

HIGH COURT OF MADHYA PRADESH : JABALPUR

Writ Petition No. 4792/2005 (PIL)

Rajendra Kumar VermaPetitioner

Versus

State of M.P. and othersRespondents

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice Shantanu Kemkar, J.

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Smt. Shobha Menon, Senior Advocate with Shri Rahul Choubey, Advocate for the petitioner.

Shri Swapnil Ganguly, Deputy Government Advocate for the respondents 1 to 4/State.

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Whether approved for reporting ? YES

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Reserved On : 16.10.2014

Date of Decision : 06.01.2015

ORDER

{06th January, 2015}

Per: A.M. Khanwilkar, Chief Justice:

The petitioner asserts that he is a well-known social worker and actively associated with many NGOs fighting for the cause of human dignity, civil liberty and social justice. He has

filed this public interest petition for direction to the State Authorities to prevent the environmental noise pollution caused during the festive seasons, religious and social ceremonies spread over the year, by use of various sound amplifiers and other devices besides the noise pollution by factories, trains and aeroplanes. Further direction is sought to prevent other atrocities committed on the society in the name of religious festivals such as (a) traffic hazards by putting *Pandals* on busy streets (the number proliferating each year) in an indiscriminate manner, (b) theft of electricity with impunity for lighting and decoration of *Pandals*, resulting in loss to public exchequer and (c) extortion and intimidation of public by unscrupulous elements in the name of donation for the *Pandals*.

2. According to the petitioner, the citizens have a right to a decent environment and to live peacefully which includes right to sound sleep at night, to leisure and free locomotion during the day time. These are essential ingredients of the right to life guaranteed under Articles 19(1)(a) and 21 of the Constitution of India. The petitioner asserts that the mandate of Article 51A(g) obligates every citizen to protect and improve the environment. Reliance is placed on the exposition of the Apex Court in

Subhash Kumar v. State of Bihar and others¹. In Paragraph 7, the Court held that right to live is a fundamental right under Article 21 and it includes the right of enjoyment of pollution free water and air for full enjoyment of life. It is contended that the use of various sound amplifiers during the festivals, social and cultural gatherings and, more particularly, if unregulated, inevitably causes health hazards and nuisance to the public. It entails in infringement of basic human rights and also fundamental rights of the captive listeners in the concerned locality. The petitioner has then placed reliance on the decision of the Calcutta High Court in the case of **Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal**² wherein the issues raised by the petitioner have been squarely dealt with in the context of right to practice and propagate one's own religion. After analysing the gamut of decisions, it is held that right does not give licence to anyone to create noise pollution and muchless force the captive listeners to suffer the same. That, none can claim an absolute right to suspend others rights or disturb their basic human rights and fundamental rights. The petitioner has also placed reliance on another decision of the Apex Court in

¹ (1991) 1 SCC 598 = AIR 1991 SC 420

² AIR 1999 Cal. 15 = 1998 SCC Online Cal. 73

Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association and others³ wherein it is held that sleep is restorative time of life and sound night's sleep is crucial to good health. The Court held that no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice amplifiers or beating of drums. Further, in a civilised society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during daytime or other persons carrying on other activities cannot be permitted. Rights of others are also required to be honoured. The Court also highlighted that the problem of noise has become a very serious issue – having many evil effects including danger to health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastro-intestinal problems, allergy, distraction, mental stress and annoyance etc. It also affects animals alike. Sometimes it lead to serious law and order problem. Further, in a civilised society, rights are related with duties towards others including neighbours.

³ (2000) 7 SCC 282

3. To buttress the argument that noise pollution should not be countenanced, the petitioner has placed reliance not only on Article 21 but also Articles 48A and 51A(g) of the Constitution of India. The petitioner has also placed reliance on the provisions of the Air (Prevention and Control of Pollution) Act, 1982 (in short “*the Act of 1982*”) and the Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as “the Central Rules of 2000”). These Rules oblige the State Authorities to take certain measures for enforcement of the restrictions specified therein. Rule 3 prescribes for the ambient air quality standards in respect of noise for different areas/zones, which are specified in the Schedule annexed to these Rules. Rule 4, read with Rules 5 and 8 obliges the State Authorities to ensure that the restrictions on the use of loud speakers/public address system are observed without any exception.

4. Reference is also made to the provisions of Indian Penal Code. Section 268 of IPC makes noise pollution an actionable cause as ‘public nuisance’. Section 290 of IPC provides for punishment for such public nuisance. Section 133 of the Criminal Procedure Code empowers the Magistrate to make conditional order requiring the person causing nuisance including

that of noise to remove such nuisance. Section 30 of the Police Act, 1861 (hereinafter referred to as “the Act of 1861”) provides for Authorities to specify Rules for conduct of all assemblies or processions on public road or public streets. This provision also requires prior procurement of licence/permission before organizing the event. The Police Authorities are competent to exercise power of stopping, dispersion or declaring the assemblies or processions as unlawful, which violate the conditions of licence, by virtue of Section 30-A of that Act of 1861. Section 32 of the said Act provides for penalty upon conviction for the violation of licence conditions or breach of any provision of Law governing the subject.

