

(1999) 09 OHC CK 0014

In the Orissa High Court

Case No : O.J.C. No"s. 3166, 4281 and 7608 of 1997

Bijayananda Patra and Others, etc.

APPELLANT

Vs

District Magistrate, Cuttack and Others, etc.

RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Constitution of India, 1950 — Article 19(1), 25, 26
Criminal Procedure Code, 1973 (CrPC) — Section 144
Orissa Fire Works and Loudspeaker (Regulation) Act, 1958 — Section 62

Citation : AIR 2000 Ori 70

Hon'ble Judges : A. Pasayat, Acting C.J.; B.P. Das, J

Bench : Division Bench

Advocate : Ashok Mohanty, P.R. Dash, J. Sahu and S. Mohanty, for the Appellant; S. Das, R. Rath, A. Patnaik and Addl Govt. Advocate, for the Respondent

Judgement

A.P. Pasayat, Actg. C.J.

1. All these cases relate to noise pollution in different parts of the State of Orissa caused due to use of high sounding explosive fire works and other blaring sound producing devices and the effect of the resultant pollution in sound. The petitions have been filed in the form of public interest litigation. It is highlighted that the manner in which the sound pollution is being caused and the impact of such sound pollution is on the health of the people, is a cause for great concern. The prayer essentially in each of the writ petitions is for direction to the concerned authorities to prevent the sound pollution, and consequential health hazards.

2. "Pollution" is noun derived from the transitive verb "pollute," which according to the Random House Dictionary of the English Language (College Edition, 1977) means :

"(1) to make foul or unclean, dirty ; to pollute the air with smoke.

(2) to make impure or morally unclean, defile, desecrate to soil, defile.

Synonyms 1. Soil, befoul, 2. Taint, exam-inable, corrupt, debase."

According to Halsbury's Laws of England, Fourth Edition, Vol. 38, "pollution" means the direct or indirect discharge by man of substances or energy into the aquatic environment resulting in hazard to human health, harm to living resources and aquatic ecosystems, damage to amenities or interference with other legitimate uses of water." The above definition relates to pollution of water, and has not covered pollution in general. As regards noise pollution it simply connotes unwanted sound in the atmosphere. It is unwanted because it lacks the agreeable amicable quality. Noise is, therefore, sound, but it is pollution when the effects of sound become undesirable. The encyclopedia Britannica (Vol. 16. 1968, p. 558) has stated :--

"In acoustics noise is defined as any un-desired sound. According to this definition, a sound of church bells may be music to others. Usually, noise is a mixture of many tones combined in a non-musical manner."

The Encyclopedia Americana further states :--

"Noise by definition is unwanted sound. What is pleasant to some ears may be extremely unpleasant to other, depending on a number of psychological factors. The sweetest music, if it disturbs a person who is trying to concentrate or to sleep, is noise to him, just as the sound of a pneumatic riveting hammer is noise to nearly everyone. In other words, any sound may be noise if circumstances cause it to be disturbing."

The pollution as evil, thus brings the society to understand that mankind is part of nature. Richard Maybe, in his "Handbook on Pollution" observes that the "root cause of pollution probably lies in the sort of world we have chosen to build for ourselves, and in our thoughtless worship of progress at any cost. This amply illustrates that pollution is plain progress crisis.

3. It is seen that the various environmental laws have failed to afford sufficient remedial measures for the individual sufferers, and the criminal liability created thereunder is mostly generalised and is of little avail to the person or persons who become victims of any pollutant. Another vital aspect lacking in the environmental laws is that there is no independent law on noise pollution.

4. It is submitted on behalf of the State Pollution Control Board (in short the "Board") that the State of Orissa has legislated an enactment namely. The Orissa Fire Works and Loudspeaker (Regulation) Act, 1958 (in short "Loudspeaker Act") as amended in 1993. This Act has been enacted for the purpose of regulating display of explosive fire works and use of loudspeaker from the date of the enactment. The Act has been made applicable to the Municipalities and the Notified Areas under the Orissa Municipal Act, 1950 (in short "Municipal Act"). Section 3 of the said Act prescribes the restricted zones and time period for use of loudspeaker and display of explosive fire works within the permissible time and also provides that permission for the same has to be obtained for its use

within the restricted zone. Contravention of any of the provisions of the said Act invites penalty by way of imprisonment and fine. The enforcing authority under the said Act is the District Administration and the Board has no power or specific role to play under it.

