

जावीद अहमद,

आई०पी०एस०



पुलिस महानिदेशक,

उत्तर प्रदेश

1 तिलक मार्ग, लखनऊ।

दिनांक : जुलाई 13, 2016

विषय:- ध्वनि विस्तारक यंत्र(लाउडस्पीकर/लोक सम्बोधन प्रणाली) पर नियन्त्रण हेतु माननीय उच्च न्यायालय द्वारा दिये गये निर्देशों का अनुपालन कराये जाने विषयक दिशा-निर्देश।

प्रिय महोदय,

माननीय उच्च न्यायालय के खण्डपीठ लखनऊ में योजित मिस रिट पिटीशन संख्या : 5776/2016 रामलखन बनाम उत्तर प्रदेश राज्य एवं अन्य में माननीय न्यायालय द्वारा धार्मिक/सार्वजनिक स्थलों पर ध्वनि विस्तारक यंत्रों(लाउडस्पीकर/लोक सम्बोधन प्रणाली) के प्रयोग किये जाने के सम्बन्ध में अपने निर्णय दिनांक 08.04.2016 में विस्तृत दिशा-निर्देश दिये गये हैं जिसकी प्रति संलग्न है।

डीजी परिपत्र संख्या : 30/2008 दिनांक
12.08.2008
डीजी परिपत्र संख्या : 37/2013 दिनांक
18.07.2013
संख्या : डीजी-आठ-77(25)/2015 दिनांक
26.07.2015

ध्वनि विस्तारक यंत्रों पर नियन्त्रण हेतु मुख्यालय स्तर से समय-समय पर पार्श्वकित परिपत्र निर्गत किये गये हैं, जिन्हे अवलोकन करने का कष्ट करें। जिसके द्वारा विस्तृत दिशा-निर्देश पूर्व में ही दिये जा चुके हैं।

माननीय उच्च न्यायालय द्वारा अपने निर्णय में लाउडस्पीकर/लोक सम्बोधन प्रणाली के उपयोग के सम्बन्ध में निम्नांकित निर्देश दिये हैं -

The Noise Pollution (Regulation and Control) Rules 2000 framed under the Environment (Protection) Act, 1986 provides that a loudspeaker or a public address system shall not be used except after obtaining written permission from the authority. Rule 5 of the said Rules are extracted here in under:-

5. Restrictions on the Use of Loud Speakers/Public Address System [And Sound Producing Instruments].

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

“लाउडस्पीकर/लोक सम्बोधन प्रणाली का प्रयोग बिना सक्षम अधिकारी की लिखित अनुमति से नहीं किया जायेगा।”

(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.]

“उपनियम में निहित प्राविधानों के अनुसार ध्वनि प्रदूषण को कम करने के लिए लाउडस्पीकर/लोक सम्बोधन प्रणाली/ध्वनि उत्पादक यंत्र या ध्वनि विस्तारक यंत्र को संचार के लिए आडीटोरियम/सम्मेलन कक्ष/सामुदायिक हाल/बैक्वेट हाल या सार्वजनिक आपातकाल को छोड़कर रात्रि में इस्तेमाल नहीं किया जायेगा।”

[(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 system and the like during nights 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.]

“बावजूद इसके निहित प्राविधानों के अतिरिक्त उपनियम-2 में राज्य सरकार इस विषय पर कुछ नियम एवं शर्तें जो आवश्यक हो के अधीन ध्वनि प्रदूषण को कम करने के लिए लाउडस्पीकर या लोक सम्बोधन प्रणाली का रात्रि (रात्रि 1000 बजे से 1200) के समय को छोड़कर तथा धार्मिक एवं सांस्कृतिक उत्सवों के अवसर पर एक निश्चित समयावधि जो कि पूरे वर्ष में 15 दिन से अधिक न हो में प्रयोग करने की अनुमति प्रदान कर सकती है। (सम्बन्धित राज्य सरकारें पूर्व में ही आम तौर पर संख्या और दिनों के ब्यौरों का निर्धारण कर लें जिस समय ये छूट प्रदान की जायेगी।)”

