

Court No. - 29

Case :- WRIT - C No. - 43167 of 2019

Petitioner :- Masroor Ahmad And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Puneet Bhadauria, Rakesh Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Mithal, J.

Hon'ble Vipin Chandra Dixit, J.

Heard Sri Puneet Bhadauria, learned counsel for the petitioners and Sri Amit Verma, learned Standing Counsel for the respondents.

The petitioners who are Muslims by religion have preferred this petition for the quashing of the order dated 12.06.2019 (wrongly mentioned as 21.06.2019 in the petition) passed by respondent No.4 Sub-Divisional Magistrate, Shahganj, District Jaunpur (wrongly mentioned as respondent No.3 Superintendent of Police, Jaunpur in the writ petition).

The aforesaid order disposes off the representations of the petitioners filed pursuant to the directions of the Court for permission/renewal of the license to use amplifiers and loudspeakers on religious places on the ground that such use of sound equipments is likely to cause animosity between the two religious groups of the village creating law and order situation.

The petitioner No.1 had moved application before the authority concerned for license/permission to use amplifiers and loudspeakers on two Mosques, Masjid Abu Bakar Siddiqui and Masjid Rahmani, both situate in village Baddopur, Tehsil Shahganj, District Jaunpur for the purposes of *Azaan* for *Namaz*.

The petitioner No.1 was granted permission by respondent No.4 Sub-Divisional Magistrate, Shahganj on 15.01.2018 to use sound equipments as aforesaid on Masjid Abu Bakar Siddiqui, Baddopur for the period from 15.01.2018 to 14.07.2018 for specified times mentioned therein with certain conditions. There is no permission on record with regard to the use of amplifiers and loudspeakers in respect of other mosque i.e. Masjid Rahmani of Village Baddopur, Tehsil Shahganj,

District Jaunpur.

It is alleged that at one point of time, the said sound equipments had to be removed from the said mosque for repairs but when they were being refixed, the local area police stopped the petitioner No.1 from reinstalling the same. Accordingly, petitioner No.1 preferred Writ Petition (C) No. 11840 of 2018 (Masroor Ahmad and others Vs. State of U.P. and 5 others) and the same was disposed off vide order dated 07.03.2019 with liberty to the petitioner to move an application afresh for renewal of license to use amplifiers and loudspeakers in the mosque in accordance with law.

It is in consequence to the above direction and the fact that the license/permission granted earlier to the petitioner to use sound equipments at the aforesaid mosque had expired that a representation was submitted on 16.03.2019 before respondent No.4. The respondent No.4 called for a report from the Circle Officer, Shahganj who vide his report dated 09.05.2019 stated that a spot inspection was carried out on 07.03.2019 wherein it was found that in the area of both the mosques, there is a mixed population of Hindus and Muslims. If any party is allowed to use sound amplifiers, the tension between the two groups would escalate disturbing the peace in the area. The Sub-Divisional Magistrate along with the C.O. had also visited the area and it was found that on account of use of sound amplifying system in the area, there is a grave tension amongst the villagers comprising of persons of both religious groups of Hindus and Muslims. In the past also, dispute on this score had taken a serious turn. Therefore, in order to maintain law and order and peace in the area, it is appropriate not to grant permission to any group to use sound amplifying system on any religious place. Accordingly, the license of the petitioners cannot be renewed or extended and no fresh permission can be granted.

In short, on the reading of the aforesaid order, it becomes quite evident that the petitioners have been refused permission to use sound amplifying system at the mosque not only for the inherent reason of noise pollution but in order to maintain peace and tranquillity in the area.

It may not be out of context to mention that people in India do not

realise that noise in itself is a sort of pollution. They are not even fully conscious about its ill effect on health though some concern is being shown to it in recent past.

On the other hand, internationally, especially in the U.S.A., England and such other countries, people are very much conscious of the noise pollution and as a matter of course do not even blow horns of their cars and honking is considered to be bad manners as it causes not only inconvenience to others but also pollutes the environment causing hazards to health.

The Central Government in exercise of powers under Sections 25 read with Section 6 (2) and Section 3 (2) of the Environment (Protection) Act, 1986 has framed Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as "**Rules**").

The aforesaid Rules apart from placing restrictions on use of horns, sound emitting equipments, loudspeakers, public address system, etc., interalia categoricly lays down that loudspeakers or public address systems shall not be used except after obtaining written permission of the authority.

From the aforesaid Rules, Rule 5 (1) of the Rules which is relevant for our purpose is reproduced hereinbelow-:

"5. Restrictions on the use of loud speakers / public address system and sound producing instruments.-

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

The authority competent to grant permission is defined under Section 2 (c) of the Rules to mean an include any authority or officer authorized by the Central Government or the State Government, as the case may be, including the District Magistrate, Police Commissioner, or any other officer not below the rank of the Deputy Superintendent of Police.

Thus, in view of the aforesaid Rules, no loudspeaker or public

address system, in short any sound producing instrument/equipment or amplifier can be used in public place without the permission of the authority concerned.

In the case at hand, petitioner No.1 was granted permission to use sound equipments on the concerned mosque for a limited period from 15.01.2018 to 14.07.2018 for specified time of the day with certain conditions. This permission has not been extended or renewed thereafter. Its extension/renewal has been denied on account of law and order situation.

