

Jaago Nehru Nagar Residents Welfare Association And Anr Vs Commissioner Of Police And Ors 5

Court: Bombay High Court

Date of Decision: Jan. 23, 2025

Acts Referred: Constitution of India, 1950 " Article 19(1)(a), 21, 25, 26, 226

Code of Criminal Procedure, 1973 " Section 133

Maharashtra Police Act, 1951 " Section 36, 37, 38, 39, 70, 136, 149

Environment Protection Act, 1986 " Section 15

Hon'ble Judges: A. S. Gadkari, J; Shyam C. Chandak, J

Bench: Division Bench

Advocate: Kaushik Mhatre, Chinmay Jawale, Reena Rechards, J.P. Yagnik, Sachindra B. Shetye

Final Decision: Partly Allowed

Judgement

,,,

A. S. G Adkari, J",,,

1) This Petition under Article 226 of the Constitution of India is filed for (i) appropriate writ, order or direction in the nature of writ of mandamus," ,,,

directing the Respondent Nos.4 & 5 to register F.I.R. against the offenders for using loudspeakers in high volume without permission, violating the",,,

Noise Pollution (Regulation and Control) Rules, 2000 [for short, "Noise Pollution Rules"] and the provisions in the Environment (Protection) Act, ,,,

1986 [for short, "said Act"] and the other relevant laws thereof; (ii) for directing the Respondent No.1 " Commissioner of Police, Mumbai to" ,,,

take appropriate action against the Respondent Nos.2 to 5 for failure in discharging their official duty and defying and non implementing and/or non,,,

complying with the Orders dated 10th " , November 2012 and 16th August 2016 passed in Public Interest Litigation No. 173 of 2010; and for other,,,

consequential reliefs.,,,

2) Heard Mr. Mhatre, learned counsel for Petitioners, Mr. Yagnik, learned A.P.P. for Respondent Nos.1 to 6-State and Mr. Shetye, learned counsel" ,,,

for Respondent No.7-M.P.C.B.,,,

3) Petitioners are the associations registered with the concerned Authorities having their object to do development work for the locality, with the aim" ,,,

to improve the general welfare and quality of life of the citizens, to help the residents in the locality in solving the problems and issues being faced by",,,

them. Petitioners are suffering from the noise pollution being created by the concerned violators by using loudspeakers in high volume without legal,,,

permission from the Authorities and also due to the casual approach and inaction on the part of the Police Department, ignoring the Rules and law of",,,

the land and in carrying out their duties. The Petitioners have therefore been constrained to institute present Petition for enforcing their fundamental,,,

and legal rights as the residents living in the area stated in the Petition since the Respondent Nos.1 to 5 have failed to protect their fundamental rights,,,

guaranteed under the Constitution of India to its citizens.,,,

3.1) It is the case of the Petitioners that, the peace and tranquility in their locality are being constantly disturbed through the use of microphones and",,,

loudspeakers to recite Āçâ,~ËœAzaanĀçâ,~â,,ç and other religious discourses by the offenders on a daily basis. That, there are many masjids and madrasas",,,

situated within the jurisdiction of Chunabhatti and Nehru Nagar, Kurla (East) Police Stations. The said masjids have fixed with / placed loudspeakers,",,

microphones and/or amplifiers and the sound created therefrom is unbearable as the decibel level of the said sound is not only excessive but beyond,,,

the permissible decibel limits under the law. That, the said loudspeakers are being used in the early morning hours i.e. as early as 5:00 a.m. as well as",,,

till the midnight and many a times even past midnight. The loudspeakers are being used five times a day for the purpose of Azaan (call for prayer,,,

regularly). That, use of loudspeakers in the early hours i.e. at about 5:00 a.m. in the morning are Āçâ,~Ā“prohibited hoursĀçâ,~ under the law and during the",,,

festival days, they are operated till 1:30 a.m., which is beyond permissible limit for its use, even if the permission is alleged to have been granted by the",,,

concerned Authorities.,,,

3.2) That, there are many masjids in the locality of Nehru Nagar and Chunabhatti area. For example, the Petitioners have given names of three",,,

masjids in the Chunabhatti Police Station jurisdiction and six masjids in the Nehru Nagar Police Station jurisdiction, which according to them are",,,

causing considerable amount of noise pollution in the locality of Petitioners. That, the Bilali Masjid situated in Nehru Nagar, Kurla, area is surrounded",,,

by four hospitals and schools and all are situated within 100 meters of radius. That, as per the Noise Pollution Rules, 2000, the said area is a silent zone",,,

and use of loudspeakers thereof is completely prohibited.,,,

3.3) The Petitioners made several complaints to the Police Control Room on phone number 100, when they noticed the noise pollution from the said",,,

loudspeakers were unbearable and in excessive volume for long hours during the day and night time. However, the police attached to Chunabhatti and",,,