माननीय उच्च न्यायालय इलाहाबाद ने माननीय सर्वोच्च न्यायालय द्वारा पूर्व में प्रतिपादित समस्त दिशा-निर्देशों को समाहित करते हुए निर्देशित किया है कि लाउडस्पीकर एवं अन्य ध्वनि यन्त्रों के प्रयोग हेतु जो भी दिशा-निर्देश समय-समय पर दिये गये हैं उनका तथा पर्यावरण(संरक्षण) अधिनियम 1986 के अन्तर्गत ध्वनि प्रदूषण(विनियमन और नियन्त्रण) नियम 2000 का अक्षरशः अनुपालन सुनिश्चित कराया जाये।

यहाँ यह भी उल्लेखनीय है कि धार्मिक जूलूसों/त्यौहारों आदि आयोजनों में लोग छोटे-बड़े समूहों में एकत्रित होकर सम्मिलित रूप से शक्तिशाली लाउडस्पीकर(डीजे) का प्रयोग करते हैं जिसके कारण अनेक घटनायें घटित हुई हैं। सामान्यतः ये लाउडस्पीकर(डीजे) 120 डेसिबल एवं इससे अधिक ध्वनि का विस्तारण करते हैं, जो माननीय उच्चतम न्यायालय द्वारा निर्धारित की गयी सीमा से कहीं अधिक होता है। ऐसी दशा में विधिक रूप से भी अधिक ध्वनि के उपयोग करने वालों के विरुद्ध कार्यवाही की जा सकती है।

The Noise Pollution(Regulation and Control) rules 2000 के नियम- 7 में उल्लंघन के लिए Authority को Complaint करने का अधिकार है। "Authority" means Police Commissioner or any other officer not below the rank of the Deputy Superintendent of Police designated for the maintenance of the ambient air quality standers in respect of noise under any law for time being in force.”

इसके अतिरिक्त धारा 291 भादवि में यह उपबन्ध है कि न्यूसेन्स बन्द करने के आदेश के पश्चात उसको चालू रखेगा या पुनरावृत्ति करेगा तो वह साधारण कारावास से जिसकी अवधि 06 माह तक हो सकेगी दण्डित किया जायेगा।

अतः आप सभी को निर्देशित किया जाता है कि माननीय उच्च न्यायालय द्वारा पारित आदेश का अक्षरशः अनुपालन सुनिश्चित करें। भविष्य में इसमें किसी भी प्रकार की शिथिलता न बरती जाये, इस सम्बन्ध में आप अपने अधीनस्थों को भी अवगत करा दें। माननीय उच्च न्यायालय के निर्णय की अवहेलना होने पर आप व्यक्तिगत रूप से उत्तरदायी होंगे।

संलग्नक : यथोपरि।

भवदीय
13.7.16.
(जावीद अहमद)

समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,
प्रभारी जनपद,
उत्तर प्रदेश।

प्रतिलिपि-निम्न को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1.पुलिस महानिदेशक, अभियोजन, उ0प्र0, लखनऊ।
- 2.पुलिस महानिदेशक, रेलवेज, उ0प्र0 लखनऊ।
- 3.अपर पुलिस महानिदेशक, कानून व्यवस्था, उ0प्र0 लखनऊ।
- 4.पुलिस महानिरीक्षक एस0टी0एफ0/ए0टी0एस0, लखनऊ।
- 5.समस्त जोनल पुलिस महानिरीक्षक, उ0प्र0।
- 6.समस्त परिक्षेत्रीय पुलिस उपमहानिरीक्षक, उ0प्र0।

**High Court of Judicature at Allahabad
Lucknow Bench Lucknow**

[A.F.R.]

[Reserved on:- 28.03.2016]
[Delivered on:- 08.04.2016]

Court No. - 1**Case :- MISC. BENCH No. - 5776 of 2016****Petitioner :- Ram Lakhan****Respondent :- State Of U.P. Thru. Prin.Secy., Home & 3
Others****Counsel for Petitioner :- Pankaj Gupta, Ram Narain Gupta****Counsel for Respondent :- C.S.C.****Hon'ble Amreshwar Pratap Sahl, J.****Hon'ble Attau Rahman Masoodi, J.**

The petitioner has come up complaining that the Sub-Divisional Magistrate, Utraula, District Balrampur has orally directed the prohibition of the use of loudspeakers displaying audio cassettes of devotional songs in the Ram Janki Temple situate at village Garib Nagar, Utraula, District Balrampur. It is alleged in the petition that the temple is very old. A newspaper report has also been filed indicating that the Provincial Armed Constabulary has been pressed into service to stifle the use of loudspeakers during morning and evening hours when devotional songs are sung and prayers are offered by devotees with lighted lamps (Aarti).