5. The petitioner has also referred to the provisions of the Motor Vehicles Act, 1939 and, in particular, Section 20, 21J, 41, 68, 68I, 70, 91 and 111A, which empowers the State Government to frame Rules to regulate equipment and maintenance of motor vehicles and trailers. Section 70(2)(i) of the said Act provides for reduction of noise emitted or caused by vehicles while Section 70(2)(k) prohibits the carrying of appliances likely to cause annoyance or danger; whereas Section 70(2)(l) envisages periodical testing and inspection of vehicles by prescribed

Authorities and Section 70(2)(n) of the said Act deals with the use of trailers with motor vehicles. According to the petitioner, the provisions of the Motor Vehicle Rules framed by various States do not contain any effective control measures in relation to noise pollution except to certain extent, use of horns and silencers. The petitioner has also adverted to the provisions of the Motor Vehicles Act, 1988, which in turn, had repealed the Motor Vehicles Act, 1939. Referring to Section 110 and 190 of the Act of 1988 and the provisions in the Central Motor Vehicles Rules, 1989 it is asserted that the issue of noise pollution caused due to vehicles has been redressed to some extent.

6. Reliance is then placed on the provisions of Madhya Pradesh Kolahal Niyamtran Adhiniyam, 1985 (in short “the Adhiniyam of 1985”). According to the petitioner, this enactment envisages mechanism for dealing with complaints relating to noise pollution caused *inter alia* due to loud speakers and other such appliances. However, the provisions in this Adhiniyam are not only negation of fundamental rights of the common man and the citizen but also against the spirit of the Noise Pollution (Regulation and Control) Rules, 2000. In that, Section 13 of the Adhiniyam of 1985 exempts the control of use of loudspeakers

during the festivals adumbrated under that Section. Thereby, it grants unfettered and untrammelled right in the hands of few religious fanatics so as to interfere with the rights of the residents in the locality to have noise free environment during festivals. Accordingly, it is asserted that that Section is *ultra vires* the Central Rules of 2000.

7. By amending this petition, the petitioner has specifically articulated grounds on which Section 13 of the Adhinyam of 1985 should be declared *ultra vires* the Constitution as well as the Central Rules of 2000. The petitioner has accordingly prayed for the following reliefs:

“I. to issue a writ of mandamus to respondents to restrict:-

- (a) installation of religious Pandals only to open areas/exhibition grounds to eliminate traffic hazards and ease of control;
- (b) Decibel level of the sound systems in accordance with the schedule to the Noise Pollution (Regulation and Control) Rules, 2000. For ease of execution, it is prayed that use of horn type loudspeakers be banned and only box type speakers be allowed within Pandals subject to decibel levels prescribed by the aforementioned Central Rules of 2000.
- (c) Theft of electricity by Pandals, by making it mandatory to use Meters at the site earmarked. It is further prayed that use of opulent decorative lamps be banned.

- (d) Anti-social elements running the Pandals by placing each under the charge of elected representatives of Local Bodies, such as Municipal Councilors and Panchayat Members.
- (e) This Honourable Court be pleased to declare section 13 of the M.P. Kolahal Adhiniyam, 1985 as *ultra vires* for violating the fundamental rights of the petitioner.

II. to grant any other relief as deemed fit and proper in the facts and circumstances of the case.”

8. While advertng to the incalculable inconvenience, nuisance and obstruction caused to the public because of installation of *Puja Pandals*, the petitioner asserts that it is obligatory for the State Administration to regulate the same so as to ensure that *Pandals* are not installed in congested areas and further do not become the source for extortion from the public. Moreover, the *Puja Pandals* permitted by the Authorities should not be allowed to use free electricity and to cause loss to public exchequer. This can be ensured by providing disqualification for anti-social elements/history-sheeters from being member of *Pandal* Committees or to act as agents of the *Pandal* Committees. Instead, the *Pandals* should be permitted and must be under the complete control of the elected Representatives such as Municipal Councillors/Corporators/ Panchayat Members etc.

These persons should ensure that donation from public is not collected by way of intimidation, but, is purely voluntary.

9. During the pendency of this petition, Division Bench of this Court had granted interim relief vide order dated 01.07.2005, which reads, thus:

“There shall be an interim direction to the respondents 1 to 4 to ensure that the following conditions are specified while granting permission/licence for erecting *Pandals* for any religious festivals or for marriage or other functions:

(a) If loud-speakers are used, the noise levels by use of such loud-speakers (either horn type or box type) shall not exceed the limits prescribed in the Schedule to the Noise Pollution (Regulation and Control) Rules, 2000.

(b) No part of the *Pandal* shall be erected in a manner obstructing traffic. No part of the Road shall be closed for erecting *Pandals*.

(c) A temporary connection with meter shall be taken for electricity supply to each *Pandal*.”

10. The respondents have filed return, which, however, is not to oppose the writ petition but to place on record steps taken by the Authorities in furtherance of the enactments requiring regulation of noise pollution. To wit, the circulars issued on 18.02.2005 and 24.11.2005 by the Chief Secretary to all the duty-holders for ensuring strict implementation and taking action against persons found to be violating the provisions of the

Adhiniyam of 1985. The same have been placed on record.

11. The Pollution Control Board has filed a separate return and has adverted to the relevant provisions concerning the prohibition of noise pollution and the mechanism for dealing with the complaints in that regard. It is stated that the Pollution Control Board has no authority to take any action against the person/Institution/Society/Association responsible for installation of Pandals and causing noise pollution. It is for the other Authorities such as District Magistrate, Police Commissioner or any other Officer designated for that purpose to ensure proper maintenance of ambient quality in respect of the noise levels under the concerned Rules.