Nehru Nagar Police Station did not take necessary steps to prevent the said noise pollution for the reasons best known to them. That, many a times",,,

the complaints were given via Twitter (a social networking site that allows users to post, share, and reply to short messages) to Mumbai Police by",,,

tagging the highest Police Authorities. However, there is no response or any legal action taken by the Police Department in that behalf.",,,

3.4) That, on 4th July 2020 written complaint signed by six citizens was given to the Senior Inspector of Respondent Nos.4 & 5, with a request to",,,

register F.I.R. against the offenders for committing the offence of noise pollution by violating Noise Pollution Rules and other laws. However, no",,,

action is taken thereof. It is the contention of the Petitioners that, the Respondent Nos.2, 4 & 5 i.e. the Police Authorities, refused to entertain their",,,

complaints on the ground that, the said noise pollution caused by the use of loudspeakers cannot be stopped, as the loudspeakers are fitted in a",,,

mosque i.e. a religious place and therefore police cannot stop the noise pollution, as it is a sensitive matter related to religion and advised the",,,

Petitioners to withdraw the complaint by expressing their inability to stop noise pollution.,,,

3.5) It is the case of the Petitioners that, refusal by Police Authorities to stop the noise pollution emitted from the loudspeakers fitted in the said",,,

religious places is contrary to the Rules framed under the Noise Pollution Act. That, use of loudspeakers without permission from the concerned",,,

Authority is illegal. It is contended that, the use of loudspeakers and amplifiers five times daily for 365 days without permission from the concerned",,,

Authorities against all necessary and relevant Rules is illegal and objectionable.,,,

3.6) That, the complaint of the Petitioners dated 30th September 2020 to the Assistant Commissioner of Police, Nehru Nagar Division, with a request",,,

to take action against the violators for creating noise pollution by using loudspeakers without permission in high volume is not properly addressed. The,,,

information obtained from the public information officer of Nehru Nagar Division of Mumbai Police under the Right to Information Act, 2005, reveals",,,

that, no permission was granted to any of the masjids to use loudspeakers in the jurisdiction of Respondent Nos.4 & 5 Police Stations. The Petitioners",,,

also addressed a written complaint dated 17th December 2020 to the Commissioner of Police, Mumbai i.e. the Respondent No.1 herein, however it",,,

was of no avail.,,,

3.7) That, due to the use of loudspeakers / amplifiers in high volume and the failure of police machinery to take necessary action against the offenders",,,

by registering necessary cases against them, many citizens in the Nehru Nagar area have fallen ill. The Police Officers attached to Respondent Nos. ",,,

4 & 5 Police Stations gave illusive answers and failed to act upon the complaints of the Petitioners and others. That, the Respondent Nos.1 to 5 are",,,

Police Authorities and are bound to take cognizance of the complaints of citizens. The non action by the Respondents itself speaks the poor state of",,,

affairs of law enforcement agency and therefore the Petitioners are constrained to file present Petition under Article 226 of the Constitution of India.,,,

4) Shri Hemrajsingh A. Rajput, Deputy Commissioner of Police, Zone-VI, Chembur, Mumbai, i.e. the Respondent No.2 herein, has filed Affidavits",,,

dated 8th February 2023 and 8th November 2023. In his Affidavits, the said Respondent has stated that, after receipt of complaint dated 4 th July 2020",,,

addressed to the Senior Police Inspector(s) of Nehru Nagar Police Station and Chunabhatti Police Station, the police called the office bearers of",,,

respective masjids, wherein the said persons stated that, two loudspeakers which were installed on their mosques were removed and they maintained",,,

the volume of sound in appropriate level. Their detailed statements were recorded by the police. That, the Petitioners therefore posted a message on",,,

their "Twitter Account" addressing to the Twitter Account of Bombay Police as, "This loud noise is at 05.00 AM the one masjid near Kurla",,,

bus depot has been silenced. I suppose action has been taken these twits I request you Mumbai police to stop the loudspeaker in the kureshi nagar",,,

Kurla east". That, the Petitioners have thus appreciated the steps adopted by Mumbai Police. That, in the year 2021, after completion of lockdown",,,

necessary instructions in respect of volume of loudspeakers were given to the office bearers of the concerned masjids. That, the office bearers of (1)",,,

Sunni Kabrasthan Masjid and (2) Jamaat-ul-Qureshi Masjid, which comes under the jurisdiction of Chunabhatti Police Station had asked for",,,

permission to use the speakers on their mosques and hence they were granted permission only for "Azaan" on certain terms and conditions",,,

regarding decibels and time limit etc. as per the Guidelines of the Hon'ble Apex Court. That, in the year 2022, the office bearers of (1) Bilali",,,

