
(2013) 12 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil Application No. 15082 of 2013

Gandhinagar Bar Association

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0089

Hon'ble Judges : Bhaskar Bhattacharya, C.J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Dipen K. Dave, for the Appellant; P.K. Jani, Government Pleader with Ms. Vacha Desai, AGP for the Respondent(s) No. 1, for the Respondent

Final Decision : Disposed Off

Judgement

J.B. Pardiwala, J.—By this application under Article-226 of the Constitution of India, the petitioner Gandhinagar Bar Association through its Vice President has prayed for the following reliefs: (A) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to declare the authorities are not entitled to extend the dead line of 12 midnight to use of Loud Speaker during Navratri Festival in any of the Garba or organized Dandiya in Gandhinagar City.

(B) Your Lordships may be pleased to suitable direction be issued to the respondents that, if any of the Loud Speaker continues after 12 midnight, then, authority should act immediately, and S.P. of Gandhinagar be directed to that for strict implementation of the Noise Pollution rules any of the Police Officer be appointed as implementing authority during Navratri Festival and his Mobile number and telephone number be circulated in Electronic and Print Media, so that any breach of Noise Pollution rules be immediately notified to the Authority and authority can act immediately;

(C) Your Lordships may be pleased to direct the respondent No. 2 to issue notification or suitable direction pursuant to section 33(1)(x) of the Bombay

Police Act, 1951;

(D) Suitable direction be issued to the Respondents that, those organizers of the Organized Dandiya and Garba continues to use the loud speaker after 12 midnight, then they should be prosecuted u/s 188 of I.P. Code read with Rule 7(1) of the Noise Pollutions Rules, 2000;

(E) Suitable directions be issued to the Authority that, in spite of the complaint of the any citizen for the use of loud Speaker after 12 midnight and if no actions are taken by the authority then concerned officers should be prosecuted u/s 166 of the I.P. Code.

(F) Suitable directions may kindly be issued to the authority that, standard of the Noise may not exceed it's limit as prescribed in Rule 7(1) of the Rules,

(G) As Navratri Festival starts 5th October, 2013 from suitable interim directions be issued to the authority to implement 12 midnight deadline for the use of loud speaker and mikes and D.J. Sets in Garba Mahotsav and organized Dandiya programmes in Gandhinagar City, and S.P. Gandhinagar be directed to nominate any of the Police Officers to implement the time limit and intensity of the Noise as per Noise Pollution rules, and S.P. Gandhinagar be further directed to publish the name such implementing officer with his phone and Mobile Number with a declaration to all the citizens that, any of the grievances can be ventilated by virtue of such telephone or mobile phones to the Special Officer nominated for this purpose.

(H) Grant such other and further relief/s as may be deemed fit and proper in the facts and circumstances of the case.

The petitioner has prayed for a direction upon the respondents so that the Loud Speakers are not permitted to continue after 12 midnight during the Navratri Festival which just concluded in the month of October this year. This petition has been confined so far as the District of Gandhinagar is concerned. 2. It is the case of the petitioner that if anyone continues the use of loud speakers after 12 midnight, the authorities should act immediately. It has also been prayed that the S.P., Gandhinagar should be directed to implement the Noise Pollution (Regulation & Control) Rules, 2000 and a particular Police Officer should be appointed as the implementing authority during the Navratri festivals and the name, mobile number and telephone number of such authorities should also be published in the Electronic and Print Media so that the violation of the Rules can be brought to the notice of the said authority immediately.

3. This writ application was taken-up for hearing on 3/10/2013. On that date this Court passed the following order:

It appears that the Supreme Court, in the case of In Re: Noise Pollution - Implementation of the Laws for restricting use of loudspeakers and high volume producing sound systems, has already passed a direction for implementing the Rules and our attention has been drawn to the fact that Gujarat Government has

also issued a notification dated 24th January 2013, published in the Gujarat Government Extraordinary Gazette dated February 2, 2013, thereby permitting use of loud speakers or public address system only between 10.00 PM and 12.00 midnight in respect of 9 days of Navratri festival.

Such being the position, the District Superintendent of Police, Gandhinagar is now required to nominate an officer who will be implementing authority of the Rules in the District of Gandhiangar during this Navratri festival and publish his mobile number and telephone number so that in case of any breach of the said rule, the general public can lodge complaint before such authority.