12. The Electricity Board in its return has stated that the Board is not providing any free electricity to Pandals installed with or without permission. Any person interested in installing Pandal, even for a short duration, is required to apply for temporary connection to the Electricity Board through its Committee and pay for the actual electricity consumed during such period as per the meter reading.

13. During the course of argument, counsel appearing for the respective parties have more or less reiterated the stand taken

in the petition/affidavit, as filed.

14. Regarding the issue of noise pollution due to loudspeakers or public address system and its impact on the basic human rights and the fundamental rights guaranteed by the Constitution of India to the persons in the neighbourhood and captive listeners, has been lucidly expounded in the decision of **Noise Pollution (V), in RE with Forum, Prevention of Environmental & Sound Pollution v. Union of India and Another**⁴. It may be apposite to refer to the directions issued by the Apex Court in the case of **Noise Pollution (V), in RE (supra)**.

“XII. Directions

It is hereby directed as under:-

(i) Firecrackers

174. (1). On a comparison of the two systems i.e. the present system of evaluating firecrackers on the basis of noise levels, and the other where the firecrackers shall be evaluated on the basis of chemical composition, we feel that the latter method is more practical and workable in Indian circumstances. It shall be followed unless and until replaced by a better system.

2. The Department of Explosives (DOE) shall undertake necessary research activity for the purpose and come out with the chemical formulae for each type or category or class of firecrackers. The DOE shall specify the proportion/composition

⁴ (2005) 5 SCC 733

as well as the maximum permissible weight of every chemical used in manufacturing firecrackers.

3. The Department of Explosives may divide the firecrackers into two categories- (i) sound-emitting firecrackers, and (ii) colour/light-emitting firecrackers.

4. There shall be a complete ban on bursting sound-emitting firecrackers between 10 p.m. and 6 a.m. It is not necessary to impose restrictions as to time on bursting of colour/light-emitting firecrackers.

5. Every manufacturer shall on the box of each firecracker mention details of its chemical contents and that it satisfies the requirement as laid down by DOE. In case of a failure on the part of the manufacturer to mention the details or in cases where the contents of the box do not match the chemical formulae as stated on the box, the manufacturer may be held liable.

6. Firecrackers for the purpose of export may be manufactured bearing higher noise levels subject to the following conditions: (i) the manufacturer should be permitted to do so only when he has an export order with him and not otherwise; (ii) the noise levels for these firecrackers should conform to the noise standards prescribed in the country to which they are intended to be exported as per the export order; (iii) these firecrackers should have a different colour packing, from those intended to be sold in India; (iv) they must carry a declaration printed thereon something like “not for sale in India” or “only for export to country AB” and so on.

(ii). Loudspeakers

175. 1. The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall

not exceed 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.

2. No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10 p.m. and 6 a.m.) except in public emergencies.

3. The peripheral noise level of privately owned sound system shall not exceed by more than 5 dB(A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place.

(iii) Vehicular Noise

176. No horn should be allowed to be used at night (between 10 p.m. and 6 a.m.) in residential areas except in exceptional circumstances.

(iv) Awareness

177. 1. There is a need for creating general awareness towards the hazardous effects of noise pollution. Suitable chapters may be added in the text-books which teach civic sense to the children and youth at the initial/early-level of education. Special talks and lectures be organised in the schools to highlight the menace of noise pollution and the role of the children and younger generation in preventing it. Police and civic administration should be trained to understand the various methods to curb the problem and also the laws on the subject.

2. The State must play an active role in this process. Residents Welfare Associations, Service Clubs and societies engaged in preventing noise pollution as a part of their projects need to be encouraged and actively involved by the local administration.

3. Special public awareness campaigns in anticipation of festivals, events and ceremonial occasions whereat firecrackers are likely to be used, need to be carried out.

The abovesaid guidelines are issued in exercise of power conferred on this Court under Articles 141 and 142 of the Constitution. These would remain in force until modified by this Court or superseded by an appropriate legislation.

(v) Generally

178. 1. The States shall make provision for seizure and confiscation of loudspeakers, amplifiers and such other equipments as are found to be creating noise beyond the permissible limits.

2. Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000 makes provision for specifying ambient air-quality standards in respect of noise for different areas/zones, categorization of the areas for the purpose of implementation of noise standards, authorizing the authorities for enforcement and achievement of laid down standards. The Central Government/State Governments shall take steps for laying down such standards and notifying the authorities where it has not already been done.”

(emphasis supplied)

In the subsequent order passed by the same Bench on 3rd October, 2005, in **Noise Pollution (VI), in RE⁵**, noticing that Rule 5, as amended, continues to remain in operation but the

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(2005) 8 SCC 794

State Governments were feeling difficulty in enforcing the Rule and also exercise of power conferred under Sub-Rule (3) of Rule 5 of the Central Rules of 2000 to that extent the matter was reopened.