5. In England, there was an Act called Noise Abatement Act, 1960, Section 1 of which has been superseded by Sub-section (9) of Section 11 of the Control of Pollution Act, 1974. Noise and vibration generally have been dealt with in 34 Halsbury's Laws of England, 4th Edition, para 324. Part III of the Control of Pollution Act, 1974, consisting of Ss. 57 to 74 of that Act relates to measures for control of noise pollution. According to Section 58 of that Act, the noise to be actionable must amount to a nuisance in the ordinary legal sense. (See *Banbury Urban Sanitary Authority v. Page* (1881) 8 QBD 97). The nuisance need not be a public nuisance, and interference with a person's personal comfort is enough, though at least in general, a private nuisance presupposes the possession and control of land from which the nuisance proceeds. Whether noise constitutes a nuisance is a question of degree, yet where the noise is caused maliciously, the same will be taken into account. (See *Christie v. Davey* (1803) 1 Ch 316).

One celebrated point, which the Indian law should be emulous of, is the provision u/s 62 of the English Control of Pollution Act, 1974, operating as perfect control of street noise, and the term "street" under that section is defined to mean "a highway and any other road, footway, square or Court which is for the time being open to public." Section 62 of that Act reads :

"(1) Subject to the provisions of this section, a loudspeaker in a street shall not be operated-

(a) between the hours of nine in the evening and eight in the following morning for any purpose;

(b) at any other time, for the purpose of advertising any entertainment, trade or business;

and any person who operates or permits the operation of a loudspeaker in contravention of this sub-section shall be guilty of an offence against this part (Part III) of this Act."

The words "subject to the provisions of this section" refer to the provisions of Sub-sections (2) and (3) of that section making inapplicable the provisions of Sub-section (1) to the operation of a loudspeaker-

(a) for police, fire brigade or ambulance purpose, by a water authority in the exercise of any of its functions, or by a local authority within its area;

(b) for communicating with persons on a vessel for the purpose of directing the movement of that or any other vessel:

(c) if the loudspeaker forms part of a public telephone system;

(d) if the loudspeaker-

(i) is in or fixed to a vehicle, and

(ii) is operated solely for the entertainment of or for communicating with the driver or a passenger of the vehicle or, where the loudspeaker is or forms part of the horn or similar warning instrument of the vehicle, solely for giving warning to other traffic, and

(iii) is so operated as not to give reasonable cause for annoyance to persons in the vicinity;

(e) otherwise than on a highway, by persons employed in connection with a transport undertaking used by the public in a case where the loudspeaker is operated solely for making announcements to passengers or prospective passengers or to other persons to be employed;

(f) by a travelling showman on land which is being used for the purposes of a pleasure fair;

(g) in ease of emergency.

Clause (b) of Sub-section (1) of Section 62 does not apply to the operation of a loudspeaker between the hours of noon and seven in the evening on the same day of the loudspeaker-

(a) is fixed to a vehicle which is being used for the conveyance of a perishable commodity for human consumption; and

(b) Is operated solely for informing members of the public (otherwise than by means of words) that the commodity is on sale from the vehicle; and

(c) is so operated as not to give reasonable cause for annoyance to persons in the vicinity.

While construing the words "cause of annoyance," it was held in *Raymond v. Cook* (1958) 3 AIER 407 that it was sufficient that an instrument was calculated to cause annoyance and it was not necessary to produce actual annoyance to persons.