We accordingly direct the respondent No. 3 to nominate such an officer and by way of advertisement in electronic and print media, publish the name, mobile and telephone number of such officer where the general public can lodge complaint in case of any breach of the said rule. Such advertisement should be given by tomorrow, the 4th October 2013.

The petitioner has also prayed for a direction upon the respondents to issue a notification in terms of section 33(1)(x) of the Bombay Police Act, 1951 prohibiting selling of passes or tickets for the programmes in connection with Navratri festival in the District of Gandhiangar, and our attention has been drawn to a notification dated 11th September, 2009 issued by the District Magistrate, Surendranagar in exercise of such power for the District of Surendranagar.

In this connection, Ms. Desai, the learned Assistant Government Pleader appearing on behalf of the State wants time to take instructions in the matter.

To enable her to take such instruction, we fix the matter tomorrow, the 4th October 2013.

Let a copy of this order be made available to Ms. Desai, the learned Assistant Government Pleader, for taking immediate action.

4. The Navratri festival for the year 2013 has already concluded and pursuant to our order referred to above, all necessary steps were taken to ensure that there is due compliance of the Noise Pollution (Regulation & Control) Rules, 2000.

5. Since this is a Public Interest Litigation although confined so far as the District of Gandhiangar is concerned, but taking into consideration the fact that Navratri is being celebrated in the State of Gujarat, every year, we deem fit and proper to dispose of this petition in public interest by issuing directions which shall be implemented and executed all throughout the State of Gujarat henceforth. During the festival of Navratri, ordinarily two issues crop up, (i) the time limit to use the loud speakers and (ii) the steps which are necessary to be taken in the event if there is non-compliance of time limit prescribed so far as the use of the loud speakers is concerned.

6. The Noise Pollution (Regulation and Control) Rules, 2000 (for short "the Rules") have been framed by the Central Government in exercise of its power

conferred by clause (ii) of sub-sec. (2) of Sec. 3, sub-sec. (1) and clause (b) of sub-sec. (2) of Sec. 6 and Sec. 25 of the Environment (Protection) Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986.

"Area/Zone" has been defined to mean all areas which fall in either of the four categories given in the Schedule annexed to the Rules.

"Educational institution" and "hospital" have been defined in Rules 2(e) and 2(f) of the Rules in the following terms:

(e) "educational institution" means a school, seminary, college, university, professional academies, training institutes or other educational establishment, not necessarily a chartered institution and includes not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral and physical development;

(f) "hospital" means an institution for the reception and care of sick, wounded, infirm or aged persons, and includes government or private hospitals, nursing homes and clinics.

Sub-rule (5) of Rule 3 of the Rules reads as under:

(5) An area comprising not less than 100 meters around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules.

Rule 5 of the Rules reads 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) A loudspeaker or a 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 festive occasion of a limited duration not exceeding fifteen days in all during a calendar year.

Ambient air, quality standards in respect of noise for silence zone have been prescribed in the Schedule. Note 3 appended thereto, however, reads as under:

3. Silence Zone is an area comprising not less than 100 meters around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority.

It is clarified that though the State Government may not have declared a particular Zone as a Silence Zone, in our opinion that would be besides the point. If nearby the venue of the Navratri celebration there is any educational institution, residential area or a hospital, then in such circumstances the Rules, 2000 shall be scrupulously followed and implemented. It would not be necessary that the Silence Zone has to be declared so as to make the Rules applicable. Interference by the court in respect of noise pollution is premised on the basis that a citizen has certain rights being "necessity of silence", necessity of sleep", "process during sleep" and "rest", which are biological necessities and essential for health. Silence is considered to be golden. It is considered to be one of the human rights as noise is injurious to human health which is required to be preserved at any cost (See Noise Pollution, Laws & Remedies by Justice Bhagabati Prosad Banerjee).

7. We also deem it necessary to look into the decision of the Supreme Court in the case of Farhd K. Wadia Vs. Union of India (UOI) and Others, wherein the Supreme Court, considered the directions issued by the Calcutta High Court in the case of Om Birangana Religious Society Vs. The State and Others, The directions which were taken notice of by the Supreme Court are as under:

(a) there will be complete ban on the use of horn type loud-speakers within city residential areas and also prohibit the use of play back of pre-recorded music etc. through such horn type loud-speakers unless used with sound-limiter.