15. In the recent decision, the Apex Court in **Farhd K. Wadia v. Union of India and Others**⁶ dealt with the question about the exemption from restriction on the use of loud-speakers and whether such exemption can apply to silence zone/areas. It will be useful to reproduce relevant extract from this decision – which answers the main issue raised even in this petition. The same reads thus :-

“21. Contention that the State Government has not declared the said zone as a silence zone, in our opinion, is besides the point. The High Court, while passing its interim order dated 25.09.2003, did not state that silence zone was required to be declared, but passed the order of restraint in respect of silence zone, as “defined and discussed in the Rules”. The parties thereto and particularly the State of Maharashtra understood the said order in that light.

22. Interference by the court in respect of noise pollution is premised on the basis that a citizen has certain rights being “necessity of silence”, “necessity of sleep”, “process during sleep” and “rest”, which are biological necessities and essential for health. Silence is considered to be

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(2009) 2 SCC 442

golden. It is considered to be one of the human rights as noise is injurious to human health which is required to be preserved at any cost. [See Noise Pollution, Laws & Remedies by Justice Bhagabati Prosad Banerjee]

23. The Calcutta High Court in several judgments and in particular in *Om Birangana Religious Society v. State* (1996) 100 CWN 617) issued various directions, some of them being:

"(a) There will be complete ban on the use of horn type loud-speakers within city residential areas and also prohibit the use of playback of pre-recorded music etc. through such horn type loud- speakers unless used with sound limiter.

(b) In cultural functions which are live functions, use of such pre-recorded music should not be used excepting for the purpose of announcement and/or actual performance and placement of speaker boxes should be restricted within the area of performance facing the audience. No sound generating devise should be placed outside the main area of performance.

(c) Cultural programmes in open air may be held excepting at least before three days of holding Board/Council Examinations to till examinations are completed in residential areas or areas where educational institutions are situated.

(d) The distance of holding such functions from the silence zones should be 100 meters and in so far as schools, colleges, universities, Courts are concerned, it will be treated as silence zones till the end of the office hours and/or the teaching hours. Hospitals and some

renowned and important Nursing Homes will be treated as silence zones round the clock."

[*See Noise Pollution, Laws & Remedies by Justice Bhagabati Prosad Banerjee, pages 327-328*]

24. This Court has also taken suo motu cognizance as regards noise pollution. It passed various orders from time to time in Noise Pollution (I), In re-[(2005) 5 SCC 727], Noise Pollution (II), In re -[(2005) 5 SCC 728], Noise Pollution (III), In re [(2005) 5 SCC 730], Noise Pollution (IV), In re-[(2005) 5 SCC 731]. A detailed judgment was rendered by a Division Bench of this Court in the said writ petition, which has since been reported in Noise Pollution (II), In re-[(2005) 5 SCC 733]. Several guidelines had been issued therein by this Court in exercise of its jurisdiction under Articles 141 and 142 of the Constitution of India. Therein, the decision of the Calcutta High Court in *Om Birangana Religious Society v. State* [(1996) 100 CWN 617] has been taken note of. As regards loudspeakers and amplifiers, it was directed: [Noise Pollution (V) case – (2005) 5 SCC 733), SCC p. 781, para 171]

“171. Loudspeakers and amplifiers or other equipment or gadgets which produce offending noise once detected as violating the law, should be liable to be seized and confiscated by making provision in the law in that behalf.”

25. The matter again came up before this Court and an order passed therein has been reported in *Noise Pollution (VII), In re-* [(2005) 8 SCC 796]. The validity of the statutory rules framed by the Central Government and in particular Rule 5 amended by notification bearing No. S.O. 1088 (E) dated 11.10.2002 was taken note

of. The decision rendered by this Court in *Noise Pollution (V), In re* was clarified. This Court noticed that the constitutional validity of sub-rule (3) of Rule 5 of the Rules had been upheld by the Kerala High Court by an order dated 14.03.2003 whereagainst an appeal was filed. The hearing of the civil appeal was, therefore, directed to be reopened. An interim order was passed that until further orders, Rule 5 of the Rules, as reproduced therein, would continue to remain in operation. The said appeal was thereafter taken up for hearing by a Bench of this Court. It was disposed of on 28.10.2005. This Court held that the Rules framed by the Central Government were not unreasonable, stating: [Noise Pollution (VII) case, SCC pp. 800-01, para 8].

"8.....The power to grant exemption is conferred on the State Government. It cannot be further delegated. The power shall be exercised by reference to the State as a unit and not by reference to districts, so as to specify different dates for different districts. It can be reasonably expected that the State Government would exercise the power with due care and caution and in the public interest. However, we make it clear that the scope of the exemption cannot be widened either by increasing the number of days or by increasing the duration beyond two hours. If that is attempted to be done, then the said sub-rule (3) conferring power to grant exemption may be liable to be struck down as violative of Articles 14 and 21 of the Constitution. We also make it clear that the State Government should generally specify in advance, the number and particulars of the days on which such exemption will be operative. Such specification would exclude arbitrariness in the exercise of power. The exemption, when granted, shall not apply to silence zone

areas. This is only as a clarification as, this even otherwise is the position of law.
(emphasis supplied)

26. The State Government is bound also by the order of this Court besides the order passed by the High Court. If any order of relaxation and/or modification is required to be passed, it is only to be passed by this Court and the Bombay High Court in the aforementioned two writ petitions. A separate writ petition, in our opinion, thus, was not maintainable.”
(emphasis supplied)

16. Considering the exposition of the Apex Court in the aforesaid decisions, it is unnecessary to underscore the imperativeness of regulating noise pollution and the obligation of the concerned Authorities to ensure strict compliance of the restrictions prescribed for noise levels.