Masjid, (2) Noorani Masjid, (3) Raza Jama Masjid, (4) Sunni Raza Masjid, Railway Phatak, (5) Madersha Masjid Darool Hadis, which comes within",,,

the jurisdiction of Nehru Nagar Police Station had asked for permission to continue the speakers on their mosques. Hence, they were granted",,,

permission on the condition of keeping the sound level upto prescribed limits of decibels, as there is residential area in the vicinity. It is stated that, the",,,

said permission was given on step by step basis and was reviewed periodically as and when applied for the same. That, after receipt of complaint",,,

dated 30th September 2020 addressed to the Senior Inspector of Police, Chunabhatti Police Station, with a grievance of noise pollution caused due to",,,

use of loudspeakers at religious structures, the Police Authorities initiated action. The concerned Police Stations, i.e. Chunabhatti Police Station and",,,

Nehru Nagar Police Station, conducted various meetings of office bearers of the concerned masjids and apprised them about the permissible level of",,,

sound as per the Guidelines of the Hon'ble Apex Court, High Court as well as Noise Pollution Rules, 2000 under the Environment (Protection)",,,

Act and the concerned persons were apprised of the permissible level of the sound within the particular zones. That, with respect to the complaints",,,

made by Mr. Akshay Kulkarni, necessary steps to check the decibel level of loudspeakers on the said masjids was adopted by the police. The",,,

permission to continue with the speakers on the mosques within the jurisdiction of Nehru Nagar Police Station was granted on the condition of keeping",,,

the sound level upto prescribed limits of decibel, because the said masjids are within the vicinity of residential zone. The said permissions were granted",,,

as per the Guidelines of the High Court. In para No.16 of Affidavit dated 8th February 2023 the Respondent No.2 has narrated various remedial",,,

measures for preventing noise pollution from the masjids within the jurisdiction of the said two Police Stations.,,,

4.1) In his Affidavit dated 8th November 2023, the Respondent No.2 has elaborately stated the steps adopted for implementing all the directions issued",,,

by this Court in paragraph No. 94(iv) passed in PIL No. 173 of 2010. It is stated that, two Police Officers were appointed at the said two Police",,,

Stations to take cognizance of the noise pollution on the complaint(s) made by the Petitioners and/or other persons. That, with regard to the issue",,,

involved in the present Petition, noise pollution from the mosques within the jurisdiction of Chunabhatti and Nehru Nagar Police Stations, from the",,,

period of 2022-2023 till the date of affirming the said Affidavit, 92 times the spots near the masjids were verified by the special team with the help of",,,

decibel meter and the readings were accordingly recorded. It was revealed that, almost all the days the noise levels was within the prescribed levels",,,

and whenever it was revealed that, there was any violation as prescribed, the concerned Police Station has taken action by submitting proposal to the",,,

Maharashtra Pollution Control Board for lodging complaints and for taking cognizance by the concerned Court. That, on 8th March 2023 it was found",,,

that the officials of Bilali mosque had caused noise pollution and accordingly upon a proposal to the Maharashtra Pollution Control Board, a complaint",,,

came to be filed before the learned Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai, bearing C.C. No. 34/SW/2023 and the trial Court has",,,

taken cognizance of it. To the said Affidavit, the Respondent No.2 has annexed a chart indicating the decibel level recorded by the police on various",,,

occasions to support the contentions that the decibel limit of noise within the periphery of the said masjids was within prescribed limits. The,,,

Respondent No.2 has annexed to the, said, Affidavit, dated, 8th, , November, 2023,, two, reports, dated, 4th, , January 2023",,,

and 2nd November 2023 submitted by the concerned Police Officers reporting that, Sunni Raza Masjid and Madarsa within the jurisdiction of Nehru",,,

Nagar Police Station and Kabrasthan Masjid situated within the jurisdiction of Chunabhathi Police Station had caused sound pollution on the dates and,,,

time mentioned in the said reports.,,,

5) After considering the fact that, the issue of noise pollution is involved in the present Petition, by Order dated 5th September 2023 we directed the",,,

Petitioners to implead Maharashtra Pollution Control Board (for short, "M.P.C.B." and accordingly by an amendment, the M.P.C.B. is impleaded",,,

as Respondent No.7.,,,

5.1) Mr. Shetye, learned counsel appeared for Respondent No.7, MPCB and with his usual fairness assisted this Court. He pointed out the relevant",,,

provisions from the said Act and the Noise Pollution Rules. He tendered across the bar a brief note in respect of Noise Pollution.,,,

6) Mr. Mhatre, learned counsel appearing for Petitioners submitted that, though the law relating to noise pollution has been well crystallized and",,,

specific directions have been issued thereof, the Respondents Police Authorities, are not implementing the provisions of the said Act and the Rules",,,

framed thereunder in its proper letter and spirit. That, it is the reason the said mosques are in blatant violation of law of the land are committing noise",,,

pollution through the loudspeakers or public address system fixed in the precincts of the said mosques. He submitted that, refusal by the police to stop",,,

the noise pollution emitted from the loudspeakers fitted in the said mosques is contrary to the Rules framed under the said Act, as without permission",,,

from the Authority the use of loudspeakers is illegal. That, the use of loudspeakers/amplifiers or public address system 5 times a day throughout the",,,

year without permission from the Competent Authority against all norms is illegal and highly objectionable. He invited our attention to the Orders dated,,,

