
(1999) 10 CAL CK 0014
In the Calcutta High Court

Case No : Constitutional Write Jurisdiction Appellate Side W.P. No. 2272 of 1997

Mohan Fireworks and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 17, 18, 2, 22
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37
Constitution of India, 1950 — Article 11, 12, 14, 15A, 17
Environment (Protection) Act, 1986 — Section 25, 3(2)
Environment (Protection) Rules, 1986 — Rule 2, 3(2), 4, 5
Telegraph Act, 1885 — Section 5(2)
Water (Prevention and Control of Pollution) Act, 1974 — Section 4

Citation : (1999) 3 CALLT 76 : (1999) 2 ILR (Cal) 546

Hon'ble Judges : Satyabrata Sinha, Acting C.J.;Ronojit Kumar Mitra, J

Bench : Division Bench

Judgement

S.B. Sinha. A.C.J.

1. The petitioners who are manufacturers of various types of fire works, filed this writ application questioning a notification dated 3.10.1997 as contained in Annexure "L" to the writ application whereby and whereunder the maximum permissible noise level of the fire works at the time of bursting was placed upto 90 Db [A] impulse noise at 5 meters from the source. It has also sought for an order permitting them to sell and/or dispose of the existing stock of fire-works.

2. The fact of the matter is not in dispute.

3. A bench of this Court dealing with environmental matters considered the issue as regard the fixation of noise level in Om Birangana Religious Society v. State of West Bengal & Ors. C.O. No. 4303(W) of 1995 as also in W.P. No. 2725 of 1996, Barrabazar Fire Works Dealers Association & Ors. v. Commissioner of Police. The said writ applications had been disposed of.

4. Pursuant to or in furtherance of the directions issued in the aforementioned

case the impugned notification was issued by West Bengal Pollution Control Board in exercise of its power conferred upon it under Air (Prevention & Control of Pollution) Act, 1981 and Environmental (Protection) Act, 1986 and in terms of the order passed by this Court in the aforementioned cases.

5. In the said applications the Petitioners and Others questioned the authority of the West Bengal Pollution Control Board as also the Commissioner of Police to impose any ban on manufacturers sell or use of certain items of fire works relying on or on the basis of their fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. The said matters were disposed of by a Judgment of a Division Bench of this Court in *Burrabazar Fire Works Dealers Association and Others Vs. The Commissioner of Police and Others*, . The Court lamented the role of the State Pollution Control Board in fixing the limit in view of the fact that sound pollution was a global problem, and keeping in view its earlier decision in *Om Birangana Religious Society Vs. The State and Others*, the Court had directed it to fix up appropriate noise level so that the citizens' right to sleep, right to speak, right to read, right to transit, right to think are not forcibly taken away by the pollutants.

6. The Court considered the views of experts in the field as regard the adverse effects on human beings' mind and body caused by such sound pollutions in the following terms :-

"Sounds created by fire works, loud speakers, air-crafts, railways are all the products of the technological age and high level of continuous sounds damages hearing and that there cannot be any two opinion about it. From the journals and the reports placed before this Court, it is clearly evident that several millions of people in different parts of the world had their hearing damages because of generating of these sounds. The noise not only creates pollution but it is a source of annoyance. Noise is also created by traffic and noise also disturbs sleep. In our country the people have the right to sleep peacefully. A citizen too have right to a decent environment as highlighted by the Supreme Court in various decisions which are all well known in the field of pollution. The effect of bad night sleep as highlighted by an eminent scientist in the field Ficina Godlee in his article in British Medical Journal, in which it was stated that noise can have positive effects on health. The effect of a bad night sleep includes mood change, reduce cardiovascular performance and poor performance at intellectual and mechanical tasks and it was further observe'd, a recent review of research into noise and sleep recommends that sound at night in sleeping quarters should not exceed 45 dB(A). It was held that noise also adversely affects behaviour, increasing anxiety and reducing the incidence of helpful behaviour. Levels of aggression are increased by loud noise, an effect which may persist outside the noisy environment. Steel Workers have more domestic disputes if they work in noisy areas. The other few impact and illustrations of the effect of sound on human behaviour and the effect of sound which disturbs sleep at night."

7. Having considered safety, health and peace as guaranteed to the Citizens of

India the Court observed that none can carry on any trade and business which may seriously affect safety, health and peace of the community. It was held that such unrestricted right is not contemplated under Article 19(1)(g) of the Constitution of India.

