

IN THE HIGH COURT OF BOMBAY

Decided On: 00.00.1995

Appellants: **Yashwant Trimbak Oke and Ors.**

Vs.

Respondent: **State of Maharashtra and Ors.**

Hon'ble Judges:

[M.B. Shah](#), C.J. and [J.N. Patel](#), J.

Subject: Environment

Catch Words

Future Generation, Noise Pollution, Public Interest, Public Nuisance

Acts/Rules/Orders:

Environment (Protection) Act, 1986 - Sections 15 and 17; Constitution of India - Article 19; Anti-Pollution Laws; Water Act; Air Act

Cases Referred:

The State of Bombay v. Narasu Appa Mali, Air 1952 Bombay 84; Indian Council for Enviro-Legal v. Union of India and Ors., JT 1996(4) 263

Case Note:

Environment –noise pollution – Article 19 of Constitution of India and Sections 15 and 17 of Environment (Protection) Act,1986 – State Government took out notice of motion to grant permission to various applicants for holding Navratri festival with use of loudspeakers – petitioner questions justification of application – Environmental Laws have been enacted to be enforced and not violated – effective control of noise is for well being of society – grant of permission would lead to infringement of law - notice of motion dismissed with direction given to State Government to control noise pollution and protecting Environment Act and Rules.

JUDGMENT

1. In this Public Interest Litigation the State Government has taken out this Notice of Motion for permitting it to grant permission to various applicants for holding Navratri

festival with the use of loudspeakers in Greater Mumbai from 13th to 21st October 1996 upto 1.00 a.m. It is pointed out that the authorities of State Government under the Rules called "the Rules for Licensing, Controlling and Prohibiting the use of Loudspeaker in or near all public entertainment place in Greater Bombay Rule, 1994" empowers them to grant exemption in certain cases.

2. It is submitted on behalf of the Government that Navratri festival is a special occasion for which exemption is required to be granted with certain limitations. The learned Advocate-General submitted that the licensing authority would strictly keep control over the use of loudspeaker and would permit use of box type loudspeaker only which would have no adverse effect on noise pollution. He submitted that considering the festival of Navratri, Court may permit grant of such permission to use loudspeaker upto 1.00 a.m.

3. This application is vehemently opposed on behalf of the Petitioner by learned Counsel Mr. S.A. Diwan and learned counsel Mr. C.U. Singh. They submitted that this application is filed so as to have an imprimatur of the Court for the State Government to infringe the provisions of Environment (Protection) Act, 1986 and for protecting themselves from the rigours of Section 15 read with Section 17 of the said Act. It is pointed out that religion nowhere requires that festivals should be celebrated by disturbing the peace of others or by creating noise or by use of loudspeaker or 'that loudspeaker is a must for observing religious festival. It is submitted that during Navratri festival, Garbas are played by the mass but that would not require any loudspeaker. In support of his submission, Mr. Singh pressed into service the decision of a Division Bench of this Court in *The State of Bombay v. Narasu Appa Mali*, [MANU/MH/0040/1952](#) : AIR1952Bom84 , wherein the Court has observed as follows :-

"A sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole."

4. Learned Counsel Shri Diwan relied upon the findings given in paragraph 14.4.3 of the Report of The National Commission on Urbanisation, Volume II, regarding noise pollution in cities. It reads as under :-

"There is a great deal of noise pollution in India Cities on account of inadequately silenced vehicle engines and amplified audio-transmissions from restaurants, shops, households, etc., and also the use of amplifiers and loudspeakers for religious functions, social gatherings and other forms of public assembly. Social intercourse and religious discourses are personal matters and should remain so. There should be stringent laws prohibiting and punishing sound amplification which creates a public nuisance, with a total ban on the use of loudspeakers. This, naturally, would not apply to public assembly in exercise of the rights under Article [19](#) of the Constitution, but this would be subject to regulation so that no public nuisance is created. The harmful effect of noise pollution,

especially on the human mind, is no less serious than pollution of the air that we breathe or the water that we drink."

He further submitted that in the previous affidavit filed before this Court on behalf of the State, the same deponent has stated that the Government is considering ban for use of loudspeaker in the city of Mumbai. Now the same deponent has filed this application for an order permitting the use of loudspeaker.

5. As against this, learned Counsel for some Intervenors, who are supporting the stand taken by the State Government, submitted that during Navratri festival, Garbas are played and for that purpose in the city number of persons take it as a cultural and religious activity and for that purpose use of loudspeaker is absolutely necessary. They submitted that permission may be granted by imposing certain stringent conditions so that religious sentiments of the public at large are not hurt. It is also submitted that the normal time limit imposed by the State Government upto 11.30 p.m. is insufficient and hardly any function is possible within this time-limit in a city like Mumbai where people return home after 9.00 p.m. from their work place and thereafter the celebrations start only after 11.00 p.m. Therefore, it is submitted that at least two hours' extension of time may be permitted.

