case and holding the Informant's right of filing information before the Commission was completely favoured by the advocate appearing n behalf of the Commission. [22]

1.6 Issue for determination

The issues framed for determination by the Hon'ble Supreme Court were that who can approach Competition Commission of India and whether the order passed by CCI was correct and not to be interfered?

1.7 Observations

The Court made the following observations regarding the limited issue of locus as well as on merits:

Noticing the scheme of the Act as well as the General Regulations, 2009, it was observed that the information may be filed by any person aggrieved and the same may be then proceeded as per the provisions of the Act. [23]

The term person has been defined under Section 2(1) is an inclusive definition and is extremely wide which includes every kind of individuals and also all artificial juridical persons. [24]

Section 19 (1) of the Act originally incorporated the word complaint from any person however, it was substituted with the word ‘information in such manner’ by the amendment in the year 2007. This substitution was of great significance as the complaint may be lodged by a person who is aggrieved however, information may be filed by any person irrespective of him being personally affected. It is because the proceedings before the Commission are *in rem* affecting public at large. [25]

The infringement may be looked into by the Commission on its own and may also receive information from any person who is necessarily not the aggrieved party. [26]

Amendment in Section 35 by way of substitution of the words ‘complainant or defendant’ by the words ‘persons or enterprise’ shows that the informant may appear personally or through a third party before the Commission to put forth all the material he has collected. [27]

Filing of false information has been made punishable with a penalty under Section 45 of the Act to deter filing of any information malafidely. [28]

Only a statement of facts and details of the violation is required to be provided as per Regulation 10 of the General Regulations, 2009. A person is not at all required to show how he is aggrieved by the alleged contravention. [29]

Public interest has been shown as the foremost concern of the Commission as per Regulation 25 of the General Regulations, 2009 and a person, if shows that he has considerable interest in the outcome of the proceedings, is allowed to participate in the proceedings before the Commission. [30]

Regulation 35 of the General Regulation provided confidentiality to the identity of an informant if it is sought in writing and the said confidential treatment keeps the person away from any nuisance created by the other people involved in the infringement. [31]

The Apex Court did not agree with the findings of NCLAT. [32] Upon the merits, however, the Supreme Court agreed with the findings of both the Commission as well as the Tribunal. [33]

1.8 Judgment

Hon’ble Supreme Court held that in as per the scheme of the Competition Act it is very clear that the Act empowers the Commission to act *in rem* and not *in personam*. It was observed that a wide interpretation must be adopted of the term ‘person aggrieved’ rather than attributing a narrow definition to it that was done by the Appellate Tribunal. Further, it was stated that under Section 53B and 53B of the Act, the term any person would include all persons who report contraventions of the provisions of the Act and they could be said to be aggrieved in case any contrary order rejecting to proceed in accordance to the information filed. [34]

Payment of compensation for the loss suffered as a result of contravention of the Act committed by an enterprise has been provided under Section 53N (3) of the Act. The argument raised was that under this sub-section any person filing a compensation application under Section 53N (1) of the Act, would refer to those individuals only who have suffered any loss/ damage. Any person would thus refer to a person who has suffered loss or damage. [35] Therefore, the Court rejected the arguments raised against the Informant/Appellant filing Information before the Commission and filing an appeal before the NCLAT.

The court held that whenever the Commission carry out inquisitorial functions and not adjudicatory functions, the access to the Commission must be widened in public interest so as to upkeep the objects and purpose of the Act. [36]

The court upheld the findings of the Commission and the subsequent findings of NCLAT with regard to the merits of the case whereby it was held that Ola and Uber were not indulged in cartelization or anti-competitive practices thereby resulting into contravention of Section 3 of the Act. Resultantly, the appeal was disposed of without finding any reason to interfere with the findings of the Commission and NCLAT thereafter. [37]

V. WHO CAN FILE INFORMATION BEFORE THE COMMISSION

Hon’ble Supreme Court [38] provided clarity with respect to the issue of *locus standi* of an informant for approaching the Commission under Section 19(1) (a) of the Act. The *locus standi* to approach the Commission was broadened by the Hon’ble Supreme Court and the decision of NCLAT restricting intervention by the Commission only to cases where information has been received from a person who has suffered from the legal injury, was dismissed. The court held that the information may be filed by any person before the Commission and the same may then be proceeded with by the Commission as per the provisions of the Competition Act.

Thus ‘any person’ can file information before Commission irrespective of the fact that no legal injury was suffered by him. With this, the scope of *locus standi* to file information before was expanded and made an exception to the traditional rule of *locus standi*.

VI. CONCLUSION

All around the world, competition authorities rely on citizens to come up with the information relating to anti-competitive conduct. The European Commission’s notice on best practices [39] itself acknowledges that information from its natives and undertakings are essential in triggering investigation before the Commission, and therefore it desired to support them to inform the Commission the cases wherein there is suspicion of infringement of the Competition Law. A formal complaint may be filed or market information may be provided to the Commission regarding the alleged contravention.

The UK's Competition and Market Authority also encouraged its citizens to come forward and help with the investigations. In line of the same key information were easily made available to citizens who felt that they've spotted something which is not right and correct, but at the same time they do not know what should be their next move after noticing the infringement. [40]

It is thus seen that the Competition authorities around the world encourage its public at large/ its citizens to provide any kind of information showing activities or conduct of entities which may possibly fall foul of antitrust legislation. The UK's Competition and Market Authority has an online reporting form that makes reporting anti-competitive conduct quicker and easier thereby facilitating citizens and whistle blowers to bring forth such information which encompasses possible contravention of competition legislation. Thus, in the European Union and in the UK, the authorities' welcome informants to report suspected violations of the law.

A plain reading of Section 19 shows that any person can approach the Commission and need not necessarily be a party who has a personal interest in the matter covered under the Information. Though initially NCLAT went on to ignore the decision of its predecessor [41], the erstwhile COMPAT on the same issue thereby not following the rule of precedent, Hon'ble Supreme struck down its findings upholding the scheme of the Act providing the right to 'any person' to move to the Commission.

Competition Law is still in the evolving stage and is witnessing novel issues that still need to be settled by the court(s) of law. The fundamental role played by the judges in the evolution of competition law cannot be neglected and it has been for the courts to put flesh on the bare bones of the competition legislation and to develop their meaning. With the judgment in Samir Agrawal Case the controversy regarding the issue of locus before the Commission has been settled once and for all.

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