

SUPREME COURT OF INDIA

Farhd K. Wadia

Vs.

Union of India

C.A.No.7131 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

05.12.2008

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Whether musical functions in an open theatre being Rang Bhavan should be allowed to be carried on or not despite the fact that it is situate within 100 meters of an educational institution and a hospital, is the question involved in this appeal which arises out of a judgment and order dated 16.08.2004 passed by a Division Bench of the Bombay High Court in Writ Petition No. 2257 of 2004.

3. The basic fact of the matter is not in dispute.

“Rang Bhavan is an institution owned and run by the State of Maharashtra. It is the only open theatre in the city of Mumbai. It is let out on hire for the purpose of holding music and cultural programmes. It charges a meagre amount for allowing private parties to hold functions. It has a sitting capacity of 4000 persons. It is stated that the world's greatest artists, both Western and Indian, have performed therein.

Dr. Yeshwant Trimbak Oke & Ors. filed a public interest litigation for a direction to the State to curb noise pollution in general in the city of Mumbai and particularly during the festive season of Navratri and Ganesh Utsav.”

4. On or about 25.09.2003, an order was passed by a Division Bench of the Bombay High Court, directing:

"(1) pending hearing and final disposal of this petition, i.e., Writ Petition No. 2053 of 2003, no loudspeaker permission be granted in respect of "Silence Zone" as defined and discussed in the *Noise Pollution (Regulation & Control) Rules, 2000*, as amended from time to time.

(2) Pending hearing and final disposal of the petition, the respondents are directed to issue loudspeaker permission verifying and certifying before granting permission that the loudspeaker will not be used in a designated Silence Zone.

(3) The authorities will also ensure implementation and observance of the conditions mentioned in the permission.

(4) It is also clarified that in case the petitioners point out that there is violation at any place, the authorities will take appropriate action in accordance with law."

5. A review application was filed thereagainst by the State of Maharashtra. The submission made by the learned Advocate General for the State therein as recorded by the High Court in its order dated 19.12.2003 is as under:

"4. The learned Advocate General submitted that reading *Noise Pollution (Regulation and Control) Rules, 2000* (hereinafter referred to as "the Rules") with the Schedule thereto, it is clear that the silence zone which has been defined in Note to the Schedule would not include hospitals, educational institutions, Courts, religious places or any other area which is declared as such by the Competent Authority, but the prohibition under Rule 6 would apply to the areas comprising not less than 100 metres around such institutions."

On the said review petition, it was held:

"7. So far as first point is concerned, in our opinion, direction issued by us on September 25, 2003 is clear. Prima facie, it appears to us that the provisions of the Rules would apply to "an area comprising not less than hundred metres around" hospitals, educational institutions, Courts, religious places or any other area which is declared as such by the competent authority. In our view, this would be in consonance with the phraseology used in clause (i) of Rule 6 which totally prohibits playing of "any music" or using of "any sound amplifiers". Had it been the intention of the Rule making authority, it would not have used the expression "an area comprising not less than 100 metres around hospitals, educational institutions, Court, religious places, etc. Moreover, such interpretation would also permit activities within those institutions in accordance with law.

8. At the same time, however, the apprehension voiced by the learned Counsel for the Petitioners has also been taken care of. It cannot be considered that with regard to such organizations, institutions, etc. there is neither any standard nor limit whatsoever. In respect of such institutions also, the general provisions laid down in Rule 5 which place restriction on the use of loud speaker/ public address system would apply."

6. While the said order was operating, the appellant made an application to book Rang Bhavan from 13th to 15th August, 2004 in regard to performance of Western Cultural Music. The said application was rejected by the State by an order dated 02.06.2004, stating:

"By the order of the Hon'ble High Court, Mumbai, dated 25/09/2003 under the Noise Pollution (Control & Regulation) Rules 2000, the use of loudspeakers in a silence zone has been banned. Also the Senior Inspector of Police, Azad Maidan Police Station, Mumbai has in accordance with the direction of the Hon'ble High Court, informed in writing that the use of loudspeakers during cultural programmes at Rangbhavan will not be permitted.

For the above-mentioned reasons, your request vide your letter dated 01/05/2004 to book Rang Bhavan for 3 days, i.e., on the 13th, 14th and 15th of August, 2004 is denied..."

7. The Directorate of Cultural Affairs in a letter dated 09.07.2004 addressed to the Secretary, Power Productions, also stated:

"You are hereby informed that, in accordance with the Hon'ble High Court's order no. 2503 dated 25/09/2003, Rangbhavan, Dhobi Talao, Mumbai, the open air theatre comes under the silence zone and hence the use of loudspeakers has been banned. For the above-mentioned reasons, your request cannot be considered."

8. Contending that the said Rang Bhavan had been lying closed for the past few years and the directions issued by the High Court are not in consonance with the rules governing noise pollution framed by the State of Maharashtra, a writ petition was filed by the appellant herein. It was furthermore pointed out that some educational institutions and hospitals have also been using loud speakers.

"In the said writ petition, the following prayers were made:

"(a) that this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari calling for the records and proceedings relating to the obtaining of permission to host the Independence Rock Concert in the Rang Bhavan from Respondent Nos. 2 and 3 and after satisfying itself of the legality of the same to quash and set aside the impugned order dated 09.07.2004...;

(b) That this Hon'ble Court be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction restraining the Respondents, their agents, servants and employees from acting in any manner in furtherance of the impugned order dated 09.07.2004...;

(c) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order compelling the

Respondents to issue appropriate orders exempting Rang Bhavan from falling within the silence zone and further directing the Respondents to permit Rang Bhavan to stage concerts and other cultural and musical functions on its premises;

(d) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate, writ, direction or order directing the Respondents to permit the Petitioner to hold the Independence Rock Festival on its premises on such suitable dates between 6 p.m. to 9 p.m. subject of course to the availability of such premises on such suitable dates;

(e) That this Hon'ble Court be pleased to declare that Rang Bhavan does not fall within the silence zone so as to be precluded from utilization of loudspeakers in hosting cultural and musical events."

