

# **SUPREME COURT OF INDIA**

Dr. Balwant Singh

Vs.

Commissioner of Police

C.A.No.10024 of 2014

(Fakkir Mohamed Ibrahim Kalifulla and Abhay Manohar Sapre JJ.)

07.11.2014

## **JUDGMENT**

**ABHAY MANOHAR SAPRE, J.**

1. Leave granted
2. This appeal arises out of an order dated 21.05.2013 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D.B. Civil Special Appeal (Writ) No. 378 of 2013 which arises out of an order dated 25.02.2013 passed by the learned Single Judge in S.B. Civil Writ Petition No. 2273 of 2013.
3. By impugned order, the Division Bench disposed of the appeal filed by the appellant herein in the light of the assurance given by the State to settle the controversy raised by the appellant in the writ petition/appeal.
4. Dissatisfied with the impugned order, the appellant has filed this appeal by way of special leave before this Court.
5. This Court issued notice to the respondents. On being served, learned counsel for the respondents filed counter affidavit on behalf of the respondents.
6. Heard learned counsel for the parties.

7. In order to appreciate the issue involved in this appeal, it is necessary to mention the facts in brief.

8. The appellant (writ petitioner) is the resident of Jaipur (Rajasthan). He retired as Director General of Police in March 1995. To settle after retirement, the appellant constructed his house in a residential colony opposite to Vidhyut Bhawan in Jyoti Nagar in Jaipur city. The locality and, in particular, the location of the appellant's house is very near to Vidhan Sabha" (State Assembly Building).

9. The appellant to his misfortune noticed that very frequently, thousand/hundreds of people belonging to political/non-political parties would gather on the road approaching to Vidhan Sabha, which is in front of his house, with agitated mood and would undertake their Protests March or "Dharna" or "Procession" for ventilating their grievances. The protestors then would use indiscriminately loudspeakers by erecting temporary stage on the road and go on delivering speeches one after the other throughout the day which sometimes used to continue for indefinite period regardless of time. Since there used to be a gathering of thousand/hundreds of people, the demonstrators would indiscriminately make use of the compound walls of nearby houses including that of the appellant<sup>TM</sup>s house to ease themselves frequently at any time.

10. In order to regulate such events and to maintain law and order situation, the State and Police Administration used to put barricades and depute hundreds of police personnel to see that no untoward incident occurs. These barricades used to be installed just in front of the gates of the houses of the residents including the appellant's house. The police personnel like others would also use the walls of the residential houses including that of the appellant's house to ease and nobody was in a position to tell them not to do such activities in front of their houses. The appellant also noticed that these activities had gained considerable momentum making living of the residents of that area a miserable one because neither they were in a position to stay comfortably and peacefully inside the house or do any work due to constant noise pollution nor were in a position to come out of their house due to constant fear of insecurity and restrictions put by the State.

11. The appellant was one of the most affected persons whose living in his house had

become impossible due to these activities and finding no solution to the problem faced, compelled him to first approach the Commissioner of Police and make an oral complaint but finding that no action was taken, filed a written complaint on 21.11.2011 (Annexure P-1).

12. In the complaint, the appellant narrated the aforementioned grievances in detail and requested the Commissioner of Police to take immediate effective remedial steps to prevent such events.

13. Since the Commissioner of Police did not take any action on the complaint, the appellant, on 06.03.2012, filed a complaint before the National Human Rights Commission (NHRC), New Delhi under the provisions of the Human Rights Commission Act, 2005 (hereinafter referred to as the Act). The NHRC forwarded the appellant's complaint to the Rajasthan State Human Rights Commission (RSHRC) for taking appropriate action in accordance with law. The RSHRC, on receipt of the complaint, registered the same being Petition No. 12/17/1720 and by order dated 24.09.2012 partly allowed the appellant's petition and directed the Additional Home Secretary to order the concerned officials to effectively stop interference with the right of the appellant herein to lead an independent and peaceful life and ensure that :

1. The crowd of demonstrators does not assemble, on both roads opposite to the petitioner<sup>TM</sup>s house during the assembly sessions.
2. The demonstrators are not allowed to use high powered loudspeakers during day and night.

The road is not closed after stopping traffic and traffic movement is maintained in a sustained and orderly manner.

The policemen are stopped from urinating in the proximity of the wall of the petitioner<sup>TM</sup>s house from the side of the M.L.A.<sup>TM</sup>s complex during the Assembly Sessions.

No barricading is done on the road opposite to, and near, the house of the petitioner.

14. Despite issuance of the aforementioned directions, the State did not ensure its compliance and on the other hand, some miscreants attacked the appellant<sup>TM</sup>s house and hence out of disgust, the appellant was compelled to file writ petition being S.B.Civil Writ Petition No. 2273 of 2013 before the High Court of Rajasthan Bench at Jaipur, seeking appropriate reliefs by issuance of writ of prohibition/mandamus against the State and its authorities to protect the interest of the appellant, his property and his peaceful living.