According to the petitioner, this has happened on the complaint of some member of the minority Muslim community with the political pressure of a local MLA who also belongs to the same community but in spite of requests to the authorities and higher officials, nothing has been done till date. In paragraph-6 of the petition, the petitioner alleges that it is the Hindus who are in minority (approx. about 40% of the total population) in the said locality and the Muslim population is openly using loudspeakers atop mosques which has not been prohibited.

Sri Gupta urges that this is a clear violation of the fundamental rights of the petitioner and members of his community of practising their religion by the performance of ablutions and offering of prayers coupled with devotional recitals with the use of loudspeakers during morning and evening hours of "Aarti". Sri Gupta, therefore, submits that such oral orders and directions prohibiting the use of loudspeakers is clearly violative of Articles 14, 19 (1) (a), Article 25 and 26 of the Constitution infringing the rights of Hindu devotees of the locality. He further submits that the audio display through a loudspeaker does not offend any of the freedoms guaranteed to any other community and since no prejudice is caused, this sort of prohibitory order coupled with the use of Provincial Constabulary Police Force is constitutionally invalid. The action is also discriminatory because no such prohibition has been clamped on members of the Muslim community who continue to use loudspeakers while offering Namaaz.

The petition has been opposed by the learned standing counsel on behalf of the State contending that it appears from the averments made in the writ petition that some law and order situation had arisen but even otherwise, the use of loudspeakers cannot be beyond the permissible limits as per the Noise Pollution (Regulation and Control) Rules, 2000, which has been framed under the provisions of Environment (Protection) Act, 1986. Learned State counsel invited the attention of the Court to the schedule appended alongwith the said Rules, and also the procedure prescribed therein indicating restraint and restricted permissible limits of the use of loudspeakers with the permission of the authority. He, therefore, submits that the petitioner has failed to demonstrate that he is using the loudspeakers in conformity with the 2000 Rules and as such, the relief prayed for, does not deserve to be granted.

Learned standing counsel has then informed the Court about the pendency of two other writ petitions on this issue being Writ Petition No.11479 (M/B) of 2014 (Rama Kant Jaiswal. Vs. State of U.P. Through Secy. Home Department, and others, where a Division Bench of this Court has passed the following order:-

"Chief Justice's Court

Case :- MISC. BENCH No. - 11473 of 2014

Petitioner :- Rama Kant Jayswal

Respondent :- The State Of U.P. Thru. Secy. Home Deptt. & 4 Ors.

Counsel for Petitioner :- Amar Nath Singh

Counsel for Respondent :- C.S.C.

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice

Hon'ble Krishna Murari, J.

On the request of the petitioner, who appears in person, we grant leave to implead the State Pollution Control Board as a respondent to these proceedings. Service of notice shall be caused to be effected on the Standing Counsel appearing on behalf of the newly impleaded respondent.

*The petitioner has highlighted the serious inconvenience which is faced by residents as a result of the rampant use of loudspeakers causing noise pollution. The Noise Pollution (Regulation and Control) Rules, 2000 have been framed under the Environment (Protection) Act, 1986. This Court must be apprised of the steps which are taken by the District Magistrate, the Senior Superintendent of Police and by the State Pollution Control Board to ensure compliance with the noise pollution norms laid down in the Rules. The Court in particular should be apprised of whether any condition is imposed by the administrative authorities while granting permission to hold **public and social events** in regard to compliance with the provisions of the Rules. If so, the Court should be apprised of what enforcement action is taken and whether any equipment is available with the authorities concerned to detect whether the decibel levels exceed those permissible under the Rules.*

*Another aspect which has been highlighted by the petitioner is that it is almost impossible for an individual citizen to complain of the nuisance of noise by moving the authorities concerned since these breaches often take place at the late hours of the night or early hours of the morning. The State would have to devise a **suitable enforcement machinery** which can be invoked by a citizen, for instance, by submitting a complaint on an identified website of which immediate notice can be taken and necessary enforcement action is adopted.*

These are matters of serious concern because due to noise pollution, the environment is being polluted by high decibel levels of noise in breach of the Rules. The authorities of the State cannot turn a blind eye to these violations and adequate measures would have to be set in place for dealing with such complaints. The petition does raise an issue of some importance having a bearing on public interest and on the fundamental right of each citizen to have a secured private space.

