

**Court No. - 29****Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 37356 of 2014****Petitioner :- Chunnu Singh & 10 Others****Respondent :- State Of U.P. & 3 Others****Counsel for Petitioner :- Rajesh Pathik****Counsel for Respondent :- C.S.C.****Hon'ble Dilip Gupta, J.****Hon'ble Mahesh Chandra Tripathi, J**

This petition has been filed in the public interest with a prayer that the petitioners may be permitted to use loud speakers for one hour in the morning and one hour in the evening everyday for offering prayers in the temple of Lord Shiva situated in Village-Naya Gaon, Akbarpur Chedary, P.S. & Tehsil-Kanth, District Moradabad.

It is stated that there is only one temple of Lord Shiva where the petitioners have been performing pooja since the last forty years. They have installed loud speakers on the roof of the temple which are being used in the morning and evening for the purposes of bhajhans and aarti. However, an objection was raised against the use of loud speakers and the police authorities have subsequently removed the loud speakers.

Learned counsel appearing for the petitioners has submitted that the authorities were not justified in stopping the use of the loud speakers, particularly when they have not taken such an action against persons belonging to a different community who have been using loud speakers for religious purposes.

Learned Standing Counsel appearing for the respondents has placed before the Court the instructions received from the Sub-Divisional

Magistrate, Kanth, District Moradabad. It has been stated that loud speakers are being used without the requisite permission.

Noise pollution is now controlled by the Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as the '2000 Rules') which have been framed under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986. **Rule 3** deals with ambient air quality standards in respect of noise for different areas/zones and provides that the ambient air quality standards in respect of noise for different areas/zones shall be such as specified in the Schedule annexed to the rules. **Rule 4** deals with the responsibility as to enforcement of noise pollution control measures and stipulates that the noise levels in any area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule. **Rule 5** deals with restrictions on the use of loud speakers/public address system and sound producing instruments. Sub-rules (1), (4) and (5) which are relevant are quoted below :-

“5(1) A loud speaker or a public address system shall not be used except after obtaining written permission from the authority.

.....

(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.”

**Rule 8** deals with the power to prohibit etc. continuance of music sound or noise and is as follows :-

“8(1) If the authority is satisfied from the report of an officer incharge of a police station or other information received by him including from the complainant that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating:

- (a) the incidence or continuance in or upon any premises of -
  - (i) any vocal or instrumental music,
  - (ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, public address systems, horn, construction equipment, appliance or apparatus or contrivance which is capable of producing or re-producing sound, or
  - (iii) sound caused by bursting of sound emitting fire crackers, or,
- (b) the carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

(2) The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order:

Provided that before any such application is disposed of, the said authority shall afford to the applicant and to the original complainant, as the case may be, an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.”

The Supreme Court has emphasised that right to live in an atmosphere free from noise pollution is guaranteed under Article 21 of the Constitution and that noise is more than just a nuisance. In fact, the Supreme Court has observed that 'right to live in freedom from noise pollution' is a fundamental

right and noise pollution beyond the permissible limits is an inroad on that right.

In **Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association and Others**<sup>1</sup> the Supreme Court, while dealing with a criminal writ petition filed by a Welfare Association before the Madras High Court seeking directions to the police authority to take action against complaints lodged for causing noise pollution, observed that as it was undisputed that loud speakers, drums and other instruments were being used during prayers, the High Court was justified in directing the police to take necessary steps to reduce the noise level to the extent permitted under the guidelines. The Supreme Court held that under the Environment Protection Act, 1986, rules for noise pollution had been framed viz. Noise Pollution (Regulation and Control) Rules, 2000 and they were required to be enforced. The counsel for the appellant had contended that the right to profess and practice a particular religion was protected under Articles 25 and 26 of the Constitution. The Supreme Court rejected the said contention holding that:-

“13. .... 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.”

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1 (2000) 7 SCC 282

The Supreme Court also observed :-

“2. 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 upto 6 years of age are considered to be very sensible to noise. Their rights are also required to be honoured.”