8. The Court also considered the lack of legislation in the field and observed that the Court can also legislate stating :-

"It is contended that the Parliament and/or the Legislature in their wisdom, had not passed any law for putting such a restriction and in the absence of any specific provision in any law, the administration cannot do this thing through the order of the Court, this criticism have no force. If a citizen has a right it is also equally a duty on the part of this Court to see that such rights are preserved and not allowed to be destroyed Legislature may not rise to the occasion but that does not mean that Court will keep its hand folded in the absence of any legislative mandate. The Courts are the custodian of the rights of the citizens and if the Court is of the view that citizens' right guaranteed under the Constitution of India are violated, the Court is not powerless to the wrong Principle of Judicial active confers power upon the Court to be active and not to remain inactive for the purpose of protecting rights., duties and obligations of the people. Article 51A of the Constitution casts the fundamental duties on every citizen to protect and improve the natural environment including forest, lake, river, wild life and to have compassion for living creatures. Tremendous sound is unacceptable not only to human being, but to all other animals. It is well known that for driving wild elephants from the localities and to save the locality from these wild elephants fire works are used."

9. Taking into consideration various decisions and the limits of sound level fixed by other countries the Court directed :-

"Accordingly, we direct the West Bengal Pollution Control Board with the expert committee already appointed, to take a decision on this question after considering all the aspects of the matter including the suggestions and recommendations made by National Committee on Noise Level Control and after giving hearing to the applications namely, Mohan Fire Works and the Burrabazar Fire Works Dealers Association and also after considering the view of the experts and the views of Dr. Abirlal Mukherjee, shall pass an order fixing the sound level of the fire works in the State of West Bengal and in view of territorial Jurisdiction of this Court neither this Court can direct the order effective to the outside West Bengal and accordingly, the Pollution Control Board's decision shall only confine to the State of West Bengal.

10. As a matter of fact it is very urgent and Durga Puja and Deepawali are knocking at the door, we direct the Pollution Control Board to hear the matter on 30th September 1997 at 12.00 noon and after hearing shall take a decision which must be taken on/before 3rd October 1997.

11. The petitioner questioned the correctness of the said decision by filing an

application for grant of special leave before the Supreme Court of India and by an order dated 12.1.98 the apex Court directed :-

"We have heard Sh. P.N. Lekhi, learned counsel for the petitioner. We approve the view taken by the Calcutta High Court in the impugned Judgment and the directions given therein regarding fixing of the noise limit. The SLP is dismissed."

12. Pursuant to the aforementioned directions of this Court, a meeting had been held on 30.9.97 wherein the special officers appointed by the Court Dr. Abirlal Mukherjee and Sri Gitanath Ganguly, authorities of the West Bengal Pollution Control Board and one professor from Kalyani University apart from four representatives of the Fire-Works Dealers' Association were present. Written submissions on behalf of the manufacturers/dealer of Fire-works had also been placed before the said Committee. The committee took into consideration the aforementioned Division Bench decision of this Court as also a decision of Samaresh Banerjea, J. and made certain recommendations after giving an opportunity of hearing to all concerned in terms of the aforementioned order and upon taking into consideration various papers. The Committee stated :-

"The basic philosophy of the order passed by the Hon'ble High Court, Calcutta dated 01.04.96 is that no one has any right to make a person captive audience or listener. Use of noise making fire works definitely make the people the captive listeners and, thus, captive sufferers. Noise making fire works makes not only users but also the surrounding people suffer from noise pollution.

2. Deepawali is a festival of light and not a festival of sound. Excessive noise generating fireworks are not essential, in our day to day life and in any way it is not an essential element for any festival-religious or otherwise; save and except a few cases, such as, in forest for driving away the wild animals and for safety purpose in the Airport to protect air crafts from vultures and birds, keeping them away from runway. There are two types of fireworks--illuminating type and noise making type. Like Air-horns, noise making fireworks is also an avoidable hazard, and banning of noise making fireworks will not affect the day to day life of the people in any condition or circumstance. However, total banning of noise generating fireworks is essential to maintain ambient noise quality under the acceptable norms.

3. Previously, State Board fixed up noise level for fire works generating noise 65 dB(A) in the ambient air but factually State Board restricted only some noise making fire works, such as Chocolate Bomb, Chain Crackers. Loose Crackers, Kali Patka. Dhani Patka. Dodoma. Seven Shorts which generate impulse noise more than 90 dB(A) at five meters. State Board did not restrict the use of fireworks which are of illuminating type and less noise producing as stipulated above.

