
Forum for the Prevention of Environmental and Sound Pollution Vs Union of India (UOI) and Others

O.P. No. 38066 of 2002

Court: High Court Of Kerala

Date of Decision: March 14, 2003

Acts Referred:

Environment (Protection) Rules, 1986 & Rule 5#Noise Pollution (Regulation and Control) Rules, 2000 & Rule 3(3), 5

Citation: (2004) 1 KLT 134

Hon'ble Judges: Jawahar Lal Gupta, C.J; Kurian Joseph, J

Bench: Division Bench

Advocate: P.B. Sahasranaman, K. Jagadeesh and T.S. Harikumar, for the Appellant; P.S. Sreedharan Pillai, S.C.G.S.G. for Respondent 1 and Abdul Rahim, Govt. Pleader for Respondent 2, for the Respondent

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, C.J.

Is the addition of Clause (3) to Rule 5 of the Noise Pollution (Regulation and Control) Rules, 2000 as made vide

notification dated October 11, 2002 illegal? This is the short question that arises for consideration in this case.

2. Learned Counsel for the Petitioner has contended that the prescribed procedure has not been followed. The power is capable of being abused.

Thus, the impugned notification, a copy of which has been produced as Ext.P-2, deserves to be annulled. The claim as made on behalf of the

Petitioner has been controverted by the counsel for the Respondents.

3. The statutory provisions may be noticed.

4. The Central Government had notified the Noise Pollution (Regulation and Control) Rules, 2000. A copy of these Rules has been produced as

Ext.P-1. Under Rule 3(3), the State Government ""was empowered"" to take measures for abatement of noise including noise emanating from

vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under the rules. Rule 5 as

framed by the Central Government provides as under:

5. Restrictions on the use of loudspeakers public address system. -- (1) A loudspeaker or a public address system shall not be used except after

obtaining written permission from the authority.

(2) The loudspeaker or public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises for

communication within, e.g. auditorium, conference rooms, community halls and banquet halls.

(3) Notwithstanding anything contained in Sub-rule (2), the State Government may, subject to such terms and conditions as are necessary to

reduce noise pollution, permit use of loudspeakers or public address systems during night hours (between 10.00 p.m. to 12.00 midnight) on or

during any cultural or religious occasion of a limited duration not exceeding fifteen days in all during a calendar year.

A perusal of the above provision shows that under Clause (3), the State Government has been empowered to ""permit use of loudspeakers or

public address systems during night hours (between 10 p.m. to 12.00 midnight) on or during any cultural or religious occasion of a limited duration

not exceeding fifteen days"". Thus, the State Government is competent to permit the use of loudspeakers or public address systems even during

the period from 10.00 p.m. to 12.00 midnight. This is precisely what has been done by the State Government by the impugned notification. The

following provision has been added after Sub-rule 2:

(3) Notwithstanding anything contained in Sub-rule (2), the State Government may, subject to such terms and conditions as are necessary to

reduce noise pollution, permit use of loudspeakers or public address systems during night hours (between 10.00 p.m. to 12.00 midnight) on or

during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year.

5. Learned Counsel for the Petitioner contends that under the provisions of Rule 5 of the Environment (Protection) Rules 1986, the State

Government was required to notify the proposal and to invite objections.

6. The contention is misconceived. A perusal of the provision contained in Rule 5 of the 1986 Rules shows that the Central Government has been

empowered to impose prohibition or restriction on the location of an industry etc. While placing this restriction, it is required to issue a notification

and give an opportunity to the interested persons to file objections. In the present case, the Central Government has not made any modification or

placed any restriction in exercise of the power under Rule 5 of the 1986 Rules. Thus, the question of giving any notice or invite any objections did

not arise. In fact, the State Government has framed the rules in exercise of the power available to it under the Act and the Rules. No provision has

been pointed out which may require the State Government to give an opportunity to the citizens to raise objections. Still further, a perusal of the

provision contained in Rule 5 as enacted by the Central Government in the year 2000 clearly shows that the State Governments were empowered

to permit use of the loudspeakers between 10.00 p.m. to 12 midnight during any cultural or religious occasions. This is precisely what has been

done by the State Government. Its action is in strict conformity with the stipulation contained in Clause (3) of Rule 5 as framed by the Central

Government.

7. Faced with this situation, learned Counsel for the Petitioner has contended that even in Churches, the use of microphone has been frowned upon

by the courts. Learned Counsel has made reference to three decisions. The first of these was delivered by Their Lordships of the Supreme Court

in Church of God v. K.K.R. Majestic Colony Welfare Association 2000 (3) KLT 651 (S.C.) In this case, Their Lordships were pleased to hold

that the sound has to be within the prescribed limits. There is no quarrel with the proposition. The prescribed standards regarding level of sound

have not been varied or violated by the State Government while issuing the impugned notification. The counsel has then referred to a Division

Bench Judgment of this Court in Anand Parthasarathy v. State of Kerala 2000 (1) KLT 566 . In this case, the Bench had taken the view that

"noise is a pollutant". Thus, restrictions regarding the noise levels shall also be attracted when fire works or crackers etc., are used. Again, the case

has no relevance to the facts of the present case. The decision does not show that a provision like the one made in the present case is illegal. The

last decision referred to by the learned Counsel is Indian Council for Environment-Legal Action Vs. Union of India (UOI) and Others, . This case

related to an amendment with regard to the raising of construction in the coastal zone area. The case has no relevance at all to the facts of the

present case.

8. Learned Counsel has then contended that the impugned provision contains no guidelines. Thus, the power is capable of being abused.

9. This contention is also misconceived. On a perusal of the provision, it is obvious that the permission can be granted only during religious festivals

or for cultural programmes. It is limited to a total of 15 days during a Calendar year. The provision is not vague or lacking in any guidelines.

10. No other point has been raised.

In view of the above, we find no merit in this petition. It is consequently dismissed. No costs.