We, accordingly direct that separate counter affidavits shall be filed in these proceedings by (i) the State Pollution Control Board; (ii) the Principal Secretary (Home); (iii) the District Magistrate, Lucknow; and (iv) the Senior Superintendent of Police, Lucknow. The issue which has been raised in these proceedings is of importance and if the authorities have suggestions in regard to a concerted plan of action for enforcing the provisions of the Rules, that may be set out in the counter affidavits.

We also deem it proper to observe that we would expect that a meeting may be convened by the Principal Secretary (Home) with the other enforcement authorities, noted above, so that a concerted plan of action and response can be chalked out to ensure compliance with law.

The petition shall be listed as fresh on 18 December 2014.

Order Date :- 20.11.2014"

The aforesaid petition has been filed complaining of use of uncontrolled loudspeakers during a religious discourse of "Srimad Bhagwat Ayojan" organized by some Mahila Uthan Samiti in a public park in the vicinity of Purana Qila, Lucknow thereby causing noise pollution in the locality. The said petition is still pending with no further orders.

He has then, invited the attention of this Court to Writ Petition No.8831 (M/B) of 2015 (Capt. Dhirendra Kohli & 2 Others. Vs.State Of U.P. Thru. Prin.Secy., Home & 8 Others.) where, a Division Bench of this Court passed an order on 23.09.2015 extracted hereinunder:-

"Court No. - 6

Case :- MISC. BENCH No. - 8831 of 2015

Petitioner :- Capt. Dhirendra Kohli & 2 Others

Respondent :- State Of U.P. Thru. Prin.Secy., Home & 8

Others Counsel for Petitioner :- Saurabh Lavania

Counsel for Respondent :- C.S.C.,A.K. Verma,Prashant Arora,Shailendra Singh Chauhan

Hon'ble Shabihul Hasnain,J.

Hon'ble Devendra Kumar Upadhyaya,J.

Heard learned counsel for the petitioners, learned Additional Chief Standing counsel for respondent No.s 1, 2, 3 and 4, Sri Surendra Singh for respondent No.5, Sri A. K. Verma for respondent No.6 and Sri Arunendra Mohan Shukla for respondent No.7.

Issue notice to respondent Nos 8 and 9, returnable at an early date.

This petition by the residents of an apartment has been filed for giving appropriate directions to respondent No.s 1 to 6 for removing the noise pollution being caused in the vicinity which is disturbing the life of the residents including those of children, infirms and old persons.

We may notice that Hon'ble Supreme Court in the case of Noise Pollution (V) in re Forum, Prevention of Environment and Sound Pollution Vs. Union of India and another, (2005(5) SCC 733), decided way back on 18th July, 2005 has issued various directions to the authorities for removal of noise pollution being caused through different sources holding therein that the right to life includes right to live in hygienic, clean and safe environment and also that life to freedom from noise pollution is a fundamental right emanating from Article 21 of the Constitution of India.

This Court by means of order dated 20.11.2014 passed in writ petition No.11473(M/B) of 2014 has also given certain directions to the authorities for dealing with the problems caused on account of noise pollution.

The petitioners appear to have apprised the authorities by moving a detailed application/representation dated 17th July, 2015 which has been annexed as annexure No.1. However, it has been submitted by learned counsel for the petitioners that no action has been taken till date.

Accordingly, let this matter be listed in the week commencing 5.10.2015 as fresh to enable learned Standing counsel appearing for all the respondents-authorities to seek complete instructions as to the action taken by them on the application dated 17th July, 2015 which has been moved by the petitioners and also as to what action is being taken pursuant to the judgment of Hon'ble Supreme Court in the case of Noise Pollution (V), (2005(5) SCC 733).

