
(2013) 05 AHC CK 0390

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 26941 of 2013

Abdul Kayyum

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

Constitution of India, 1950 — Article 25, 25(1), 26

Citation : (2013) 6 ADJ 38

Hon'ble Judges : Sunil Ambwani, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : Tahir Husain, for the Appellant;

Final Decision : Disposed Of

Judgement

1. We have heard Sri Tahir Husain for the petitioner. Learned standing represents all the respondents. This writ petition raises an important question of establishment of religious places i.e. temples, mosques, churches, gurudwaras, etc by numerous communities or sects, and the use of microphone/loud speaker on these places on the ground of professing and propagating religion, for which Constitution gives guarantee of freedom of conscience and free profession, practice, and propagation of religion under Article 25 of the Constitution of India.

2. It is submitted that in small village named Kakoda, P.S. Kadar Chowk, Tehsil Sadar, District Budaun, majority of the population belongs to Hindu community. Out of 6,000 voters, in the voter list of 2009, there are about 600 voters of Muslim community of their population of about 800. The Hindus have set up three small temples-one of Lord Shiva and two of Devies. The Muslims have set up one Mosque, in which they offer "namaz" (prayers) five times in a day. The temples and mosque in the village were established since long in which both the communities were peacefully offering their prayers and worships, until they (Hindu & Muslim communities) decided to use microphone and on loud speaker on the top of temples and on the top of a tree near mosque, for announcing their prayers. The petitioner has annexed photographs of temples and mosque situate

in the village to show that on the top of temples, two loud speakers are fitted and that one loud speaker on a tree top, near the mosque, had been tied up.

3. In order to resolve the dispute on the use of microphone/loudspeaker making high-pitched noise, the district administration called a meeting of the members of the village, and arrived at an agreement on the use of microphone/loudspeaker at Mosque to the effect that the Muslim community agreed that except for the month of Ramzan, during which period it becomes necessary to announce the time of Roza, aftar and sahri, announcements and morning azam will be made through microphone/loudspeaker, and that they will not use the microphone, for any other programme, and that the Hindu community had agreed to the said proposal.

4. It is submitted by the learned counsel for the petitioner that the agreement was entered into exercising coercion in violation of the fundamental right of the petitioners, whereas the other communities are using the loudspeakers throughout the year and during festivals by continuous chanting of religious prayers and music. It is submitted that the restriction have been placed only on one of the community, and thus this Court should interfere in issuing directions, to protect the petitioner's right guaranteed under Article 25(1) of the Constitution of India, and to allow the petitioner's community in using microphone for azam, namaz and announcement and other programme from the mosque.

5. On 14.5.2013, we granted time to the learned standing counsel, to get instructions. He has produced a letter dated 18.5.2013 of the District Magistrate, in which it is stated that a request was made to the State Government, for providing policy decision in such matter, and as soon as the same is received from the State Government, he will produce the same before the Court, and for that purpose he wants one month time.

6. Learned counsel appearing for the petitioner has relied on judgments in Church of God (Full Gospel) in India Vs. K.K.R. Majestic Colony Welfare Association and Others, ; M.S. Appa Rao Vs. The Government of Tamil Nadu, The Consumer Action Group and The Commissioner of Police , Om Birangana Religious Society Vs. The State and Others, ; Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others, , in which detailed directions have been given, with regard to use of loud speaker, with reference to Noise Pollution [Regulation and Control] Rules 2000, framed by the Central Government under the provisions of Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules 1986. The Supreme Court in this case has given detailed directions, for maintaining limits in dB(A) Leq. at day time and night time, in industrial, commercial, residential areas, and silence zone, as specified in the schedule annexed to the Rules. The Rule of 2000, specifies the day time as 6.00 a.m. to 10.00 p.m., and night time as 10.00 p.m. to 6.00 a.m.. The silence zone is defined as an area comprising not less than 100 meters around hospital,

educational institutions and Courts, and other areas, as declared by the competent authority as silence zone.

7. Church of God (Full Gospel) In India v. K.K.R. Majestic Colony Welfare Association and others (supra), the Supreme Court held in paras 12 and 13 as follows:

12. In the present case, the contention with regard to the rights under Article 25 or Article 26 of the Constitution which are subject to public order, morality and health are not required to be dealt with in detail mainly because as stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities. We would only refer to some observations made by the Constitution Bench of this Court qua rights under Articles 25 and 26 of the Constitution in Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others, . After considering the various contentions, the Court observed that no rights in an organized society can be absolute. Enjoyment of ones 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.

