

Form No. J.(2)
Item No.2

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 27.07.2023

DELIVERED ON: 27.07.2023

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNAM
AND**

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A.(P) 369 of 2022

Miss Shagufta Sulaiman

Vs.

The State of West Bengal & Ors.

Appearance:-

Miss Shagufta Sulaiman

.....Petitioner (In Person)

Mr. N. C. Bihani

Mrs. Papiya Banerjee Bihanifor the West Bengal Pollution Control Board

Mr. Amitesh Banerjee, Sr. Standing Counsel

Mr. T. M. Siddiqui, Ld. A.G.P.

Mr. S. Adak

.....for the State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNAM, CJ.)

1. By filing this public interest writ petition, the petitioner appearing in person seeks for certain directions against the respondent/police. The concern of the petitioner is that there is severe noise pollution in various

parts of the city on account of continuous beating of drums by a group of persons, throughout the day and night on the alleged ground that they are performing the mourning ritual on occasion of Muharram. The petitioner would state that there is a ban for Azan by using loud speakers as that lasts 5 minutes only, which is certainly a religious matter but the non-stopping of beating of drums with no restriction of intensity of the sound is illegal. According to the petitioner, the noise pollution is a serious threat to public health and welfare. It creates a stress and would affect the persons, who reside in and around the area, where this beating of drums is being done throughout the day and night.

2. The petitioner would also state that there are school going children. Many of them have to take their examination. There are senior citizen people, who are sick and ailing and all of them have been affected and in spite of the repeated complaints lodged by the petitioner before the 3rd respondent/police, no action has been taken. With these facts, the petitioner seeks for appropriate directions to stop the nuisance caused on account of the continuous beating of drums.
3. The learned Government counsel appearing for the respondents would submit that whenever the petitioner has approached the respondent/police, her grievance has been looked into and appropriate action has been taken and the period for the beating of drums has been regulated.
4. The petitioner by way of reply submission would state that the stand taken by the respondents is factually incorrect and beating of drums is continuously going on and there is high noise pollution.

5. After we have elaborately heard the petitioner in person and the learned Government counsel, we have to point out that the Hon'ble Supreme Court in the case of ***Church of God (Full Gospel) in India vs. KKR Majestic Colony Welfare Association & Ors.*** reported in ***A.I.R. 2000 SC 2773*** was considering a somewhat similar issue relating to noise pollution on the ground of religion. The question, which fell for consideration before the Hon'ble Supreme Court was whether beating of drums or reciting of prayers by use of microphones and loud speakers so as to disturb the peace and tranquillity of neighbourhood should be permitted. The Hon'ble Supreme Court held that undisputably no religion prescribes that any prayer should be performed by disturbing the peace of others nor does it preach that they should be through noise amplifiers or beating of drums. Further, it was pointed out that in a civilised 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. Further, it was pointed out that the 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 there 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 the age of 6 years are considered to be very sensible to noise and their rights are also required to be honoured.

6. The Hon'ble Supreme Court took note of the provisions of the Environment (Protection) Act, 1986 and the rules framed thereunder for noise pollution level, which prescribes permissible limits of noise in residential, commercial, industrial areas or silence zone. The Hon'ble Supreme Court took note of the decision of the High Court of Madras in ***Appa Rao, M.S. vs. Government of Tamil Nadu & Anr.*** reported in ***1995-1L.W. (Vol.115) 319***, wherein certain guidelines have been laid down for controlling the noise pollution. The Division Bench of the High Court of Madras after considering the contentions raised by the parties and the decisions cited and also the relevant provisions of the Madras City Police Act, 1888 and Madras Town Nuisance Act, 1989 issued directions to the Government for controlling the noise pollution and for the use of amplifiers and loud speakers.
7. The Hon'ble Supreme Court also took note of the articles, which appeared in the ICMR bulletin of July, 1979 containing a study on noise pollution in South India, wherein it is pointed out that noise pollution will lead to serious nervous disorders, emotional tension leading to high blood-pressure, cardio vascular disease, increase in cholesterol level resulting in heart attacks and strokes and even damage to foetus. In the said case, the appellant was a Church and the allegation was on account of use of loud speakers, there was a nuisance caused on account of noise pollution. The Hon'ble Supreme Court pointed out that it cannot be said that the religious teachers or the spiritual leaders, who had laid down the tenets had any way desired the use of microphones as a means of performance of religion. Further, it was pointed out that one can practice, profess and propagate

religion, as guaranteed under Article 25(1) of the Constitution but that is not an absolute right. The provision of Article 25 is subject to the provisions of Article 19(1)(a) of the Constitution and on a true and proper construction of the provisions of Article 25(1) and Article 19(1)(a) of the Constitution, it cannot be said that the citizens should be coerced to hear anything, which he does not like or which he does not require.

8. The Hon'ble Supreme Court also referred to the observations made by the Constitution Bench *qua* rights under Articles 25 and 26 of the Constitution in ***Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v. The State of Gujarat*** reported in **(1975) 1 SCC page 11**, where the Hon'ble Supreme Court after considering the various contentions observed as hereunder:-

“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 “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.”