Order Date :- 23.9.2015"

The abovementioned petition has been filed praying that a Temple and Mosque inside a public park namely, River Side Park near Hanuman Setu Temple Lucknow, are both competing with each other by the use of loudspeakers unabated and in an unrestricted manner causing nuisance and noise pollution to the detriment of the citizens of the locality but no action is being taken against them by authorities in spite of regular complaints. The same is also pending before this Court.

Another decision has been cited in the case of Public Interest Litigation (PIL) No.47386 of 2015 (Vikky Deval. Vs. State of U.P. And another), dismissed on 21.08.2015 in relation to the use of DJ sound systems by congregational processions of "Kanwaris" who carry water from the holy rivers for being offered at various places in temples throughout the State during a particular season.

Thus, there are two other writ petitions that have been filed as indicated above wherein directions have been sought to curtail the use of loudspeakers.

The 2000 Rules framed under the Environment (Protection) Act, 1986 provides that a loudspeaker or a public address system shall not be used except after obtaining written permission from the authority. Rule 5 of the said Rules are extracted hereinunder:-

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 system and the like during nights 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.]"

The permission granted has to be in consonance with the scientific measures provided for to maintain ambient area quality standards. The authority in relation for exercising control etc., is vested in the Officer as defined under Rule 2 (c) of 2000 Rules and according to Rule 8, prohibitory orders can be issued by the authority on the basis of information received by him in accordance with the said Rules.

Rule 8, therefore, requires a compliance of procedure to be followed and an order to be passed if any complaint is received in this regard.

The due process of law, therefore, has to be followed and it is for this purpose that in the case of Rama Kant Jaiswal (supra) as also in the case of Dhirendra Kohli (supra) the Court has issued orders calling upon the authorities to file affidavits in order to make the Rules enforceable effectively. A perusal of the said orders also indicates that these writ petitions have been entertained for securing the interest of individuals against noise pollution. The speed and the promptness with which such matters have to be dealt with and was the concern expressed by the Division Benches while passing the orders extracted hereinabove.

So far as the present dispute is concerned, the complaint is about a prohibition that has been imposed and police force has been resorted to keeping in view some rising communal uncomfortable situation.

The issue of law and order, therefore, is a separate area of concern where the authorities will have to take action looking into the exigency of situation, but so far as the use of loudspeakers for the purpose of chanting devotional songs or prayers in any form is concerned by whatever community the same would be further subject to the 2000 Rules referred to hereinabove. The petitioner will have to, therefore, apply

before the authority and make a request to that effect which has to be dealt with in accordance with 2000 Rules.

In the aforesaid background, the following judgments would reflect the concern of the Courts in areas of noise pollution:-

1. **AIR 1985 Calcutta 222: Rabin Mukherjee and others. Vs. State of West Bengal and others**, that was in relation to the use of air horns in transport vehicles in violation of the Bengal Motor Vehicles Rules, 1940. The Court in paragraph-1 expressed its concern in the following manner:-

"1. ...The case of the petitioners is that State of West Bengal is a thickly populated area and the density of population is one of the highest in India, It was further alleged that the prevailing noise level in this State particularly in the Calcutta Metropolitan Area is far in excess of the permissible limit and it is no longer in dispute that such excessive noise level poses positive danger to the residents of the respective locality. It also poses serious threat to the health of the residents apart from causing serious inconvenience to the weak, infirm and indisposed people. It was also alleged that even normal people are increasingly finding it difficult to enjoy their so essential in their lives or to carry on their works whatever be their nature. The petitioners' further case is that one most important factor contributing to the noise nuisance, particularly in the case of those who have their residences in the Calcutta Metropolitan Area or any other urban areas, is the blowing of loud and shrill horns by operators of transport vehicles. The said loud and shrill horn either electric horn or air horn mechanically generated and stored in an air tank in most of the transport vehicles. It was further alleged by the petitioners that sudden blowing of such horns by transport vehicles produces a rude shock in the human system and is acknowledged to have serious effects on various aspects of human life including blood pressure, mental and nervous system. It also does not permit effective concentration to be provided because of sudden disruption caused by such loud and shrill horns. The transport operators particularly the goods transport vehicles operate about 18 hours a day with such type of horns."