17. Thus, prayer clause 7(b) need not detain us. We have no hesitation in accepting the said relief to the extent of the legal exposition in the aforesaid decisions and following that we direct the concerned Authorities to ensure strict compliance of the restrictions and to take all precautionary measures to prohibit violation of any of the provisions of the Central Legislation, Central Rules or State Regulations on the subject.

18. However, in the context of relief in prayer clause 7(e), we may have to consider the question: as to whether the

provisions of the Adhiniyam of 1985 are *ultra vires* the Constitution and/or the Central enactment on the subject and, in particular, the Central Rules of 2000? Going by the principles restated by the Apex Court in the aforesaid decisions, right to make unregulated noise inheres in no one. Rather, there are ample provisions in the Central Legislation as well as the Rules framed thereunder and including the Adhiniyam of 1985, which provide for restriction on the use of amplifiers and other electronic devices to the extent of permissible limits. It must be presumed that the noise level upto those limits are within the tolerable limits and therefore, permissible. If the noise limit specified by law is exceeded or breached, that would be an actionable cause.

19. Reverting to the moot question, we deem it apposite to reproduce the provision in the Adhiniyam regarding exemption. The same reads, thus:

“13. **Provisions.** – (1) Nothing in this Act shall apply to,-

(i) the occasions of National and Social functions and religious Festivals mentioned below:-

1. Republic Day (26th January);
2. Basant Panchami;
3. Maha Shivratri;
4. Holi and Rangpanchami;
5. Guripadhva;

6. Chaitti Chand;
7. Ramnawami;
8. Baishakhi;
9. Mahavir Jayanti;
10. Dr. Ambedkar Jayanti;
11. Buddha Poornima;
12. Nagpanchami;
13. Id-ul-Fiter;
14. Rakshabandhan;
15. Independence Day (15th August);
16. Shri Krishna Janmashtami;
17. Ganesh Chaturthi to Anant Choudas;
18. Sarva Pitrimiksha Amavasya;
19. Gandhi Jayanti (2nd October);
20. Durga Padhva to Dashahara;
21. Deepavali;
22. Bhai Dooj;
23. Guru Nanak Jayanti;
24. Milad-un-nabi;
25. Guru Ghasidas Jayanti;
26. Christmas Day;
27. Moharrum from 1 to 10;
28. Id-uz-Zuha;
29. Good Friday; and

(ii) the use of loud speaker at any religious place or premises where it is being made as a tradition.

(2) The prescribed authority may, on application in writing made to him, grant exemption from the provisions of sections 4, 5, 6 and 7 for such period, as such occasions and in such areas as may be specified in the permission.”

20. We may now advert to the provisions in the Central Rules of 2000. The said Rules were framed in exercise of powers under the enabling provisions in the Environment (Protection) Act, 1986 read with Environment (Protection)

Rules, 1986 by the Central Government, titled as the Noise Pollution (Regulation and Control) Rules, 2000. The same have come into force on the date of publication in the Official Gazette on 11.02.2000 and amended in the same year by Amended Rules (on 22.11.2000) and further amended in 2010 (on 11.01.2010).

21. Rule 3 of the Central Rules of 2000 specifies the ambient air quality standards in respect of noise for different areas/zones. The same reads, thus:

**“3.AMBIENT AIR QUALITY STANDARDS
IN RESPECT OF NOISE FOR
DIFFERENT AREAS/ZONES:-**

(1) The ambient air quality standards in respect of Noise for different areas/zones shall be such as specified in the Schedule annexed to these rules.

(2) The State Government shall categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.

(3) The State Government shall take measures for abatement of noise including noise emanating from vehicular movements, (blowing of horns, bursting of sound emitting free crackers, use of loud speakers or public address system and sound producing instruments) and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.

(4) All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out

functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.

(5) An area comprising not less than 100 meters around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules."

(emphasis supplied)

Rule 4 of the Central Noise Pollution Rules of 2000 imposes responsibility on the stated Authority to enforce noise pollution control measures within the limits of the ambient air quality standards, as specified in the schedule. The Schedule specifies limits Area/Zone wise, during the day time and night time. The "day time" has been specified from 6.00 A.M. to 10.00 P.M and "night time" as 10.00 P.M. to 6.00 A.M. Rule 5 provides for restrictions on the use of loud speakers/public address system and sound producing instruments. The same reads, thus:

"5. RESTRICTIONS ON THE USE OF LOUD SPEAKERS/PUBLIC ADDRESS SYSTEM AND SOUND PRODUCING INSTRUMENTS:-

(1) A loud speaker or a public address system shall not be used except after obtaining written permission from the authority.

(2) A loud speaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall not be used at night time except in closed premises for communication within, like auditoria,

conference rooms, community halls, banquet halls or during a public emergency.

(3) Notwithstanding anything contained in sub-rule (2), the State Government may subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or [public address systems and the like during night hours] (between 10.00 p.m. to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year.] [The concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption would be operative].

(4) The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.

(5) The peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5 dB(A) the ambient noise standards specified for the area in which it is used.”

(emphasis supplied)

22. As the argument is confined to the noise pollution caused on account of loud speakers and public address system used during the religious and social gatherings, we may not burden the judgment with the other provisions in the Rules of 2000.