The provisions of Section 62 have banned the use of loudspeakers in a street, and the "street" defined as a highway and any other road, footway or square or Court which is for the time being open to the public, the expression open to public, which also occurs in Section 1(4) of the Street Offences Act, 1959, seems to have the same meaning as the phrase to which the public have access. Therefore, the expression street would cover every road, etc. on which members of the public are found who have obtained access without overcoming a physical obstruction or defying a prohibition express or implied, in other words, have in fact access either as a matter of right or by tolerance. (See *Harrison v. Hill* (JT) 1932 SC 13 and *Buchanan v. Motor Insurer's Bureau* (1955) 1 All ER 607).

6. In India, the position is different, and the use of loudspeaker assumes the status of a fundamental right by virtue of Article 19(1) and Article 25 of the Constitution. Article 19(1) provides that all citizens have the right-

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India.

Although the right as specified in (a), (b), (c) and (d) above is subject to reasonable restriction imposed or imposed by law in the interest of-

- (i) the sovereignty and Integrity of India;
- (ii) the security of the State;
- (iii) friendly relations with foreign States;
- (iv) public order, decency or morality or in relation to contempt of Court, defamation or incitement to offence;
- (v) general public.

It may not be missed that the restrictions to be placed in the interests of the general public to obtain in relation only to the right to move freely throughout the territory of India, which right has not so much to do with the use of a loudspeaker, with the result that the right to freedom of speech and expression, or to assemble peaceably and without arms and to form associations or unions, which are manifest most in advertisement of wares or entertainment shows, speeches of party leaders or office bearers of any Union, the assemblage of guests or visitors at marriage or birthday parties or at fairs, melas or exhibitions, the street processions or Shobha Yatras betokening a social or religious festivity or the twists and pop songs heralding a marriage procession, or the election campaign of a candidate, which must and shall invariably go with a loudspeaker, and all these are subject to reasonable restrictions on ground not of noise being a pollutant, but only on grounds of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order, decency or morality or in relation to contempt's of Courts, defamation or incitement to offence.

7. The one thing that can conceivably cover a ban on noise by loudspeakers can of course, be decency, but the difficulty, again, is that the word decency being itself undefined, public shall have to wait until some verdict of the higher judiciary might declare noise as contrary to decency.

A bye-law of a Municipality requiring permission for using a loudspeaker does not infringe Article 19(1)(a). The State can regulate the use of loudspeakers and mechanical or other contrivances to simplify sound, and does not amounts to an

Infringement of the right under Article 19(1)(a).

Then comes Article 25 of the Constitution protecting the freedom of conscience and free profession, practice and propagation of religion. Clause (1) of this article states :

"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, practice and propagate religion."

This right is made subject only to public order, morality and health. Since this right is subject to health, the noise caused by loudspeakers can be prohibited in the interest of health, but, then again, the nexus between noise and health will have to be judicially established.

As to the other categories of noise pollution, aeroplanes, trains, cars and all varieties of automobile, the radio and the television sets, have the common symptom to add to the noise, since all of them produce noise, now considered to be the most dangerous pollutant of man's environment.

8. Noise not only causes irritation or annoyance but it does also constrict the arteries and increases the flow of adrenaline and forces the heart to work faster, thereby accelerating the rate of cardiac ailments, the reason being that continuous noise causes an increase in the cholesterol level resulting in permanent constriction of blood vessels, making one prone to heart attacks and strokes. The health experts are of opinion that excessive noise can also lead to neurosis and nervous breakdown.

There has been a high incidence of emotional disaster among people living near airports, as revealed by study. For children, noise not only causes hearing problems but also other neurological reactions that make the child irritable and hyperactive, and this has been noted for slowing down the process of development of the mental faculties of children. A study conducted by a medical team discovered an increased incidence of birth defect, still births and usually low weight among children born to mothers living near airports. A study of more than 2,25,000 births in Los Angeles area of U.S.A. by Dr. Nowall Jones, Professor of Psychology at the University of California, proved that there were more birth defects among the babies whose mothers lived in noise polluted areas near the international airports compared to those who lived in quieter places. Similar results were obtained in a different study near London's Heathrow airport. Neonatal development is affected if the expectant mother is subjected to continuous noise stress during pregnancy. The result (sic) conducted by medical experts, may or may not be accurate, but deserves serious consideration. Abortion because of uproar was known to the poet saint Tulsidas, in the Sixteenth Century, who sang (The Ramcharit Manas, Sunder Kanda 27/1) that the roar of Hanuman, while back from Lanka, brought abortion to many a demoness in the Lanka. These aspects have been highlighted by a learned author in a recently published article.