9. As noticed hereinbefore, the said writ petition has been dismissed.

10. Mr. S. Ganesh, learned senior counsel appearing on behalf of the appellant, drawing our attention to the relevant rules, would contend that as no silence zone has been notified in terms of the statutory rules, the High Court committed a serious error in passing the impugned judgment.

"It was urged that, in any event, an exemption should be granted in respect of Rang Bhavan having regard to the fact that it is not possible to hold a musical event at any other place in the city of Mumbai at such cheap rates.

The State of Maharashtra, the learned Senior Counsel pointed out, has also been supporting the cause of the appellant."

11. Dr. R.G. Padia, learned Senior Counsel appearing on behalf of the Union of India, on the other hand, submitted that the cause of action for which the appellant filed the writ petition being rejection of one-time request, the writ petition became infructuous.

"Our attention has furthermore been drawn to various orders and judgments passed by this Court in regard to control and regulation of noise pollution to contend that as the validity of the rules framed by the Central Government has been upheld by this Court, no interference with the impugned judgment is called for."

12. Appellant is the Chief Executive Officer of 'Power Productions', a leading Audio Studio in Mumbai. He does soundtracks for movies, ad films, etc. He is said to be a concert promoter in India for over 18 years. He in the said writ petition questioned the validity of the order dated 09.07.2004 passed by the respondents. Dr. Yeshwant Trimbak Oke & Ors., who had filed the public interest litigation being Writ Petition (PIL) No. 2053 of 2003, were not impleaded as parties in the proceedings. An application for modification of the order passed therein had also not been filed in the second public interest litigation.

13. Whereas the public interest litigation was filed by Dr. Yeshwant Trimbak Oke & Ors. contending that noise pollution created by reason of use of loudspeakers be curbed in the areas which have been and should be declared as silence zone, the purported public interest litigation was filed by the appellant herein to seek an exception there for.

14. The High Court in the earlier public interest litigation, being Writ Petition No. 2053 of 2003, admittedly passed an order of injunction. If the said order was required to be modified or clarified and/or relaxation was to be prayed for and granted in regard to Rang Bhavan, the appellant should have filed an application in the said proceeding. An independent public interest litigation to obtain a relief which would be contrary to and inconsistent with the order of injunction passed by the court was not maintainable. Inter alia, the doctrine of comity or amity demands the same.

15. It was not that the appellant was not aware of the said order. As indicated hereinbefore, the premise on which the appellant's application was rejected was the said order dated 25.09.2003 passed in the said Writ Petition No. 2053 of 2003.

“The State of Maharashtra felt itself and in fact was bound by the order dated 25.09.2003 and as such filed an application for modification in the said Writ Petition No. 2053 of 2003, which, as noticed hereinbefore, was not allowed.

We fail to understand as to on what premise the writ petition could have been entertained by the High Court. We are constrained to opine that the writ petition was filed to achieve a purpose indirectly which could not be achieved directly. The High Court, therefore, cannot be said to have committed any error in passing the impugned judgment.”

16. The Noise Pollution (Regulation and Control) Rules, 2000 (for short "the Rules") have been framed by the Central Government in exercise of its power conferred by clause (ii) of sub-section (2) of Section 3, sub-section (1) and clause (b) of sub-section (2) of Section 6 and Section 25 of the *Environment (Protection) Act, 1986* read with Rule 5 of the *Environment (Protection) Rules, 1986*.

"Area/Zone" has been defined to mean all areas which fall in either of the four categories given in the Schedule annexed to the Rules.

"Educational institution" and "hospital" have been defined in Rules 2 (e) and 2(f) of the Rules in the following terms:

"(e) "Educational institution" means a school, seminary, college, university, professional academies, training institutes or other educational establishment, not necessarily a chartered institution and includes not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral and physical development;

(f) "hospital" means an institution for the reception and care of sick, wounded, infirm or aged persons, and includes government or private hospitals, nursing homes and clinics."

Sub-rule (5) of Rule 3 of the Rules reads as under:

"(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."

Rule 5 of the Rules reads as under:

"5. Restrictions on the use of loudspeakers/public address system.--(1) A loudspeaker or a public address system shall not be used except after obtaining written permission from the authority.

(2) A loudspeaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises for communication within, e.g. auditoria, conference rooms, community halls and banquet halls.

(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 loudspeakers or public address systems 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."

Ambient air quality standards in respect of noise for silence zone have been prescribed in the Schedule. Note 3 appended thereto, however, reads as under:

"3. Silence Zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority."

17. 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.

18. 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]

19. The Calcutta High Court in several judgments and in particular in *Om Birangana Religious Society v. State of West Bengal* [decided on 11th August, 1998] 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 play back 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]

20. This Court has also taken suo motu cognizance as regards noise pollution. It passed various orders from time to time in *Noise Pollution, In Re. v. Union of India and Another*¹.

21. A detailed judgment was rendered by a Division Bench of this Court in the said writ petition, which has since been reported in [(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 of West Bengal*² has been taken note of.

As regards loudspeakers and amplifiers, it was directed:

"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."

22. The matter again came up before this Court and an order passed therein has been reported in [(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 reported in [(2005) 5 SCC 733] 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 re-opened. 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:

"...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.

23. 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.

24. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly. In the facts and circumstances of the case, however, there shall be no order as to costs.

¹(2005) 5 SCC 727

²(1996) 100 CWN 617