30th July 2014 and 28th August 2015 passed by this Court in Criminal Public Interest Litigation No. 20 of 2015 (Filing No.39 of 2014), wherein this",,,

Court has specifically directed that, if necessary permission is not obtained by the users of loudspeakers for religious functions, then the police was",,,

directed to take adequate steps for removal of those loudspeakers. It was directed that, all the religious structures belonging to all the religions are not",,,

permitted to use the loudspeakers without seeking permission of the Competent Authority. He pointed out that, even while granting permission for use",,,

of loudspeakers, specific terms and conditions have been imposed by the Competent Authority / Police Department. Condition No. 10 thereof",,,

specifies that, the police have right to revoke a licence in case of breach of terms and conditions of the licence given to use loudspeakers. He",,,

submitted that, the Petitioners reside in a residential zone and the decibel limit of noise ambient air quality standard in respect of the noise or the",,,

decibel limit of noise in residential area during day time is 55 decibels and at night time it is 45 decibels. That, all the said mosques are emitting noise",,,

pollution throughout the day and night in utter defiance of the provisions of the said Act and the Rules framed thereunder. He submitted that, under",,,

Section 38 of the Maharashtra Police Act, the Police Authority is having power to prohibit continuance of music, sound or noise and has also power," ,,,

either to rescind, modify or alter any Order issued by it granting permission for use of loudspeakers. That, in his Affidavit dated 8th February 2023, the",,,

Respondent No.2 has admitted that, the Petitioners reside in a Residential Area as contemplated under the schedule appended to the said Rules.",,,

He submitted that, in his Affidavit dated 8 th February 2023 the Respondent No.2 has made false statement that, the loudspeakers on the said masjids",,,

/ mosques were not in use at the time of visit of the Police Authority. That, the reading recorded by the police, mentioned in the chart annexed at page",,,

93 to the Affidavit dated 8th November 2023 by Respondent No.2 is an eyewash. The Petitioners are the sufferers due to the blatant violation of noise",,,

pollution emitted by the said mosques in their vicinity. That, due to this continuance of noise pollution, the police are bound to take action under Section",,,

36 the Maharashtra Police Act read with Rule 7 of the said Rules. He submitted that, the police are also duty bound to follow the directions and/or",,,

guidelines issued by this Court in the case of Mahesh Vijay Bedekar (supra). He submitted that, as the police have failed to take necessary steps",,,

under the said Act and the Rules framed thereunder, necessary action against the Respondent Nos.2 to 5 be initiated by directing Respondent No.6." ,,,

He therefore prayed that, the present Petition may be allowed." ,,,

7) Mr. Shetye, learned counsel appearing for Respondent No.7, M.P.C.B. pointed out, the various provisions of the said Act. He submitted that, in",,,

view of sub Rule (4) of Rule 5 of Noise Pollution Rules, 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 standards for the area or 75 dB(A) whichever is lower.,,,

He submitted that, as per the chart annexed to the Affidavit dated 8th November 2023 filed by the Respondent No.2, it appears that, the decibel limit",,,

of noise was within the purview of Rule 5(4) of the said Rules. He submitted that, on the basis of complaints lodged by the Petitioners and receipt of",,,

information from the police, till date three complaints have been filed before the trial Court by the Respondent No.7. The said three complaints are as" ,,,

under.,,,

Sr.

No.",Case No.,Name of the Parties,

1,Case No. 34/SW/2023,"M.P.C.B. Vs. Bilali Masjid, Jagruti Nagar, S.G. Barve Road, Nehru Nagar, Kurla (E.), Mumbai.",

2,Case No. 52/SW/2023,"M.P.C.B. Vs. Nurani Masjid, S.G. Barve Road, Nehru Nagar, Kurla (E.), Mumbai.",

3,Case No. 53/SW/2023,"M.P.C.B.Ã, Vs.Ã, SunniÃ, RajjaÃ, MasjidÃ, &Ã, Madarsa,Ã, Sable Nagar,Ã, NearÃ, RailwayÃ, Phatak,Ã, NehruÃ, Nagar,Ã, Kurla (East), Mumbai.",

Area Code,Category of Area/Zone,Limits in dB(A) Leg*,

.,Day time,Night Time

(A),Industrial Area,75,70

(B),Commercial Area,65,55

(C),Residential Area,55,45

(D),Silence Zone,50,40

aforestated three decisions and all other relevant decisions of various High Courts, in para Nos. 80, 81, 82 & 89 has held as under :",,,

80) In view of the authoritative pronouncement of law by the Apex Court in the case of Church of God (Full Gospel) in India v. K.K.R. Majestic (2000) 7 SCC 282,,,