(b) In cultural functions which are live functions, use of such pre-recorded music should not be used excepting for the purpose of announcement and/or actual performance and placement of speaker boxes should be restricted within the area of performance facing the audience. No sound generating devise should be placed outside the main area of performance.

(c) Cultural programmes in open air may be held excepting at least before three days of holding Board/Council/Examinations to till examinations are completed in residential areas or areas where educational institutions are situated.

(d) The distance of holding such functions from the silence zones should be 100 meters and in so far as Schools, Colleges, Universities, Courts are concerned, it will be treated as silence zones till the end of the offence hours and/or the teaching hours. Hospitals and some renowned and important Nursing Homes will be treated as silence zones round the clock.

7.1 The Supreme Court has also taken suo motu cognizance as regards noise pollution in the case of RE v. Union of India and another reported in 2005(5) SCC -727.

7.2 A detailed judgment was rendered by the Supreme Court in the above referred writ petition which has since been reported in In Re: Noise Pollution - Implementation of the Laws for restricting use of loudspeakers and high volume producing sound systems, Several guidelines had been issued therein by the

Supreme Court in exercise of its jurisdiction under Articles-141 and 142 of the Constitution of India. Therein, the decision of the Calcutta High Court in Om Birangana Religious Society (supra) has been taken note of.

7.3 As regards loud speakers and amplifiers, it was directed:

171. Loudspeakers and amplifiers or other equipment or gadgets which produce offending noise once detected as violating the law, should be liable to be seized and confiscated by making provision in the law in that behalf.

8. Thus, it is very clear that the authorities concerned, all over the State are duty bound to ensure that during the Navratri festival in the State there is due compliance and implementation of the Noise Pollution (Regulation and Control) Rules, 2000.

9. So far as the time limit is concerned, it appears that the Supreme Court in the case of Noise Pollution (Supra) has already passed the direction for implementing the rules and our attention has been drawn to the fact that the Gujarat Government has also issued a notification dated 24/1/2013 published in the Gujarat Government extraordinary Gazette dated February 2, 2013 thereby permitting use of loudspeakers or public address system only between 10 p.m. and 12 midnight in respect of 9 days of Navratri Festival.

10. So far as the prayer for direction upon the respondents to issue a Notification in terms of Sec. 33(1)(x) of the Bombay Police Act, 1951, prohibiting selling of passes or tickets for the program in connection with Navratri festival is concerned, we are of the opinion that in what manner such selling of passes or tickets should be regulated by the authority in terms of Sec. 33(1)(x) of the Act, 1951 is concerned, should be left best to the authority. We may only say that it is not possible for us to accept the arguments canvassed on behalf of the petitioner that selling of passes or tickets should be banned completely as it amounts to trading and such a festival should not be promoted to be commercialized. If an individual person or a group or any event management deems fit to host a programme of Ras Garba at a particular venue and for that purpose if the entry at such a venue is restricted except by way of passes or tickets then the same by itself would not amount to commercialization. However, it is for the State Government to evolve a policy, if deemed necessary for the purpose of regulating or prohibiting selling of passes or tickets in exercise of powers u/s. 33(1)(x) of the Act, 1951. We dispose of this public interest litigation with the following direction:

We direct the State Government to issue appropriate instructions by way of a general circular or a Government Resolution to all the Police Commissioners/ District Superintendents of Police in the entire State of Gujarat to ensure that every year during the festival of Navratri, there is strict compliance of the Noise Pollution (Regulation and Control) Rules, 2000, and the Notification dated 24th January, 2013, published in the Gujarat Government Extraordinary Gazette as regards the use of loud speakers or public address system only between 10.00

P.M and 12 Midnight. The Police Commissioners/District Superintendents of Police shall also be instructed that from henceforth, every year during the Navratri festival, they shall nominate a team of officers who will be the implementing authority of the Rules in the respective Cities/Districts during the Navratri festival, and publish their mobile numbers and telephone numbers, so that in case of any breach of the said Rules, the general public can lodge a complaint before such authority.

The above direction should be implemented from next year onwards all over the State. With the above, we close this public interest litigation and dispose of the same. However, in the facts and circumstances of the case there shall be no order as to costs.