We also feel tempted to remind all, including the District Administration of Moradabad and the Regional Pollution Control Board, about the observations made by the Supreme Court in **Noise Pollution (V), In Re Unknown with Forum, Prevention of Environmental & Sound Pollution Vs. Union of India & Anr.** reported in (2005) 5 SCC 733, which are as follows :-

“1. These two matters before us raise certain issues of far-reaching implications in day-to-day life of the people in India relating to noise pollution vis-a-vis right to life enshrined in Article 21 of the Constitution of India as interpreted in its wide sweep by the constitutional courts of the country. Though a limited grievance was raised to begin with but several intervenors and interlocutory applications enhanced the scope of hearing and the cases were heard in a very wide perspective centering around Article 21 of the Constitution. Several associated and incidental issues have also been gone into.

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10. Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of person to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. Human life has its charm and there is no reason why life

should not be enjoyed along with all permissible pleasures. **Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. None can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance.** How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and the surrounding circumstances including the place and the time.

11. Those who make noise often take shelter behind Article 19(1)(a) pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. **Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge in aural aggression.** If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are Free Legal Aid Cell Shri Sujan Chand Aggarwal alias Bhagatji v. Govt. of NCT of Delhi and Ors., (D.B.) AIR 2001 Delhi 455 and P.A. Jacob v. Superintendent of Police, Kottayam, AIR 1993 Ker. 1. We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in entire agreement therewith.

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### **Noise as nuisance and health hazard**

15. Noise is more than just a nuisance. It constitutes a real and present danger to people's health. Day and night, at home, at work, and at play, noise can produce serious physical and psychological stress. No one is immune to this stress. Though we seem to adjust to noise by ignoring it, the ear, in fact,

never closes and the body still responds-sometimes with extreme tension, as to a strange sound in the night.

16. Noise is a type of atmospheric pollution. It is a shadowy public enemy whose growing menace has increased in the modern age of industrialization and technological advancement. Although a soft rhythmic sound in the form of music and dance stimulates brain activities, removes boredom and fatigue, but its excessiveness may prove detrimental to living things. Research has proved that a loud noise during peak marketing hours creates tiredness, irritation and impairs brain activities so as to reduce thinking and working abilities. Noise pollution was previously confined to a few special areas like the factory or the mill, but today it engulfs every nook and corner of the globe, reaching its peak in urban areas. Industries, automobiles, rail engines, aeroplanes, radios, loudspeakers, tape recorders, lottery ticket sellers, hawkers, pop singers, etc., are the main ear contaminators of the city area and its marketplace. The regular rattling of engines and intermittent blowing of horns emanating from the caravan of automobiles do not allow us to have any respite from irritant noise even in suburban zones.

17. **In the modern days noise has become one of the major pollutants and it has serious effects on human health. Effects of noise depend upon sound's pitch, its frequency and time pattern and length of exposure. Noise has both auditory and non-auditory effects depending upon the intensity and the duration of the noise level. It affects sleep, hearing, communication, mental and physical health.** It may even lead to the madness of people.

18. However, noises, which are melodious, whether natural or man-made, cannot always be considered as factors leading to pollution.

19. Noise can disturb our work, rest, sleep, and communication. It can damage our hearing and evoke other psychological, and possibly pathological reactions. However, because of complexity, variability and the interaction of noise with other environmental factors, the adverse health effects of noise do not lend themselves to a straightforward analysis.

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**Judicial opinion in India**

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 117. We have referred to a few, not all available judgments. Suffice it to observe that Indian **Judicial opinion has been uniform in recognizing the right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution, and noise pollution beyond permissible limits as an inroad on that right.** We agree with and record our approval of the view taken and the opinion

expressed by the several High Courts in the decisions referred to hereinabove.

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**How to check/control noise pollution**  
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169. Not only the use of loudspeakers and playing of hi-fi amplifier systems has to be regulated, even the playing of high sound instruments like drums, tom-toms, trumpets, bugles and the like which create noise beyond tolerable limits need to be regulated. The law-enforcing agencies must be equipped with necessary instruments and facilities out of which sound level meters conforming to Bureau of Indian Standards (BIS) code are a bare necessity.

170. Preventive measures need to be directed more effectively at the source. To illustrate, the horns which if fitted in automobiles would create honking sound beyond permissible limits, should not be allowed to be manufactured or sold in the market as once they are available they are likely to be used.