13. Further, it is to be stated that because of urbanization or industrialization the noise pollution may in some area of a city/town might be exceeding permissible limits prescribed under the rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and, therefore, rules prescribing reasonable restrictions including the rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisance Act, 1889 and also the Noise Pollution (Regulation and Control) Rules, 2000 are required to be enforced. We would mention that even though the Rules are unambiguous, there is lack of awareness among the citizens as well as the Implementation Authorities about the Rules or its duty to implement the same. Noise polluting activities which are rampant and yet for one reason or the other, the aforesaid Rules or the rules framed under various State Police Acts are not enforced. Hence, the High Court has rightly directed implementation of the same.

8. In Om Birangana Religious Society v. State, 1996 (2) Cal. LT 474, the Calcutta High Court held in paras 24 and 25 as follows:

24. In a religious place or congregation, the use of microphones should be

limited to the persons or the followers or the disciples who are there so that they may hear and know, they may follow and understand what is meant for them No person and/or organization cannot be allowed to use microphone at a high noise level without any volume control.

25. So far as right of religious organization to use loudspeaker or amplifier is concerned that right is not an independent right under Article 25 of the Constitution of India. Article 25(1) of the constitution of India provides that subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

9. Learned standing counsel has also relied on the directions issued by the Supreme Court, directing the respective State Governments, to frame policy with regard to constructions of building used for religious purpose and the direction that no such building shall be allowed to be built on public streets, public parks or other public places. The State Government, after following the directions issued by the Supreme Court in *Union of India v. State of Gujarat*, in SLP (Civil) No. 8519 of 2006, has issued directions to all the District Magistrates and other authorities to follow the orders of the Supreme Court dated 29.9.2009, 7.12.2009 and 4.2.2010 and 16.2.2010, directing that no constructions of building for religious purpose will be allowed on public road, lanes, public parks or any other public places, and that no new constructions will be allowed to be made on such places. The Government Order dated 12.10.2010, produced by the learned standing counsel, will be brought on record with the counter-affidavit.

10. Taking into consideration of the aforesaid facts and circumstances, we direct that the respondents will (sic) in village Kakoda, P.S. Kadar Chowk, Tehsil Sadar, District Budaun both temples and mosque will be allowed to use microphone/loud speaker within permissible limit of decibels i.e. at low noise levels within the prescribed decibels limit. Wherever exact decibel limit cannot be measured by the administration, the noise should not be heard beyond 50 meters from the place where it is originating. The temple or mosque management will not be allowed to use amplifiers and any extension-speakers outside the premises

11. We also direct that during night time i.e. between 10.00 p.m. to 6.00 a.m., as notified in schedule to Noise Pollution [Regulation and Control] Rules 2000, no microphone/loudspeaker will be permitted to be used and played, whether it is temple, mosque, church, gurudwara or any religious or public other place. This restriction will not be applicable to the prayers and "namaz" during day time i.e. 6.00 a.m. to 8.00 p.m..

12. We also find it appropriate to issue directions, in pursuance of the directions of Supreme Court as accepted by the State Government in its policy decision dated 12.10.2010, that no building for the religious purpose will be permitted to be constructed on public roads, streets, pavement, public parks and other public places.

13. Learned standing counsel is directed to place on record a positive policy decision taken by the State Government, with regard to use of microphones/loud speakers in tune with the decisions referred to as above, and Noise Pollution [Regulation and Control] Rules 2000, made under Environment (Protection) Rules 1986.

14. The policy with regard to use of microphones/loud speakers, to be framed by the State Government will also be made to cover the use of microphones, for all other purposes including meetings, marriage procession, religious festivities, (sic) The State Government, in the policy to be framed, will also consider banning of the use of loud speaker/microphone during examination period i.e. between March to May every year.

15. Learned standing counsel will file counter-affidavit of not below the rank of Principal Secretary within four weeks.

16. The directions issued in paragraphs 11, 12 and 13 shall strictly complied with by the respondents-authorities.

17. Since we have heard the parties at length, the matter will be listed before us on 19.7.2013 at 2.00 p.m. Let a copy of this order be made available to learned Chief Standing Counsel, for compliance by 31.5.2013.