This was further explained by the Court in

paragraph-3 which is extracted hereunder and finally, the view of the Court was expressed in para-7 which is extracted hereinunder:-

3. It is a matter of common knowledge that almost all the transport vehicles use air horn and electric horn instead of using bulb horn as provided in Rule 114(d) of the Bengal Motoc Vehicles Rules, 1940 and such unnecessary and excessive use of such horn creates annoyance to the people. It was stated in paragraph 15 of the petition that recently a research was conducted jointly by Basu Bijnan Mandir and the Presidency College, Calcutta about noise pollution in the city of Calcutta and the suburbs. On such analysis it is found that the atmosphere and the environment is very much polluted from indiscriminating noise emitted from different quarters and **on research it was found that persons who are staying near the Air Port, are becoming victim of various ailments.** Such persons even become victim of **mental disease.** On such research it was also found that **workers in various factories even become deaf and hard of hearing.** It was further found on such research that as a result of this excessive noise pollution, **people suffer from loss of appetite, depression, mental restlessness and insomnia.** People also suffer from complain of excessive blood pressure and heart trouble. It is not necessary to go into the question about direct effect of such noise pollution because of indiscriminate and illegal use of such electric and air horn as **it is an admitted position that the same is injurious to health** and amongst different causes of environmental pollution, sound pollution is one, which is a matter of grave concern."

7. Considering the facts and circumstances of the case and considering the mandatory provision of Rule 114(d) of the said Rules and considering the fact that in a congested State like the State of West Bengal, sudden blowing of such horn by transport vehicles produces **rude shock** in the human system and is acknowledged to have **serious effect on various aspects of human life including blood pressure, mental and nervous system** it is the duty of the respondents to enforce the provisions of Rule 114(d) of the said Rules. It is also a matter of common knowledge that such transport vehicles even for overtaking another vehicle on the road small or big continuously blow such electric and/or air horn which produces a shrill and loud noise and which **creates annoyance to everyone who resides by the side of the road and to all pedestrians including the persons travelling in the vehicles.** The indiscriminate use of such horn is amounting to noise pollution in the city of Calcutta and the congested

areas of the State of West Bengal and that the same have adverse effect on the public health of the people which creates many a complication including mental restlessness, blood pressure and heart trouble and that it is necessary in the interest of the public at large in the State of West Bengal to stop such noise pollution arising out of unnecessary use of such electric and air horn deliberately. "

2. The next decision is in the case of **Church of God (Full Gospel) in India. Vs. K.K.R. Majestic Colony Welfare Association and others.:** (2000) 7 SCC 282, which concerns both the noise from the vehicles as also the musical noise through the use of loudspeakers, drums and other means during prayers. The Court went on to hold in paragraph-2 and 3 as follows:-

"2. The questions involved in this appeal are that in a country having multiple religions and numerous communities or sects, **whether a particular community or sect of that community can claim right to add to noise pollution on the ground of religion? Whether beating of drums or reciting of prayers by use of microphones and loudspeakers so as to disturb the peace or tranquility of neighbourhood should be permitted? Undisputedly 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. In our view, in a civilized 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 day-time or other persons carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighbourhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere. A student preparing for his examination is entitled to concentrate on his studies without their being any unnecessary disturbance by the neighbours. Similarly, old and infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution. Aged, sick, people afflicted with psychic disturbances as well as children up to 6 years of age are considered to be very sensible to noise. Their rights are also required to be honoured.**

3. Under the Environment (Protection) Act, 1986, rules for noise pollution level are framed which prescribe permissible limits of noise in residential, commercial,

industrial areas or silence zone. The question is—whether the appellant can be permitted to violate the said provisions and add to the noise pollution? In our view, **to claim such a right itself would be unjustifiable.** In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialization, urbanization and modernization and is having many evil effects including **danger to the 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.** This also affects animals alike. **The extent of damage depends upon the duration and the intensity of noise. Sometimes it leads to serious law and order problem.** Further, in an organized society, rights are related with duties towards others including neighbours."

The Court also went on to take notice of an earlier decision of the Madras High Court that referred to the scientific analysis made in the magazine 'Science Today', August 1982 issue and an Indian Council of Medical Science Research, 1979 indicating noise pollution leading to serious nervous disorders, emotional tension leading to high blood-pressure, cardiovascular diseases, increase in cholesterol level resulting in heart attacks and strokes and even damage to foetus.