: (AIR 2000 SC 2773), no religion or religious sect can claim that the of use loudspeakers or similar instruments for prayers or for worship or for celebrating",,,

religious festivals is an essential part of religion which is protected under Article 25. We hold that there is no fundamental right to use loudspeakers or similar,,,

instruments under Article 19(1)(a) of the constitution. On the contrary, the use of such instruments contrary to the Noise Pollution Rules will be a violation of",,,

fundamental rights of citizens under Article 21 of the Constitution as well as fundamental right of citizens of not being forced to listen something which they do,,,

not desire to listen.,,,

81) As far as the directions given by the Apex Court in the case of Noise Pollution (V) In re, are concerned, we have already held that the State is bound to comply",,,

with the said directions. We are fortified by the view taken by the Apex Court in the case of Balwant Singh v. Commr. of Police (2015) 4 SCC 801 : (AIR 2015 SC,,,

(Supp) 474, paras 27 and 28).",,,

“23. In our considered view, in the light of the authoritative pronouncement rendered by this Court on the issue of noise pollution in Noise Pollution (5), In re”,,

[Noise Pollution (5), In re, (2005) 5 SCC 733] : (AIR 2005 SC 3136), it is not necessary for this Court to again deal with the same issue except to issue”,,

appropriate directions for its compliance.,,,

24. We, accordingly, direct the respondents to ensure strict compliance with the directions contained in paras 174 to 178 of the judgment of this Court in Noise”,,

Pollution (5), In re [Noise Pollution (5), In re, (2005) 5 SCC 733] , and for ensuring its compliance, whatever remedial steps are required to be taken by the State”,,

and their department(s) concerned, the same be taken at the earliest to prevent/check the noise pollution as directed in the aforesaid directions. (Underline”,,

supplied),,,

82) We must record here that in the written submissions filed in PIL No.173 of 2010, a fair stand has been taken by the State Government as regards interpretation”,,

of Rule 6 of Noise Pollution Rules. Though such a stand is taken, the perusal of the orders passed from time to time in this group of Petitions shows there is hardly any”,,

implementation made by the State Government of the Noise Pollution Rules. In fact, time and again, this Court was required to issue very stringent directions to”,,

the State Government. The one of the main reasons for the failure is that adequate numbers of meters for measuring noise levels are not available with the State.,,,

The Noise Pollution Rules came into force in the year 2000. The orders passed in PIL No.173 of 2010 will reveal that till August 2016, the State Government has”,,

not even procured the requisite number of meters. Therefore, this Court was required to issue a direction to the State Government to collect data from various”,,

police officers as regards their requirement of meters. The order dated 4th January, 2016 records that the learned Government Pleader made a statement that”,,

there were very few meters available in the State and in fact the requirement of the State was of 1843 meters. It shows that there is never any serious effort made by”,,

the State Government for implementation of the Noise Pollution Rules for last 16 years. Therefore, under the order dated 4th January, 2016 a direction was issued”,,

to the State Government to grant necessary approval for acquiring 1843 meters. Time of three months was granted to procure 1843 meters. The said time expired,,,

on 3rd April, 2016. This Court found that no steps were taken to procure the meters within the stipulated time and that is why this Court was compelled to issue a”,,

notice of contempt to Shri K.P. Bakshi, Additional Chief Secretary, Home Department. Notwithstanding the disposal of the main Petition, the notice of contempt”,,

will remain pending as the direction to acquire requisite number of meters will continue to operate. Even as of today, the meters have not been procured. The”,,

learned AGP tendered across the Bar a letter dated 11th August, 2016 addressed by the Additional Director General of Police to the Additional Chief Secretary of”,,

the Home Department. The said letter records that a period of 60 days will be required for supply of the said meters. In short, the meters will be available only at",,,

the end of September, 2016. Right from the year 2014, very elaborate interim orders were passed by this Court in PIL No.173 of 2010 including detailed orders",,,

passed on 13th March, 2015 and 24th June, 2015. Notwithstanding the said orders, even requisite number of meters are not yet procured. We must note that these",,,

orders were passed for implementation of the directions issued by the Apex Court and the Noise Pollution Rules. The approach of the State Government has been",,,

very casual. The result of this gross delay in procuring meters is that during two important festivals of Dahi Handi and Ganapati of the year 2016, adequate",,,

number of meters will not be available with the police machinery. This inaction has to be deprecated.,,,

89) The provision is similar to Rule 8 of Noise Pollution Rules. Under Section 38 of the Maharashtra Police Act, the power is conferred to the Commissioner of",,,

Police and Superintendent of Police to order prevention or prohibition of music sound or noise. On receiving a report/complaint of nuisance created by music or",,,

sound or instrumental noise, the Officer incharge of the concerned Police Station the same communicate the said report immediately to the Commissioner of",,,

Police or the Superintendent of Police to enable to the said authority to take immediate action under Section 38 of the Maharashtra Police Act.,,,