It is not the case of the petitioners in the entire writ petition that the installation of such sound equipments is not likely to cause any tension in the locality between the two groups and that law and order situation does not demand such refusal of permission.

The administrative authorities vested with the responsibility of maintaining law and order situation in any given area are duty bound to fulfill their obligations and to ensure that the tranquillity and peace of the area is not disturbed and if there is any tension in relation to any incident or dispute, the same be reconciled and settled. Thus, they are obliged to defuse tension and not to ensure that peace prevails in the area.

The Fundamental Duties referred to in Part IV-A of the Constitution of India obliges every citizen which includes the administrative officers as well inter-alia to promote harmony and the spirit of common brotherhood amongst all the people of the country irrespective of religious linguistic or sectional diversities and to ensure that practices derogatory to the dignity of women are renounced.

The relevant part of Article 51A of the Constitution of India is quoted below-:

“51A. Fundamental duties It shall be the duty of every citizen of India-:

a.....

b.....

c.....

d.....

e. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women”

In view of the above provision, every citizen of the country has to promote harmony and the spirit of common brotherhood and for that purpose it is necessary that any action which tends to disturb the harmony be checked and nipped in the bud.

The petitioners submit that the use of amplifiers and loudspeakers on the mosques for 2 minutes 5 times a day would neither cause noise pollution nor would disturb the tranquillity of the area. It is an essential part of their religious practice and it has become necessary with the increasing population to give call to the people on amplifiers and loudspeakers to come and pray.

It is true that one can practice, profess and propagate religion as guaranteed under Article 25 (1) of the Constitution of India but the said right is not an absolute right. The right under Article 25 is a subject to the wider Article 19 (1) (a) of the Constitution and thus both of them have to be read together and construed harmoniously.

In **Acharaya Maharajshri**¹, the Court in paragraph 30 has observed as under:-

“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 in paragraph 31 of the said very judgment has further observed as under:-

“A particular fundamental right cannot exist in isolation in a watertight compartment. One

1. Acharaya Maharajshri Narandraprasadji Anandprasadji Maharaj Vs. State of Gujarat, 1975 (1) SCC 11

fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and 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.”

In **Church of God**², it was held that the rights under Articles 25 and 26 of the Constitution of India are subject to public order, morality and health. No religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums and if there is such practice, it should not adversely affect the rights of the others including that of not being disturbed.

A similar view has been expressed by the Supreme Court in the case of **Dr. Subramaniam Swamy**³ and the right to manage religious affairs has been held to be subject to other provisions of Chapter-III of the Constitution of India.

A Division Bench of this Court in **Sant Kumar and others**⁴ held that right to practice one's religion freely is a fundamental right under Article 25 of the Constitution of India but the said right of religion and right to privacy which is also a fundamental right has to be read together and nobody has a right to practice religion in a way so as to invade privacy of others. The Court observing thus appealed to the public at large to refrain from using loudspeakers for various religious practices such as *Akhand Ramayan, Kirtan*, etc. as it causes inconvenience to public and creates noise pollution.

It may not be out of place to refer to a Supreme Court decision in **RE-: Noise Pollution**⁵, wherein the Apex Court expressed opinion that the fundamental right of a person under Article 19 (1) of the Constitution of India of freedom of speech and expression are not absolute and no one can claim fundamental right to create noise by amplifying sound of his speech with the help of loudspeakers as every citizen has a fundamental

2 Church of God (Full Gospel) in India Vs. K.K.R. Majestic Colony Welfare Association and others, 2000 (7) SCC 282

3 Dr. Subramaniam Swamy Vs. State of Tamilnadu, AIR 2015 SCC 460

4 Sant Kumar and others Vs. Collector, Saharanpur and others, 1999 (2) AWC 1664

5 Noise Pollution (V), IN RE, 2005 (8) SCC 796

right to live in peace, comfort and quietness of his house.

In **Farad K. Vadia**⁶, it has been observed that “necessity of silence”, “necessity of sleep”, “process during sleep and rest” are all biological necessities and essentials for health and is part of human rights as noise is injurious to health.

It is universally acceptable today that noise adversely affects human health. It causes hearing loss or deafness, high blood pressure, depression, fatigue and even annoyance. Excessive noise has resulted in cardiac ailments, neurosis and nerves breakdown.

It is a cardinal principle of a exercise of equitable jurisdiction that the High Court in such exercise should maintain social balance by interfering where necessary and refusing where it is against social interest and public good.

In **State of Maharashtra**⁷, it has been observed that in exercising equity jurisdiction in social interest, the Court should weigh the pros and cons of exercising the jurisdiction and to see whether the interference would cause more harmony to the society or its refusal.

In **Ritesh Tiwari**⁸, the Court held that the equitable jurisdiction may be exercised to promote good faith and equity and in the larger public interest.

In view of the aforesaid facts and circumstances, we are of a clear opinion that this matter does not require any interference by us in exercise of our extraordinary jurisdiction as otherwise it may result in causing social imbalance.

Accordingly, the writ petition is dismissed with no order as to costs.

Order Date :- 09.1.2020

Nirmal Sinha

6 Farad K. Vadia Vs. Union of India and others, 2009 (2) SCC 442

7 State of Maharashtra Vs. Prabhu, 1994 (2) SCC 481

8 Ritesh Tiwari Vs. State of U.P., AIR 2010 SC 3823