The Court then went on to refer a decision of **Calcutta High Court in Om Birangana Religious Society v. The State and others** expressing concern whether the public are captive audience or listeners when permission is given for using loud-speakers in public and the person who is otherwise unwilling to bear the sound and/or the music or the communication made by the loud-speakers, is compelled to tolerate all these things against his will and health? Does it concern simply a law and order situation? Does it not generate sound pollution? Does it not affect the other known rights of a citizen? Even if a citizen is ill and even if such a sound may create adverse effect on his physical and mental condition, yet

he is made a captive audience to listen.

It was then analyzed that neither Article 25 nor Article 19 (1) (a) of the Constitution allows that a citizen should be coerced to hear anything which he does not like or which he does not require.

The judgment then proceeds to analyze the 1986 Act and 2000 Rules and goes on to hold in para-13 and 14 as follows:-

"13. In the present case, the contention with regard to the rights under Article 25 or Article 26 of the Constitution which are subject to "public order, morality and health" are not required to be dealt with in detail mainly because as stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities. We would only refer to some observations made by the Constitution Bench of this Court qua rights under Articles 25 and 26 of the Constitution in *Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj and Others v. The State of Gujarat*. After considering the various contentions, the Court observed that: (SCC p.20, para 30)

"No rights in an organized society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests..."

The Court also observed that (SCC p.20, para 31)

A particular fundamental right cannot exist in isolation in a water-tight compartment. One Fundamental Right of a person may have to co-exist in harmony with the exercise of another Fundamental Right by others also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole.

14. Further, it is to be stated that because of urbanization or industrialization the noise pollution may in some area of a city/town might be exceeding permissible limits prescribed under the rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and, therefore, rules prescribing reasonable restrictions including the rules for

the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisance Act, 1889 and also the **Noise Pollution (Regulation and Control) Rules, 2000** are required to be enforced. We would mention that even though the Rules are unambiguous, there is lack of awareness among the citizens as well as the **Implementation Authorities** about the Rules or its duty to implement the same. Noise polluting activities which are rampant and yet for one reason or the other, the aforesaid Rules or the rules framed under various State Police Acts are not enforced. Hence, the High Court has rightly directed implementation of the same."

3. The third decision which deals with this issue, is **Noise Pollution (V), In Re., Forum Prevention of Environmental & Sound Pollution. Vs. Union of India and another: (2005) 5 SCC 733**, which was preceded by the orders passed in this regard in the same case that are reported in **(2005) 5 SCC 727-732**. The said judgment was dealing with all sorts of noise pollution and in paragraph-171 and 175 indicated directions in relation to use of loudspeakers which are extracted hereinunder:-

"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.

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 10.00 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.

4. In continuation thereof, in the same case, directions were issued that are reported in **Noise Pollution (VII), In Re [Forum, Prevention of Environmental & Sound Pollution]. Vs. Union of India and another: (2005) 8 SCC 796**, particularly in relation to use of loudspeakers

vis-a-vis 2000 Rules. The Court held that Noise Rules have been framed in exercise of statutory powers and they cannot be held to be unreasonable.

Thus, the ratio of these judgments leave no room for doubt that use of loudspeakers by any community indiscriminately, is impermissible and is subject to law and of the land with regard to which reasonable restrictions have been imposed under the aforesaid Rules. Its execution, therefore, is to be carried out till any Rule is framed subject to any other requirement of administration including enforcement of public law and order.

At the same time, such prohibition should not be clamped merely because of dislike by one particular community. If the permission is allowed to one, then it is allowed to the other but within the limits of law as indicated above.

We, therefore, dispose of this writ petition leaving it open to the petitioner to approach the competent authority under the Rules seeking permission for the use of loudspeaker as claimed, which can be considered if permissible and to the extent as indicated under the 2000 Rules and not otherwise. If the petitioner chooses to make such an application, the same shall be dealt with promptly keeping in view the law referred to hereinabove as also any other law or Government order which can be required to be considered for the purpose of entertaining such application and passing the order without prejudice to the rights of any particular community subject to maintaining law and order.

The writ petition is disposed of with the said directions.

Order Date :-8.4.2016
Rajneesh)

[Attau Rahman Masoodi,J.] [Amreshwar Pratap Sahi,J.]