171. Loudspeakers and amplifiers or other equipments 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.

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(emphasis supplied)

Interference by Courts in noise pollution matters has also been taken note of by the Supreme Court in **Farhd K. Wadia Vs. Union of India & Ors.** reported in **(2009) 2 SCC 442** and the observations are :-

“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 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*)”



**In Janhit Manch and Ors. v. State of Maharashtra and Ors.**

reported in **2006 (2) MhLj 284**, a Division Bench of Bombay High Court consisting of Hon. Dalveer Bhandari, C.J. and Hon. Dr. D.Y. Chandrachud,

J. observed :-

“1. These proceedings have been instituted in the public interest and seek the "enforcement of all legal provisions" for controlling noise pollution under the Environment (Protection) Act, 1986, Noise Pollution (Control and Regulation) Rules, 2000 and directions issued in judicial pronouncements more particularly reproduced in the petition. Other reliefs have been sought including (i) institution of criminal proceedings; (ii) disciplinary action against errant officers; (iii) preparation of silence zone maps; (iv) a prohibition on the use of microphones and music in private premises resulting in noise pollution beyond the prescribed limit under the rules; (v) stipulation of norms for manufacturing fire crackers; (vi) destruction of fire crackers which violate the prescribed rules; and (vii) creation of awareness in regard to the observance of the Noise Pollution Rules.

2. The reliefs which have been sought in these proceedings are substantially, if not in their entirety covered by a recent decision of the Supreme Court in *In Re, Noise Pollution (V)*, MANU/SC/0415/2005 : AIR2005SC3136 . In the judgment of the Supreme Court, the Learned Chief Justice, Mr. Justice R. C. Lahoti has issued comprehensive directions to the authorities of the Union Government and of the States to enforce norms in relation to the prevention of noise pollution.

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4. The Supreme Court has, in the judgment, considered the entire body of law on the subject. The comprehensive directions which have been issued bind all authorities and necessarily also those within the States. ....

5. A copy of this order shall be forwarded to the Chief Secretary of the State with a direction to issue instructions forthwith to all the concerned authorities including local authorities in the State so that the implementation of the directions issued by the Supreme Court can be commenced forthwith.”

What, therefore, follows from the aforesaid discussion is that :-

- (i) The 2000 Rules have been framed to regulate and control noise producing and generating sources as they have deleterious effects on human health and the psychological well being of the people. The ambient air quality standards have been specified in the Schedule to these Rules. The State Government has to ensure that the existing noise levels do not exceed the prescribed air quality standards. All the Authorities have to take effective steps to avoid noise menace and achieve the object of maintaining the ambient air quality standards.
- (ii) The restrictions on the use of loudspeakers, public address systems, sound producing instruments, horns, sound emitting construction equipments contained in the 2000 Rules have to be strictly enforced.
- (iii) Right to live in freedom from noise pollution is a fundamental right protected by Article 21 of the Constitution and noise pollution beyond permissible limits is an inroad on that right.
- (iv) Noise pollution has a direct effect on sleep, hearing, communication, mental and physical health. Noise is also created by vehicles and it also disturbs sleep.
- (v) Law enforcing agencies must be equipped with necessary instruments and facilities for checking the menace of noise pollution.
- (vi) The Authority specified in Rule 2(c) of the 2000 Rules has to act when a complaint is made and has to take action against the violator.

It is, therefore, imperative for the District Administration of Moradabad and the Regional Pollution Control Board to ensure that the provisions of the Rules referred to above as also the directions that have been issued by the Supreme Court noted above are followed in true letter and spirit.

The petitioners are, therefore, not justified in asserting that they can use the loud speakers without obtaining the requisite permission contemplated under the Rules. It would, however, be open to the petitioners to approach the competent authority and the Court has no reason to doubt that in case such an application is filed by the petitioners, the authority shall take a decision on the application strictly in accordance with the Rules and the decisions of the Supreme Court referred to above.

At the same time, we direct that the District Administration of Moradabad and the Regional Pollution Control Board will act with all seriousness to ensure that there is no noise pollution by use of loud speakers or any other device causing noise pollution beyond the prescribed standard in the 2000 Rules on any building or place of worship in the district. We also direct that all police stations shall be informed and made aware that they have to ensure that no loud speakers or any noise producing activities are permitted to be used within their jurisdiction in violation of the 2000 Rules. They must also ensure that any complaint made by any citizen in this regard is immediately acted upon.

The writ petition is disposed of with the aforesaid observations and directions.

A copy of this order shall be sent by the Registry of this Court to the District Magistrate, Moradabad for compliance of the directions.

**Order Date** :-22.07.2014

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**(Dilip Gupta, J.)**

**(Mahesh Chandra Tripathi, J.)**