15. Learned single Judge, by order dated 25.02.2013 disposed of the appellant's writ petition observing that since the State has already taken all necessary steps in the light of the directions given by the RSHRC in their order dated 24.09.2012 and hence no more orders are called for in the writ petition.

16. Learned Single Judge, in the concluding part of his order, observed as under:

..I am of the considered view that no order on the reliefs prayed for by the petitioner be passed as the State Government has already taken all requisite action within its powers to ensure that the peace and quiet of the petitioner living in his residential house at Jyoti Nagar locality in proximity to Vidhan Sabha is not unduly disturbed. It would be expected that measures detailed by the Additional Advocate General in his submissions before this Court would be implemented strictly.

17. The appellant, felt aggrieved, filed intra court appeal before the Division Bench of the High Court out of which this appeal arises. The Division Bench, by impugned order, more or less on the same lines on which the learned Single Judge had disposed of the writ petition, decided the appellant's appeal.

18. The Division Bench in the concluding part of their order observed as under:

In view of that assurance extended on behalf of the State Government, the learned single Judge has already reached the conclusion that the directions issued by the Human Rights Commission, Rajasthan in its order dated 24.9.2012, have substantially been complied with. At this stage, the Division Bench of this Court cannot give further direction in the appeal. The State Government obviously shall also comply with such order and act in conformity

with assurance given before the single Bench and take special care to ensure that peace and quiet of the petitioner, living in his residential house at Jyoti Nagar locality in proximity to Vidhan Sabha is not unduly disturbed. It is against the aforementioned order of the Division Bench, the appellant (writ petitioner) has filed this appeal.

19. The respondents have filed their counter affidavit. The State, on affidavit, has stated that it is their duty to ensure that no harm, injury, damage or inconvenience/nuisance of any nature is caused to the life and property of any citizen on account of any action and activities of other person(s) or/and State authorities and all personal/fundamental/property rights guaranteed and recognized in law to every citizen are protected to enable him to lead a meaningful life with dignity and peace and to also enjoy his property. It is further stated that in compliance to the order passed by RSHRC, the State has issued directions for ensuring its compliance which are as under:

a. Deputy Commissioner of Police has been put in charge of the area in order to ensure law and order in and around the residence of the petitioner.

b. Barricading at appropriate distance from the residence of the petitioner so that the movement of the residents as well as of the petitioner is not restricted as such and also because of the demonstration in specific. When the legislative assembly is in session barricading is done at least 60 feet away from the residence of the petitioner.

c. Mobile public toilets (two vehicles) have been placed by the Rajasthan Municipal Corporation in the concerned area so that hygiene is maintained in and around the area which has been affected by regular demonstration. Further all cautions have been taken that the public uses such facilities and neither police personnel on duty nor the demonstrator may spoil the walls of the petitioner by urinating.

d. Prior permission as per the Rules are being given by the office of Deputy Commissioner of Police, Jaipur (South) to the demonstrators and District Collector is directed to ensure that while giving permission for demonstration it may also check that no instruments are allowed which may violate the Rules or

cause noise pollution.

20. It is with this background, the question arises as to whether the directions issued so far need any further modification and if so, to what extent.

21. The law on nuisance is well settled. Nuisance in any form as recognized in the law of Torts - whether private, public or common which results in affecting anyone's personal or/and property rights gives him a cause of action/right to seek remedial measures in Court of law against those who caused such nuisance to him and further gives him a right to obtain necessary reliefs both in the form of preventing committing of nuisance and appropriate damages/compensation for the loss, if sustained by him, due to causing of such nuisance. (See - Ratanlal Dhirajlal - Law of Torts by G.P.Singh - 26th Edition pages-621,637,640).

22. We may, at this stage, consider apposite to take note of law laid down by this Court in Noise Pollution(V), In Re - Implementation of the Laws for restricting use of loudspeakers and high volume producing sound systems, (2005) 5 SCC 733, as in our considered view, it has a material bearing over the issue, which is the subject matter of this appeal.

23. This Court while entertaining the PIL filed by one Organization called "Forum, Prevention of environmental and sound pollution" had the occasion to examine the issue in relation to nuisance of noise pollution caused to the people at large due to use of equipments/apparatus/articles etc. The noise pollution caused generates different kinds of sounds thereby constantly creates irritation and disturbance to the people. Since it was a continuing wrong all over the country and hence, this Court, in great detail, examined the issue in the light of the citizens rights guaranteed under Articles 19(1), 21 and 25 of the Constitution of India, read with all laws/rules/regulations relating to pollution, including penal laws governing this issue.