4. It is the specific recommendation of the World Health Organisation that more than 65 dB(A) exposure in the ambient noise level will affect the health of the people. Virtually all noise making fireworks create noise pollution and generate noise levels more than the acceptable norms fixed under the Environment

(Protection) Act, 1986. The fireworks which had been banned by the State Board create noise of more than 65 dB(A) in ambient level particularly during festivals when these are generally used when the "impulse" and "ambient" levels merge and become indistinguishable. It is admitted position that such fireworks are detrimental to the human health if those are used in any place of west Bengal. Noise making fireworks are generally used in the residential places during different festive seasons and those can be carried to any place irrespective of any zone, that is to say. Industrial zone. Commercial zone. Residential zone or Silence zone.

5. In fine, considering the deposition of the Burrabazar Fire Works Association and the facts stated above and other records kept and maintained in the Board, we recommend that all fireworks such as chocolate Bomb, Chain Crackers, Loose Crackers. Kali Patka. Dhani Patka, Dodoma, Seven Shorts, Rocket Bomb and similar other noise making crackers by any name should not be allowed to be used or sold in the State of West Bengal because all such fireworks are creating more than 90 dB(A) impulse noise at 5 meters from the source and use of such fireworks will definitely increase the ambient noise level more than the acceptable norms fixed up under the Environment (Protection) Act. 1986 and Air (Prevention & Control of Pollution) Act, 1981."

13. Thereafter the impugned Notification was made and published. Before us, three applications had been filed in the said disposed of matter by the Pradesh Adarshabadi Byabsayee Samity. Mridula Narula and Virendra Kumar Narula.

14. An application had also been filed by the Commissioner of Police and another seeking certain clarification as regard modalities of implementation of the said decision. An application had also been filed by the Commissioner of Police, inter alia, for a direction of banning of manufacture, storage and transportation of banned fireworks within the State of West Bengal. This Court keeping in view the assurances given by the other manufacturers did not issue any order on the Commissioner of Police's application for banning the manufacturers of fire-works but issued certain directions as regard the mode and manner which the parties should take recourse to for export of such fire works from the State of West Bengal.

15. Mr. Sarkar, the learned counsel appearing on behalf of the petitioner, inter alia, submitted that the purported ban on fire works can be prescribed by the West Bengal Pollution Control Board, and in any event, the said circular does not confirm to the tests laid down by this Court in the earlier judgment. According to the learned counsel the said direction also does not conform to the provision of the Environment (Protection) Act. 1986 (hereinafter referred to as 1986 Act) and Air (Prevention & Control of Pollution) Act, 1981 (hereinafter referred to as 1981 Act) and the rules framed thereunder.

16. It was further submitted that this Court erred in holding that the Court can make laws and issue directions which is not contemplated under the Federal

Policy of the Constitution.

17. Mr. Manik Chandra Das, the learned counsel appearing on behalf of the respondents, on the other hand, submitted that this application is barred by *res judicata*.

18. Environmental Law had to be enacted by the Parliament keeping in view the Stockholm Declaration. 1972. Sundarvans Protocol had also come into being. It is now accepted by all concerned that at all costs the ecological balance has to be maintained. Strict views of maintenance of environment both biotic and non biotic is a must. Lack of care on the part of the human beings in maintaining cleanliness and maintenance of purity of water and flora and fauna as also disappearance of forest, appearance of deserts resulting in floods etc. is now well known.

19. The Apex Court in various judgments upon considering the provisions of the International Conventions and Covenants made laws. By way of example it may be mentioned that in *Dilip K. Basu Vs. State of West Bengal and others*, the Apex Court had laid down the norms to be followed while arresting a person and the rights of the person so arrested.

20. In *Vishaka and others Vs. State of Rajasthan and Others*, the Apex Court created a legal mechanism for protecting women from sexual harassment in the work places upon referring to various International Covenants on the issue including Articles 11, 24 and general recommendations 22, 23 and 24 of the Convention on the elimination of all forms of discrimination against women observed:-

"Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions (Articles 14, 15, 19 and 21) to enlarge the meaning and contents thereof to promote and object of Constitutional guarantee."