23. Be that as it may, the validity of Section 13 of the Adhiniyam of 1985 will have to be tested in the context of Rule 5 of the Central Noise Pollution Rules of 2000. No doubt, the Central Noise Pollution Rules of 2000 have come into force much after the Adhiniyam of 1985 was introduced. At the same time, being Central Rules framed under the Central enactment, will have to prevail. Indisputably, the entire subject regarding the use of loudspeakers and public address system and sound producing instruments is now regulated by Rule 5 of the Central Rules of 2000. Besides the time limits for use of such devices is specified in Rule 5, even the sound level generated by the loud speakers/public address system and sound producing instrument has been restricted.

24. The only relaxation in that behalf can be noticed from Sub-Rule (3) of Rule 5 of Central Rules of 2000 subject to the outer limit of duration not exceeding 15 days in all “during a calendar year” and which the State Government is obliged to specify in advance. In *Noise Pollution (VII) case*⁷ the Apex Court in para 8 has expounded that the power to grant exemption conferred on the State Government cannot be further delegated. That power must be exercised by reference

⁷ (2005) 8 SCC 796

to the State as a unit and not by reference to districts, so as to specify different dates for different districts. Further, the power must be exercised with due care and caution in the public interest and that it is not open to widen the exemption by increasing the number of days or by increasing the duration beyond two hours. The State Government, must specify the exemption in advance. In any case, no exemption can be granted to silence zone areas.

25. The exemption to use of loud speakers or public address system and the like during night hours between 10.00 P.M. to 12.00 midnight on or during any cultural or religious festival, must, therefore, be limited to 15 days in all “during a calendar year”. Whereas, Section 13(1) of the Adhiniyam of 1985 refers to 29 days in a calendar year for social and religious festivals; and at any religious place or premises where it is being made as a tradition. The exemption so provided in the Adhiniyam of 1985 is *ex facie* in conflict with the outer limit specified by Sub-Rule (3) of Rule 5 of the Central Noise Pollution Rules of 2000. To that extent, Sub-section (1) of Section 13 of the Adhiniyam of 1985 will have to be declared as *ultra vires* being repugnant to the Central Noise Pollution Rules of 2000 on the same subject. We are conscious of the fact that the opening part of Sub-section (1) of

Section 13 of the Adhiniyam of 1985 overrides only the provisions contained in that Adhiniyam. However, the number of days referred to in Section 13 (1) (i) and (ii), far exceed the outer limit of in all fifteen days during a calendar year specified by Rule 5 (3) of the Central Rules. It is not open to save the said provision by an interpretative process. To do so, would require us not only to rewrite that provision but inevitably preempt the State Government from identifying the fifteen days in a calendar year, which, according to the State Government, can be reckoned for granting stated exemption. As observed by the Apex Court in *Noise Pollution (VII)* (supra), the power has to be exercised by reference to State as a unit and not by reference to districts.

26. Indeed, Sub-section (2) of Section 13 of the Adhiniyam of 1985 gives power to the prescribed Authority to grant exemption from the provisions of Section 4 to 7 for such period, occasions and in such areas, as may be specified in the permission. However, that exemption cannot be de hors the restriction specified by Rule 3 read with Rule 5 of the Central Noise Pollution Rules of 2000. Any infringement of those restrictions or non-adherence by the Authority must be viewed seriously – not only as violation of statutory restrictions but as

abridgement of basic human rights and also the Fundamental Rights of the residents in the concerned locality. It can also give rise to an actionable claim against the law breakers as also against the officials of the State for having failed to discharge their duty to stop the public nuisance caused, by resorting to civil as well as criminal action. In addition, the officials responsible to prevent such unauthorized activity, can be proceeded by way of departmental action for misconduct and dereliction of duty.

27. Since the substantive exemption provision, Section 13 (1) as a whole, cannot be preserved or saved, for the same reasons, even the procedural provision in the form of Section 13 (2) of the Adhiniyam cannot be saved. For, the exemption must be by reference to the State as a unit and not left to the discretion of the prescribed Authority by reference to districts. For that, the State Government may have to specify in advance, which of the fifteen days in a calendar year must be reckoned for grant of exemption, at the beginning of the calendar year for the entire State. A priori, the petition must succeed in terms of prayer Clause I (e) – to declare Section 13 of the Adhiniyam as *ultra vires*.

28. Indubitably, sound producing devices having potential to produce sound noise in excess of the limit specified in Rule 3 read with Rule 5 of the Central Rules cannot be used

by anyone unilaterally. Prior permission in writing of the appropriate Authority is a must - even on the excepted days. Section 4 of the Adhiniyam of 1985 prohibits production of loud music between 10.00 P.M. to 6.00 A.M., which timing is consistent with the night time specified in the Schedule to Central Noise Pollution Rules of 2000. Section 5 of the Adhiniyam of 1985 also provides for restriction against the use of loud speakers between 10.00 P.M. to 6.00 A.M., which again is consistent with the Central Rules. Section 6 of the Adhiniyam of 1985 provides for restrictions on the use of horn-type loud speaker and Section 7 about the operation of loud speaker. None of these provisions are in conflict with the timing, place or the noise limits specified in the Central enactment and Rules framed thereunder.