9. In the aforementioned decision, the role of the State has also been clearly delineated and it has been pointed out that the State has to step in to set right the imbalance between the competing interest. Ultimately, the appeal filed by the appellant before the Hon'ble Supreme Court namely, Church of God (Full Gospel) in India was dismissed.

10. In our considered view, the decision of the Hon'ble Supreme Court would apply with full force to the grievance expressed by the writ petitioner in this public interest litigation. As observed by the Hon'ble Supreme Court that even though the rules are unambiguous, there is lack of awareness amongst the citizens as well as the implementing authorities, who will be the respondents/State as well as the Pollution Control Board. It was further pointed out that the implementing authorities are duty-bound to implement the rules and ultimately, the direction issued by the High Court was affirmed.
11. As pointed out by the learned counsel appearing for the respondents/State that beating of drums may be part of an activity while performing the mourning ritual on 29th July, 2023, however, unabated beating of drums is impermissible in terms of the relevant rules as well as in the light of the observations and directions issued by the Hon'ble Supreme Court. The petitioner had earlier filed a writ petition before this Court in W.P.A.23366 of 2022 and an order was passed on 28th October, 2022, wherein the learned Single Bench has referred to a notification issued by the State of West Bengal in Notification No.EN/3346/T-IV-6/0001/2007 dated 29th December, 2009 according to which loud speakers cannot be used in open air after 10 p.m. and for the use of microphone in open air, sound limiter should be attached to the amplifier. It is not clear as to whether the respondent/police are aware of such notification. It was the duty of the West Bengal Pollution Control Board to issue public notice prior to any religious festival or any congregation or any rally or any meeting sensitising the citizens about the relevant rules, which prohibit indiscriminate noise

pollution. If what has been said by the petitioner is true namely, that beating of drums is continuing day and night in the said area, where she resides as well as in other areas in Kolkata, it is undoubtedly illegal and contrary to the relevant rules.

12. Therefore, there will be a direction to the respondent/police to immediately issue public notice regulating the timing for beating of drums. On earlier occasion, this Court has considered the various notifications issued by the Government granting permission for conducting processions and rallies, whereby an organisation or a club has to approach the concerned authorities and submit an application form with necessary declarations and furnishing relevant information and only after permission is granted, such an organization can take out processions or conduct rallies. It is not clear as to why such a measure has not been put in place so far as the complaint made by the petitioner with regard to beating of drums throughout the day and night.
13. Therefore, the respondent nos.1 to 3 as mentioned above, if feasible, can also identify the groups, which can be permitted to carry on beating of drums by maintaining the permissible noise level. The period for beating of drums shall also be regulated. We have observed that the respondents shall do so, if feasible, bearing in mind that the mourning ritual is to be performed on 29th July, 2023 and within the short time, it may not be feasible for the authorities to invite applications and grant permission. However, a Standard Operating Procedure (SOP) in this regard shall be drawn before any other religious festival or meetings or rallies are

conducted, where DJ music is being played and beating of drums and other musical instruments are being used.

14. The petitioner would further submit that the people in the locality have installed open air kitchen right in front of her house and by using the huge vessels are cooking food day and night. It is not clear as to why the 3rd respondent/police has permitted open air kitchen especially when the petitioner alleges nuisance to herself and to the members of her family and the neighbourhood. This aspect has also to be regulated by the 3rd respondent/police.
15. It is noteworthy to point out that the West Bengal Pollution Control Board by letter dated 8th July, 2021 has forwarded a complaint with regard to noise pollution from playing of loudspeaker at Nawab Abdul Latif Street, Kolkata – 700016 to the Officer-in-Charge, Park Street Police Station/the 3rd respondent enclosing a copy of the complaint sent by the writ petitioner with a request to the police to ensure that the following points are complied with strictly in conformity with the provisions of the Noise Pollution (Regulation & Control) Rules, 2000, as amended, and the orders issued by the Hon'ble National Green Tribunal from time to time. The points being as hereunder:-

*“1. Loudspeakers/Sound producing instruments are not used at night time (10 p.m. to 6 a.m.) except in closed premises for communication within, like auditoria, conference rooms, community halls, banquet halls or during a public emergency;
2. Sound limiters are mandatorily used with the amplifier if the Loudspeakers/Sound producing instruments are used in the open air;
3. Loudspeakers/Sound producing instruments are not used in the open air without written permission of the local police station.”*

16. The West Bengal Pollution Control Board is directed to immediately issue a public notice giving wide publicity that the noise level cannot exceed the permissible decibel, as laid down under the relevant rules and notifications and also make it clear that any violation thereof would invite penal action under the provisions of the pollution control laws.
17. The above directions shall be complied with effectively in its letter and spirit without any deviation.
18. With the above observations/directions, the writ petition stands disposed of.
19. No costs.
20. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)