9. The measure of noise is known as the decibel. Noise researchers have shown that continuous noise level in excess of 90 decibels (units of measuring noise are called decibels and one decibel is the threshold of hearing, 30 decibels comes near whispering range and 60 decibels denotes the level of normal talk) can cause loss of hearing and irreversible changes in nervous system. The World Health Organisation has fixed 45 decibels as the safe noise level for a city, though the four metropolitan cities of Bombay, New Delhi, Calcutta and Madras have usually registered more than 90 decibels, and Bombay has been rated as the third noisiest city in the world. New Delhi is said to be closely following Bombay in noise pollution and if control measures are not taken to reduce the sound level, the result would be alarmingly disastrous.

10. By the international standards, a noise level up to 65 decibels is considered tolerable. In the world, concern over noise pollution has resulted in introduction of noise proof motor vehicles, construction of sound barriers on road sides, tunnels instead of flyovers and restrictions on noisy traffic.

11. Noise pollution has, thus, two sources industrial and non-industrial, but the movement against noise pollution seems to be not that sound in India as in other countries, the reason, according to environmental experts, being that most of the people in India do not consider noise as pollution but as part of routine and modern life. In order to curb noise pollution, it is essential that people realise that dangerous consequence of noise and take some remedial measures.

12. The causes of noise pollution can also be divided into the categories, namely, natural and man made. Natural causes of noise pollution are air, noise, volcanoes, seas, rivers, exchanging voices of living organs including man and mammals. Some of the chief causes of man made noise pollution are machine and modern equipment of various types, automobiles, trains, aeroplanes, religious and social celebrations, construction works, speeches, loudspeakers, resounding buildings and structures, and other things leading to noise pollution,

Noise affects human life in many ways. It affects sleep, hearing, communication, mental and physical health and makes men peaceless. It may even lead to the madness of people. However, noises which are melodious whether natural or man-made cannot always be considered as factors leading to pollution.

13. Though in the areas of water and air pollution, there are two independent Acts in India, named as the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, there is no independent Act to deal with the problem of noise pollution. It was after the enactment of the Environment (Protection) Act, 1985, that attention was attracted to noise pollution. But instead of bringing any self-contained enactment for preventing noise pollution, the Air (Prevention and Control of Pollution) Amendment Act, 1987 (47 of 1987) was brought to include noise in the definition of the term "air pollutant."

The Air (Prevention and Control of Pollution) Act, 1981 was enacted under Article

253 of the Constitution of India to implement the decision taken at the United Nations Conference on Human Environment held at Stockholm in June, 1972 in which India participated. The definition clause u/s 2 thereof, being Clause (a) of that section, had defined the expression air pollutant to mean "any solid, liquid, or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

In view of Section 2(1) of the above Amendment Act of 1987, the definition of air pollutant as now rendered is "any solid, liquid, or gaseous substance (including noise) present in the atmosphere.

14. It appears, the Air Pollution Board is preparing specific standards of noise level, both industrial and ambient noise level, and Industries are expected to be asked to change their manufacturing processes or to use suitable techniques to keep the noise level low, The Bureau of Indian Standards, it is reported is also working to fix new standards of noise pollution levels. As different level attempts are being made to develop gadgets that would control noise at sources.

In the opinion of scientists, green trees and plants absorb and dissipate sound, energy and air, therefore, considered to be effective protection against noise. The trees along the streets have been found to be good absorbers of the sonic bang.

Besides changing traffic patterns in the cities of India, what is desired further is that vehicles must be compelled to fit efficient mufflers or silencers in reduce noise.

The researchers on noise say that noise levels in excess of 90 decibels for continuous periods can cause loss of hearing. It can also cause neurological, digestive and metabolic disorder. A single exposure of 150 decibels is said to cause permanent injury to the ear's internal mechanism.