6. In our view, this application to permit use of loudspeaker after 11.30 p.m., if allowed, would only add to the existing noise pollution in the city of Mumbai. Noise pollution in the city even without loudspeakers was measured by the Committee formed by this Court in the year 1986. It was found that time noise pollution was much more and the Committee has suggested various measures for reducing the same. In the present Petition also, with regard to noise pollution, joint measurements were taken at different parts of the city pursuant to the directions given by this Court on 13th March 1996 and noise pollution was found to be more than the permissible decibels. In that view of the matter, as stated above, the Government has filed affidavit stating that proper measures for banning use of loudspeakers would be taken. From time to time, we have passed orders for this purpose. Instead of complying with those orders, the present Notice of Motion is taken out.

7. It should not be forgotten that Environment (Protection) Act, 1986 enacted by Parliament and the Rules framed thereunder are meant for enforcement and are not for their violation. It is the duty of the State Government to enforce it rigorously and not to find out excuses for not implementing it. Effective control of noise disturbance is for the well being of the society. The adverse effect of noise pollution is now scientifically examined and is well known as it adversely affects the health of the citizens. We do not want to discuss this aspect any further. However, it would be worthwhile to quote the observation of the Supreme Court in the case of *Indian Council for Enviro-Legal v. Union of India and Ors.* JT 1996(4) 263, that enactment of a law, relating to protection of environment, usually provides for what activity can or cannot be done by people. If the people were to voluntarily respect such a law, and abide by it, then it would result in law being able to achieve the object for which it was enacted. Where, however, there is a conflict between the provision of law and personal interest, then it often happens that

self-discipline and respect for law disappear. The Court thereafter pertinently observed as under :-

"Enactment of a law, but tolerating its infringement is worse than not enacting law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the Enforcement Authorities encourages lawlessness and adoption of means which cannot, or ought not to be tolerated in any civilized society. Law should not only be meant for law abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that the Parliament enacted the Anti-Pollution Laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986.....These Acts and Rules framed and Notifications issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibits certain types of activities then it is of utmost importance that such legal provisions are effectively enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations."

8. While dealing with a similar application during the Ganesh festival, we have rejected it by our order dated 10th September 1996 by observing that religious ceremony nowhere provides that on religious festival days loudspeaker is a must without which festivals cannot be observed. For us, it would be difficult to distinguish Ganesh festival from Navratri festival. We note that during Ganesh festival the Respondents had taken proper steps for controlling the noise pollution. Therefore, we do not find any justifiable reason to grant permission to use loudspeakers as prayed for during Navratri festival which would only result in increase in noise pollution. In any case, there is no question or granting any permission by us or putting an imprint or seal to do something which is in violation of the Environment Act and the Rules. It is for the State Government to implement the said Act and the Rules and prohibit certain activities which adversely affect the lives of persons who cannot oppose the noise pollution for various restraints. It is the duty of the State Government not to encourage the activities which will lead to violation of law. Nobody can object to Navratri festival or any festival for that matter. These festivals can be enjoyed even without loudspeaker. Garba or Dandiya during the Navratri festival without noise pollution by the loudspeaker were played in the recent past and can be played without use of loudspeaker. Hence we reiterate the direction given in paragraph 8, 9 and 10 of the order dated 10th September 1996, which are as under :-

"8. In view of this, we do not think any further order is necessary except to observe that the Respondents should take appropriate action to prevent additional noise pollution which adversely affects the member of the society at large. The State Government cannot

wash off their hands by stating that it may lead to law and order situation. Hence the Respondents would see that during this extra noise created by loudspeakers, beating of bands, drums and bursting of fire crackers is minimized.

9. The State Government is directed to issue necessary advertisement so as to educate the public at large with regard to noise pollution in the city particularly its adverse effect on health of the citizens at large.

10. The Police Commissioner is directed to issue necessary instructions to the concerned Police Stations that on receipt of the complaint with regard to noise pollution, appropriate action be taken as early as possible. Further, while permitting the use of loudspeakers, appropriate undertaking be also taken from the concerned organizers that loudspeakers will be modulated only within the permissible limits and timing and used during permitted timing."

9. Hence, the State Government would take appropriate steps to control noise pollution created by loudspeakers during these festivals and protect the silent sufferers, may be students, old, infirm or others not interested. It is for the State to implement the law as it is.

10. With the above observations and directions, this Notice of Motion is dismissed.