29. As regards the use of loudspeakers at any religious place or premises where it is being used as a tradition, the sound level restrictions provided under the Central Legislation will have to be adhered to without any exception. The noise level at the boundary of the public place, where loud speakers or public address system or any other noise source is being used, has been specified as not exceeding 10 dB(A) above the ambient noise standards for the area or 75 dB(A), whichever is lower. Whereas,

the peripheral noise level of a privately owned sound producing system or instrument has been specified as not exceeding more than 5 dB(A) at the boundary of the private place above the ambient noise standards specified for the area in which it is so used. The State Authorities are, therefore, obliged to adhere to these norms without any exception in future. The Commissioner of Police/Superintendent of Police and the Collector of the concerned District shall be personally responsible to regulate these matters. The State Authorities, however, shall not grant permission/licence for use of sound producing instruments beyond the permissible limits and also ensure that any violation of the Central Rules of 2000 should be proceeded strictly and in accordance with law.

30. Notably, the legal position about the right to use of sound producing system for religious activities has already been considered by the Apex Court in the case of **Church of God (Full Gospel) in India (supra)**. It is held that no religion prescribes that the prayers are required to be performed through voice amplifiers and by beating of drums. This judgment also addresses the issue about causing of obstructions to public thoroughfare and public roads for any religious activities.

31. That takes us to the issue regarding traffic hazards

caused due to permitting *Pandals* on busy streets during the festival season, in particular. As aforesaid, the issue has been dealt with by the Apex Court in the case of **Church of God (Full Gospel) in India (supra)** and also in **A. Abdul Farook Vs. Municipal Council, Perambalur and others**⁸ as well as **K. K. Road Merchants, E.A.R.W.A., T.N. Vs. District Collector, T. N. And another**⁹. We may, therefore, observe that the officials – be it Police, Revenue, Municipal or Local Government Authorities – must entertain application/request for installation of *Pandals* on public streets not only keeping in mind the statutory provisions and restrictions but also the dictum of the Apex Court in the aforesaid decisions. Thus, when any application for permission to put up a *Pandal* on a busy street is received, that must be considered with utmost circumspection and should not be granted mechanically. The competent Authority, before granting permission, must keep in mind the extant Regulations and must consider all aspects including the period for which the *Pandal* will be put up, the likelihood of any inconvenience to public and in particular obstruction to smooth traffic flow and also about the security and safety of the nearby

⁸ (2009) 15 SCC 351

⁹ (2004) 13 SCC 61

residents, pedestrians and vehicle operators. The competent Authority must be fully satisfied about all these and related matters before accepting the request for installation of *Pandal* on a busy street. It would be appropriate for the competent Authority to notify the locations for putting up *Pandals* on public places in advance, by issuing public notice. In the event, grant of permission for any other public place or a busy public street is unavoidable, utmost care should be taken to adhere to the restrictions specified under the extant Regulations. In any case, that permission should be for a limited duration on strict conditions and including under vigilance of the local police so as to minimize the inconvenience to the public. As far as possible, such permission should be granted well in advance, preferably not less than one week in advance of the proposed event. In addition, sufficient publicity of permission granted in area other than the notified area must be put up on the official website contemporaneously, so that any person, aggrieved by such permission, will be free to take recourse to remedy, as may be permissible in law. In those proceedings the justness of such permission can be examined.

32. Be that as it may, if any Authority (duty holder) comes across any unauthorised *Pandal* on a busy street, must

immediately move into action and remove the same by following due process forthwith – lest face action of dereliction of duty.

33. Reverting to the grievance of theft of electricity with impunity for lighting and decoration in the *Pandals* permitted by the Authorities and which results in loss to public exchequer, the Electricity Board in its return has denied of any such incidents within its knowledge. The Electricity Board in its return has asserted that when permission to install *Pandal* is given, contemporaneously, application for temporary electricity connection is made to the Electricity Board through the Committee Members and that request is accepted on condition of installation of temporary meter for the relevant period. In that case, the Committee will be obliged to pay the actual electricity consumed during the relevant period as per the meter reading. However, if any specific instance of noninstallation of temporary meter or tampering of the temporary meter or otherwise comes to the notice of the officials of the Electricity Board, immediate action of disconnecting the illegal connection should be resorted to. In addition to that, the officials of Electricity Board must not only recover the loss suffered due to such illegal connection but

also register criminal action against the members of the Committee for drawing electricity without proper electricity connection given by the Electricity Board and take those proceedings to its logical end.

34. The relief claimed by the petitioner to direct the respondents to make the elected representatives of local bodies in-charge of the *Pandals*, which are permitted by the competent Authority, in our opinion, cannot be countenanced. For, it would tantamount to interference with the rights of the registered Society to administer its own affairs within the frame work of the concerned Regulations. The autonomy of registered Societies or the rights of Association of persons cannot be interfered with, in absence of any reasonable restriction imposed by a law made by the legislature in that behalf. It is, however, open for the duty-holders to form a joint broad based Committee to act as a watchdog for enforcement of the Environmental laws in which the elected representatives can play a significant role. Besides this, we do not wish to dilate any further on this issue and make it amply clear that we may not be understood to have expressed any final opinion in that behalf. In fact, this relief was not seriously pressed during the arguments advanced before us and the arguments essentially were to

persuade the Court to strike down Section 13 of the Adhiniyam of 1985 as *ultra vires*.