15.1) In para No. 93 thereof, the Court has summarized its important/main conclusions and in sub-para Nos. (ii), (vi), (vii), (xv), (xvii), (xx) & (xxi) has",,,

held as under :-",,,

(ii) In view of sub-rule (1) of Rule 5, a loudspeaker or a public address system shall not be used except after obtaining written permission from the authority as",,,

prescribed in clause (c) of Rule 2 of the said Rules. We clarify that if a license for use of loudspeaker or public address system is required under any other",,,

provision of law such as Maharashtra Police Act, 1951, or the Rules framed thereunder, a loudspeaker or public address system shall not be used without",,,

obtaining such a license as well. Even after grant of written permission, the person holding the permission is duty bound to maintain the noise level as prescribed",,,

by the Schedule and sub-rules (4) and (5) of Rule 5 of the Noise Pollution Rules.,,,

(vi) The noise level at the boundary of a public place defined under clause (i) of Rule 2 will have to be maintained as provided in sub-rule (4) of Rule 5, even if a",,,

license is granted under sub-rule (1) of Rule 5 to use loudspeaker in the public place. By way of illustration, we may state that in case of an open ground covered",,,

by clause (i) of Rule 2 in respect of which a license has been granted under sub-rule (1) of Rule 5 which is situated in the residential area, in view of sub-rule (4)",,,

of Rule 5, maximum level of noise during the day time and night time can be 65 dB(A) and 55 dB(A) respectively.",,,

(vii) Under sub-rule (5) of Rule 5, if privately own sound system and sound producing instrument is used in private place, at the boundary of private place, the",,,

noise level cannot be more than 5 dB(A) above the prescribed noise standard specified for the area as provided in the Schedule. Thus, in case of residential area," ,,,

in the day time, the noise level cannot exceed 60dB(A) at the boundary of private place." ,,,

(xv) Even if a loudspeaker or public address system (as distinguished from privately owned sound system) is used within the precincts of the hospitals," ,,,

educational institutions and Courts, wherever permission under sub-rule (1) of Rule 5 is needed, the same shall be mandatory and condition precedent for its use." ,,,

Needless to add that even if a permission is granted and if such instruments are used in the precincts of hospitals, educational institutions and courts, the same" ,,,

are subject to all other provisions of the Noise Pollution Rules and, therefore, noise levels at the boundary shall be as provided in sub-rules (4) and (5) of Rule 5" ,,,

which are applicable to the silence zones. The prohibition in clauses (i) to (iv) of Rule 6 will not apply to completely covered and closed premises within silence,,,

zone, but the said premises will be governed by all the Rules incorporated in the Noise Pollution Rules including sub-rules (4) and (5) of Rule 5." ,,,

(xvii) In view of Section 15 of the Environment Protection Act, whoever fails to comply with or contravenes provisions of the Noise Pollution Rules, all orders or" ,,,

directions issued thereunder is liable for penalty. Such noncompliance or contravention attracts imprisonment for a term which may extends to five years and fine,,,

which may extends to one lakh. Thus, noncompliance of the Noise Pollution Rules or contravention of the Noise Pollution Rules shall attract penalty under" ,,,

Section 15 of the Environment Protection Act and therefore, it is the duty of all the Authorities of the State to ensure that the offences under Section 15 are" ,,,

registered.,,,

(xx) The power under Section 8 shall be in addition to the power of the Commissioner or the Superintendent of Police as the case may be under Section 38 of the,,,

Maharashtra Police Act, 1951 and the power of the District Magistrate to take action in accordance with Section 133 of the Code of Criminal Procedure, 1973." ,,,

(xxi) We hold that all places of worship of all religions are bound by the provisions of the Noise Pollution Rules and no religion or sect can claim fundamental,,,

right of using loudspeakers or public address systems or instruments creating noise as a part of right conferred by Articles 19(1)(a) and 25 of the Constitution of,,,

India.,,,

15.2) TheÃ, decisionÃ, inÃ, theÃ, caseÃ, ofM aheshÃ, VijayÃ, BedekarÃ, (supra)Ã, has attained finality as the Special Leave Petition filed by the,,,

State of Maharashtra against the said decision has been dismissed.,,,

15.3) The principles of law enunciated by the Division Bench of this Court in the case of Mahesh Vijay Bedekar (supra) have been referred to, relied" ,,,

upon and affirmed by the Full Bench of this Court in the case of Ajay Marathe Vs. Union of India and Others, reported in 2018 (4) Mah.L.J." ,,,

15.4) The law relating to Noise Pollution as contemplated under the Environment (Protection) Act, 1986 and the Noise Pollution (Regulation and",,,

Control) Rules, 2000 is well elucidated by this Court in the decision of Mahesh Vijay Bedekar (supra), as reproduced above and has attained finality",,,

in view of the dismissal of the SLP preferred by the State before the Hon'ble Supreme Court. Its repetition is hereby avoided for the sake of",,,

brevity.,,,

16) Perusal of the Environment (Protection) Act, 1986 indicates that, there is no provision for lodgment of First Information Report and it is the reason",,,