24. Chief Justice R.C. Lahoti (as His Lordship then was), speaking for the Bench in concluding para of the order, issued directions to all the States directing them to ensure that noise pollution caused due to use of various apparatus/ articles/ activities must be curbed and controlled by resorting to methods and modes specified in several rules/regulations dealing the subject. These directions are extracted herein below:

## 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. DOE shall specify the proportion/composition as well as the maximum permissible weight of every chemical used in manufacturing firecrackers.

[pic]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 10.00 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.

(iii) Vehicular noise

176. No horn should be allowed to be used at night (between 10 p.m. and 6 a.m.) in residential area 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 textbooks which teach civic sense to the children and youth at the initial/early-level of education. Special talks and lectures be organised in the [pic]schools to highlight the menace of noise pollution and the role of the children and younger generation in preventing it. Police and civil 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. Resident 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 equipment 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, categorisation of the areas for the purpose of implementation of noise standards, authorising 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.

25. We note with concern that though the aforesaid directions were issued by this Court on 18.07.2005 for ensuring compliance by all the States but it seems that these directions were not taken note of much less implemented, at least, by the State of Rajasthan in letter and spirit with the result that the residents of Jaipur city had to suffer the nuisance of noise pollution apart from other related peculiar issues mentioned above so far as the appellant's case is concerned.

26. Needless to reiterate that once this Court decides any question and declares the law and issues necessary directions then it is the duty of all concerned to follow the law laid down and comply the directions issued in letter and spirit by virtue of

mandate contained in Article 141 of the Constitution.

27. In our considered view, in the light of the authoritative pronouncement rendered by this Court on the issue of noise pollution in the case of Noise Pollution (V), In Re (supra), it is not necessary for this Court to again deal with the same issue except to issue appropriate directions for its compliance.

28. We, accordingly, direct the respondents to ensure strict compliance of the directions contained in Para 174 to 178 of the judgment of this Court in Noise Pollution (V), In Re (supra), and for ensuring its compliance, whatever remedial steps which are required to be taken by the State and their concerned department(s), the same be taken at the earliest to prevent/check the noise pollution as directed in the aforesaid directions.

29. Now so far as the disturbance created by the police/state officials/people at large in the appellant<sup>TM</sup>s peaceful living in his house is concerned, in our considered view, they do result in adversely affecting the appellant<sup>TM</sup>s rights guaranteed under Article 21 of the Constitution as held by this Court in Noise Pollution (V), In Re (supra) and also in Ramlila Maidan Incident in Re, (2012) 5 SCC 1. The RSHRC and the writ Court were, therefore, justified in entertaining the complaint under the Act and the writ petition under Article 226 of the Constitution of India and in consequence justified in giving appropriate directions mentioned above while disposing the appellant's complaint/writ petition.

30. We, however, note that the State was right on their part in not contesting the appellant's complaint/writ petition by raising technical/legal grounds finding the appellant's grievance made in his complaint to be genuine and then rightly came out with remedial suggestions to deal with the situation arising in the case.

31. Indeed, this reminds us of the subtle observations made by Justice M.C. Chagla, Chief Justice of Bombay High Court in Firm Kaluram Sitaram Vs. The Dominion of India, AIR 1954 Bombay 50, wherein while deciding the case between the citizen on the one hand and State on the other, the learned Chief Justice in his distinctive style of writing reminded the State of their duty towards the citizens while contesting his rights qua State and made the following observations.

.we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent judges, as an honest person.

32. We are in complete agreement with the aforementioned statement of law laid down in *Firm Kaluram Sitaram* (supra) as far back as in 1954. In our considered view, the Constitution, inter alia, casts a duty on the State and their authorities to ensure that every citizen's cherished rights guaranteed to him under the Constitution are respected and preserved, and he/she is allowed to enjoy them in letter and spirit subject to reasonable restrictions put on them, as dreamt by the framers of the Constitution. Intervention of the Court is called for at the instance of citizen when these rights are violated by fellow citizens or by any State agency.

33. We have perused the steps suggested by the State in their counter affidavit and find that if the steps suggested by the State are implemented in letter and spirit and further the implementation is observed in its proper perspective by the State and its authorities from time to time coupled with any other good suggestions, if noticed, while implementing the suggestions, then most of the problems presently being faced by the appellant and many others like him in the concerned area(s) would be reduced to a large extent.

34. We, accordingly, direct the respondents to ensure strict compliance of the conditions/steps mentioned in Paras 5 (a) to (d) of the Counter Affidavit extracted above and while ensuring its compliance, if the respondents consider that it needs some amendment(s) for ensuring better implementation then in such eventuality, the same be done in the larger interest of the residents of the concerned area and equally for the benefits of the residents of different parts in the State. Needless to say, while implementing the directions, its objective should always be to ensure that the rights of the citizens are not affected adversely by any kind of nuisance as mentioned above.

35. In view of the foregoing discussion and the directions contained above, the appeal succeeds and is allowed in part. Impugned order stands modified to the extent mentioned above.