15. The environmental situation has to be treated as an emergency situation. The environment pollution is still regarded as "a subject of halting legislation, hypocritical implementation and helping interpretation," as observed by Apex Court. Not only the environmental laws should be refined in a manner which could give a legal justification to civil assessment in terms of compensation but also to be re-evaluated in manner that violation of pollution laws should become unnecessary in the times to come, and this can materialise by providing sufficient incentives to the industrials and education to the layman.

16. Where noise can be said to amount to nuisance, the person causing noise can be restrained by injunction, even though that person was causing noise in the course of conducting his business. Where the nuisance complained and found was noise generated by the hammering of steel sheets with hammers varying in weight from half a pound to four pounds, it was held in *Gotham Construction Co. v. Amulya Krishna Ghose* AIR 1969 Cal 91 that no money could afford adequate relief to the plaintiff and his neighbours who are thereby discomforted. It was

observed that in determining whether such noise was actual discomfort, the Court is an expert of experts and can need no opinion evidence of an expert in order to determine whether hammering of steel plates by hammers up to four pounds in weight would create a terrific noise or not and whether such nuisance could be wholly abated or not by treating the workshop with the well known method of acoustics.

Thus, a person can claim injunction to stop nuisance if in a noisy locality, there is substantial addition to the noise by introducing some machine, instrument or performance at defendant's premises which materially effects the physical comfort of the occupants of the plaintiffs-house.

Pollution of air, or of water, or of atmosphere through noise, continues to be part of and not severable from the common law of nuisance despite the enactment of the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 or the Environment (Protection) Act, 1986. The purpose of these enactments have been to include the pollution control measures in the wider conspectus of social justice.

17. The effect of noise on health is a matter which has yet not received full attention of our judiciary, but it deserves.

Pollution being wrongful contamination of the environment which causes material injury to the right of an individual, noise can well be regarded as a pollutant because it contaminates environment causes nuisance and effects the health of a person and would, therefore, offend Article 21, if it exceeds a reasonable limit.

Noise pollution can be curbed by adopting certain measures. Environment eco-friendly technology should be adopted. Machinery should be designed and manufactured in such a way that it should not create more sound than allowable noise limits. Road should be made sound proof, trees should be planted on both sides of the roads and outside the big factories and industries. Public awareness among masses should be created through seminars, conferences and discussions, etc. making them vigilant about the evil effects of noise pollution. Houses of God should be kept peaceful and noise free as it is rightly said that God is not deaf. Flights of aeroplanes should be also planned to curb noise.

Noise Code regulating all aspects of noise pollution may be enacted.

As the problem of noise pollution has already crossed the danger point and noise like a smog is threatening as a slow agent of death, some immediate measures are needed to be taken in this regard, some of them being as follows :

- (i) The prescribed standards regarding noise by Govt. of India may be enforced strictly in letter and spirit.
- (ii) Separate Courts regarding noise pollution may be established.
- (iii) The cases should be decided within a prescribed time limit.

(iv) All District Magistrates and Sub-Divisional Magistrates should be empowered to issue prohibitory orders u/s 144 of the Code of Criminal Procedure, 1973 limiting the hours of loudspeakers in religious places and for other social gatherings and functions.

(v) The subject of environment protection may be made compulsory at school, college and University levels.

(vi) The press and media should play a constructive role to highlight disastrous effects of noise pollution and its remedy.

(vi) The District Administration and the State Pollution Control Board shall work out the modalities to prevent catastrophic effect of noise pollution by ensuring strict compliance with the statutory provisions, scanty though they are.

(vii) Both Central Government and State Government should consider the desirability of having adequate legislative measures to prevent this fast growing menace which though appears to be "silent" has in fact potentialities of producing a future generation of deaf persons.

(ix) Permanent monitoring bodies should be appointed to make periodic review of the situation and suggest remedial measures. The composition of such body has to be determined by the State/Central Government.

The writ application is disposed of accordingly. No costs.

D.P. Das, J.

18. I agree.