Section 19 prescribes that, no Court shall take cognizance of any offence under this Act except on a complaint made by the Authorities mentioned",,,

therein. Section 15 of the Act provides for penalty or contravention of provisions of the said Act, Rules, Orders and directions issued under the said",,,

Act.,,,

17) In view thereof, though the Petitioners have prayed for a direction for lodgment of a crime, in the absence of any provision specifying the same",,,

under the said Act and/or Rules, we are unable to accede to the request of the Petitioners. However, taking into consideration the vital issue involved",,,

in the present case, i.e. noise pollution caused on account of use of microphones and loudspeakers to recite 'Azaan' or other religious",,,

discourses in daily basis in the vicinity of the Petitioners and not following the directions issued by this Court in the case of Mahesh Vijay Bedekar",,,

(supra), we have entertained this Petition.",,,

18) Mumbai is a cosmopolitan City, obviously there are persons of different religions in every part of the city. The very fact that the Petitioners have",,,

filed the Petition to direct the State authorities to implement the Orders of the Apex Court as well as several Orders of this Court would evince that",,,

there has been a deliberate violation of the Orders.,,,

Noise is a major health hazard on various aspects. No one can claim that his rights are affected in any manner if he is denied a permission to use",,,

loudspeaker. It is in public interest that such permissions should not be granted. By denying such permissions, rights under Article 19 or 25 of the",,,

Constitution of India are not at all infringed. Use of loudspeakers is not an essential part of any religion.,,,

19) It is the specific case of the Petitioners that, the said masjids / mosques mentioned in the Petition are committing noise pollution thereby disturbing",,,

the peace and tranquility in their locality, which is being constantly disturbed during the use of microphones and loudspeakers to recite 'Azaan' or",,,

and other religious discourses by the offenders on a daily basis. It is the further contention of the Petitioners that, since the Respondent Nos.1 to 6 are",,,

willfully and deliberately not taking any action against the perpetrators of the noise pollution and violators of law, therefore the trustees or managers of" ,,,

the said mosques are brazenly on a daily basis committing noise pollution in the vicinity of the Petitioners.,,,

20) It is noted here, that, to his Affidavit, dated 18th November 2023, the Respondent No.2 has annexed two reports" ,,,

dated 4th January 2023 (page 106) and 2nd November 2023 (page 104). The said two reports are pertaining to Kabrastan Masjid situated within the ,,,

jurisdiction of Chunabhatti Police Station and Sunni Raza Masjid situated within the jurisdiction of Nehru Nagar Police Station. As per the said two ,,,

reports, the said masjids were emitting noise level upto 98.7 decibels and 79.4 decibels respectively. The said reports are submitted by the Police" ,,,

Officers attached to the concerned Police Stations. It is thus apparent that, there is substance in the allegations of the Petitioners and therefore there" ,,,

is no reason to disbelieve the grievance of the Petitioners that, the loudspeakers / public address systems put up by the said mosques are creating noise" ,,,

pollution. As noted earlier, the law relating to noise pollution and the steps to be adopted by the law enforcing agencies is well elucidated by this Court" ,,,

in the case of Mahesh Vijay Bedekar (supra).,,,

21) According to us, it is the bounden duty of the Respondent Nos.1 to 6 that, they must and should enforce the law by adopting all the necessary" ,,,

measures, as may be prescribed by the provisions of law. In a democratic State, there cannot be a situation that, a person / group of" ,,,

persons/association of persons would say that, it will not follow or adhere to the law of the land and the law enforcers would be meek or silent" ,,,

spectators to it.,,,

22) It is well settled by the Hon'ble Supreme Court in the case of Church of God (Full Gospel) In India (supra) that, undisputedly no religion" ,,,

prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice-amplifiers or ,,,

beating of drums. That, in a civilized 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.,,,

23) As per the schedule appended to the Noise Pollution Rules, the ambient air quality standards in respect of noise i.e. the decibel limit in Residential" ,,,

Area during day-time must be at the most 55 decibels and during night-time must be 45 decibels. According to us, this limit of 55 or 45" ,,,

decibels is a cumulative limit of all the loudspeakers / voice amplifiers / public address systems or other sound emitting gadgets. Thus, in the vicinity of" ,,,

the Petitioners if one or more number of religious places are using loudspeakers or public address systems, it is not the individual ambient air quality" ,,,

limit of 55 decibels or 45 decibels, but it is in all the cumulative sound level of all the loudspeakers / voice amplifiers / public address system or other",,,

sound emitting gadgets, which are in use at one point of time. The law does not permit that, every individual loudspeaker will emit 55 or 45 decibels of",,,

noise aggregating to more than what is prescribed under the said Rules. That would amount to frustrating the intention of Legislature.,,,