35. We may also observe that if violation of noise levels is brought to the notice of the police, Revenue or Municipal Authorities, they must report that matter to the Electricity Board with recommendation to disconnect the electricity connection forthwith. In any case, all the duty-holders must work in tandem to ensure that the nuisance caused on account of such noise pollution or because of theft of electricity is not ignored, but proceeded against the members of the Committee individually and vicariously in accordance with law - for recovery of damages /compensation for such unauthorized activity, in addition to criminal action.

36. As regards the grievance of petitioner regarding extortion and intimidation of public by unscrupulous elements in the name of donation for the *Pandals*, even that is a matter which must be brought to the notice of the local administration – be it police or Revenue or Municipal officials, who in turn must take immediate corrective action to redress such complaints. It may be desirable for all the duty-holders to provide for one common telephone helpline to ensure immediate response for

redressal of such complaints or receiving online complaint and to deal with such complaints in accordance with law including by registration of criminal action against the persons indulging in such unauthorized activity of intimidating the public to force them to donate involuntarily for the installation of *Pandals* for arranging functions.

37. Our attention was invited to the order passed by the National Green Tribunal, Central Zonal Bench, Bhopal in **Neel Choudhary vs. State of M.P. and others**¹⁰. This order has adverted to the directions given by the Principal Bench of NGT at New Delhi in its judgment of Supreme Court **Group Housing Society vs. All India Panchayat Parishad** and others decided on 18th December, 2012. Paragraph 9 of the said decision, reads, thus:

“In compliance with our directions, it appears a detailed Action Plan has been prepared in the meeting conveyed by the Divisional Commissioner, Delhi, the decisions taken, modalities adopted and duties assigned to various departments which attended the meeting. On perusal of this Action Plan, we feel that by and large it should be able to reduce/mitigate noise pollution. However, to make it more effective, few modifications have been suggested by us and modified Action Plan is placed below: -

¹⁰ .M.A.No.168/2013 & M.A. No.169/2013 (CZ) in O.A. No.18/2013 decided on 21.2.2014.

- (a) To establish and run a call centre where the complaints related to noise pollution can be lodged 24 x 7 hours by the citizen.
- (b) To draw a detailed action plan/ standard operating procedure (SOP) regarding control of noise pollution in industrial, hospitals and educational/ institutional areas including monitoring mechanism and surveillance system.
- (c) To draw a detailed action plan / standard operating procedure (SOP) to implement ban or use of generator sets of capacity of 5 KVA and above in the residential area between 10 p.m. to 6 a.m.
- (d) To examine and issue notification regarding inclusion of provisions for compounding of offences of noise pollution.
- (e) To examine in details the requirement of use of decibel meters and to prepare a detailed standard operating procedure in this respect including maintenance and upkeep of sound decibel meters.
- (ii) **Actions to be taken by Transport Department:** -
 - (a) Inclusion of status of pressure horn in the vehicle at the level of issuing pollution control certificate.
 - (b) To issue notifications with respect to increase of fine amount, ban on manufacturing / distribution / sale of pressure horn and ban on modification of vehicular silencers in the NCT of Delhi.
 - (c) To check and prohibit the entry of heavy vehicles fitted with pressure horn and to arrange for awareness in the form of pamphlets / slips etc. in association with DCs and Traffic Police.
 - (d) To conduct Information Education and Communication (IEC) programmes in

association with Education Department and the DCs.

(iii) **Actions to be taken by the Traffic Police:-**

- (a) Mandatory Challan and prosecutions of noise polluting vehicles
- (b) Strict implementation of the acts/rules/directions.

(iv) **Actions to be taken by the Delhi Police: -**

- (a) The complaints so forwarded by the call centre be attended immediately by the Area SHO and confiscation and seizure of the amplifiers and other noise pollutants. Production of the case before the area SDM within 24 hours of such seizure.
- (b) To assist the area SDM in survey of the religious places causing noise pollution and provide necessary infrastructure to remove noise causing instruments and gadgets.
- (c) To provide full support to the executing agencies as and when required.

(v) **Action to be taken by the Office of the Deputy Commissioner:-**

- (a) SDMs to hear the cases and file prosecutions.
- (b) SDMs to complete survey of religious places causing noise pollution and take steps to remove such installations.
- (c) DCs to chalk out modalities in consultation with Transport Department for checking the vehicles fitted with pressure horn at the borders of Delhi with neighbouring states.
- (d) To conduct Information Education and Communication (IEC) programmes in association with Education Department and the Transport Department.

(iv) **Actions to be taken by the Education Department, GNCT of Delhi:-**

- (a) To incorporate education materials in the curriculum of the schools with respect to control of noise pollution.
- (b) To organize the IEC activities amongst the students and youth in consultation with the DCs.”

We direct the respondents to “additionally” follow these norms which may go a long way to assuage the complaints about noise pollution caused on account of use of sound producing instruments and vehicle pressure horns.

38. While parting, we appreciate the initiative taken by the petitioner for bringing the cause of noise pollution to the fore by filing this PIL. We also appreciate the able assistance given by the counsel appearing for the parties and not treating it as an adversarial proceedings.

39. We, accordingly, dispose of this petition with the above observations.

(A.M. Khanwilkar)
Chief Justice

(Shantanu Kemkar)
Judge

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