24) As held in the case of Mahesh Vijay Bedekar (supra) in addition to the Police sending the complaint(s) to the Respondent No.7 for lodging it,,,

before the Court of competent jurisdiction, the Police are bound to take action under Section 38 read with 136 of the Maharashtra Police Act on every",,,

default or breach committed by the user of loudspeakers / voice amplifiers / public address system or other sound emitting gadgets, if it is notice either",,,

by them or brought to their notice by any citizen that, the Noise Pollution Rules are being violated.",,,

25) The Police under the Mumbai Police Act are having powers under Sections 38, 70, 136 & 149 of the Maharashtra Police Act and it is necessary",,,

for the Respondents-Police Authorities to use it for proper implementation of the Environment (Protection) Act and the Noise Pollution Rules, 2000.",,,

25.1) In our view under Section 136 of the Mumbai Police Act, an imposition of fine of Rs.5,000/- a day or Rs.18,25,000/- for 365 days and payment",,,

thereof may perhaps not be a deterrent for those blatantly violating the said laws of the land. The violators do it as a matter of right and the,,,

complainants, often individuals are hapless and helpless victims of these obnoxious use of loudspeakers and/or amplifiers.",,,

25.2) We take a judicial note of the fact that, generally people / citizens do not complain about the things until it becomes intolerable and a nuisance.",,,

We are of the view that, without requiring identification of the complainant, the Police Authorities must act on such complaints, more so to avoid such",,,

complainants being targets or ill will and developing hatred.,,,

26) We therefore direct the State to consider to direct all the concerned to have inbuilt mechanism to control decibel level in their loudspeakers / voice,,,

amplifiers / public address system or other sound emitting gadgets used by any religious place / structure / institution, irrespective of religion. The State",,,

may also seriously consider to issue directions for calibration and/or auto-fixation of decibel limit of loudspeakers / voice amplifiers / public address,,,

system or other sound emitting gadgets used by any or all the religions in their respective places of prayers or worship.,,,

26.1) The Respondent No.1 also to direct all the concerned Police Officers to use the decibel level measuring mobile application for checking the,,,

decibel levels. These applications are easily available on internet and would assist in monitoring the noise levels. Thus, loudspeakers and amplifiers or",,,

other equipment or gazettes which produce offending noise, one detected as violating the law or in defiance of the directions issued by the concerned",,,

Police Authorities can seize the said equipment/s under Section 70 of the Maharashtra Police Act. The Police are bound to implement Sections 38, 70, ",,,

136 and 149 of the Maharashtra Police Act, as may be required in view of the fact situation of each case.",,,

27) In the case, the Petitioner lodges a complaint with the local Police Station, it will be the duty of the concerned Police Station to consider the said",,,

complaint as per the provisions of law under the Maharashtra Police Act and the Environment (Protection) Act and to forward the said complaint to",,,

the Respondent No.7. The Police may also withdraw permissions granted to the said trusts / institutions for use of loudspeakers, if repeated violation",,,

of the provisions of said Noise Pollution Rules are brought to their notice.,,,

28) The Petitioners or such complainants of the noise pollution in the Petitioners area are entitled to file a representation with the Respondent No.2,",,

Dy. Commissioner of Police, who will consider the representation of such concerned person and pass appropriate Orders / directions in accordance",,,

with law after notice to all concerned parties against whom allegations for making noise pollution are made.,,,

29) The Respondent No.1 " The Commissioner of Police to give directions to all his subordinates and may caution the concerned persons violating",,,

the law in the following manner :-",,,

(1) Once a citizen of any locality raises a complaint with the Police against any religious structure or otherwise causing noise pollution, the Police will",,,

without seeking / verifying identification of the person complaining thereof and if has received identification shall not disclose the identity of the",,,

complainant to the offender and to adopt following steps :-",,,

(a) At the first instance caution the alleged offender.,,,

(b) On a subsequent occasion, complaint/s received against same offender, the Police to impose a fine under Section 136 of the Maharashtra Police",,,

Act, on the concerned religious structure and may recover it from its Trustees and/or Manager and warn the Trustees and Manager/s with further",,,

stricter action in case of receipt of complaints in future.,,,

(c) If any further complaint/s are received pertaining to the same religious structure on the next occasion, the Police shall adopt steps as contemplated",,,

under Section 70 of the Maharashtra Police Act, to seize the loudspeakers and/or amplifiers from the concerned religious structure and thereafter may",,,

proceed to cancel the licence issued in favour of the concern structure permitting to use loudspeakers and/or amplifiers.,,,

(2) As noted above, the police are bound to take action under Sections 38, 70, 136 and 149 of the Maharashtra Police Act, against the violator/s of the",,,

Noise Pollution Rules, 2000 and in addition thereof, to also file complaint/s under the provisions of Environment (Protection) Act, against the Trustees",,,

or Manager/s responsible for administering or running the concerned religious place and all those persons responsible for operating the,,,

loudspeakers/amplifiers.,,,

30) Petition is partly allowed and disposed off in above terms.,,,

Ã,,,