21. In *People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another*, the Supreme Court was looking at the issue of telephone tapping which was permissible u/s 5(2) of the Indian Telegraph Act. Testing the validity of the said provision on the touchstone of Article 21 of the Constitution the Apex Court severely restricted the scope of such telephone tapping upon taking aid of Article 17 of the International covenants on civil and political rights as also Article 12 of UDHR and, thus, expanded the scope of Article 21 of the Constitution of India. Even in the field of ordinary Private Interest Litigation the apex Court looked at the International Covenants for Guidance it while interpreting section 51 and Order 21 Rule 37 of the CPC which provides for civil imprisonment interpreted narrowly in *Jolly George Veghese v. The Bank of Cochin*, reported in AIR 1960 SC 470, while doing so it took in aid of Article 11 of the International Covenants on Civil and Political Rights.

22. The Constitution has conferred upon the Supreme Court and the High Court

the power to interpret the Constitution as also the statutes. Judge made law has come to stay. It is, therefore, not correct to contend that this Court erred in issuing the aforementioned directions pursuant where to the impugned order has been issued.

23. Mr. Sarkar, is also not correct in contending that no provision exists for ban on user of crackers.

24. The 1981 Act defines Air Pollution and Air Pollution in sections 2(a) and 2(b) respectively to mean :

"2(a)--Air Pollutant means 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;

2(b)--Air Pollution means the presence in the atmosphere of any air pollutant."

25. The said expressions are of wide import.

26. The powers and functions of the board under the 1981 Act are contained in chapter-III, section 17(1)(g) of the said Act states :-

"to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft."

27. It may be true that while laying down the standard for the quality of air it might not have consulted with the Central Board but it had issued the impugned order in terms of the directions issued by this Court, and thus, it cannot be said that the State Board had absolutely no power whatsoever in this regard. Furthermore, the petitioner and the association of Manufacturer of Fireworks have submitted themselves to the jurisdiction of the State Pollution Control Board and made known their view points. As noticed hereinbefore, even now other manufacturers have accepted the said decision as also the order impugned in this writ application.

28. Section 18 of 1981 Act to which our attention has been drawn cannot be said to have any application as no contrary directions had been issued by the State Government. In fact, the State Government was a party to the said decision and also took part in the deliberations before the committee.

Section 22 of the 1981 Act reads thus:-

"No person carrying on any industry specified in the Schedule or operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of section 17."

29. As the provision of 1981 Act was not found adequate, the Parliament with a view to provide for the protection and improvement of environment and for matters connected therewith enacted 1986 Act. Environment, Environmental pollutant and Environmental pollution have been defined in sections 2(a), 2(b) and 2(c) respectively, which read thus :-

"Section 2(a)--Environment includes water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.

Section 2(b)--Environmental pollutant means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment.

Section 2(c)--Environmental Pollution means the presence in the environment of any environmental pollutant."

30. Thus, air pollution also comes within the purview of the said Act. It is not also in dispute that gaseous substance emanates from user of fire works and, thus, the same would come within the purview of "environmental pollutant" as the same is injurious to environment.

31. Rule 2(j) of Environment (Protection) Rules, 1986 defines State Board to mean :-

"State Board means a State Board for the Prevention and Control of water Pollution Constituted u/s 4 of the Water (Prevention and Control of Water Pollution) Act, 1974 (6 of 1974) or a State Board for Prevention and Control of Air Pollution constituted u/s 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981)."

32. Rule 3(2) empowers, inter alia, the State Board to specify more stringent standards from those provided under the schedule.

33. It may be noticed that even the National Committee of Noise Pollution Control had considered the Noise Standard of Fireworks as would appear from the minutes of the second meeting of the National Committee on Noise Pollution Control held on 5th September, 1997. Dr. Abirlal Mukherjee, who was a member of the West Bengal Pollution Control Board presented a paper as regard Noise Standard for Fireworks, it was stated : -

"The Chairman suggested that either of the two criteria viz. (i) annoyance, or (ii) hearing impairment, may be adopted for fixing standards for fireworks.

Some members were of the opinion that first criterion may be adopted, as use of fireworks causes annoyance and disturbance to public at large. They stressed that the sound causing fireworks should be immediately banned and they did not agree with the suggestion for phasing out such fireworks over a period of 1-2 years. The Member Secretary, West Bengal Pollution Control Board, informed the members that West Bengal Pollution Control Board has already banned the use of

fireworks causing noise more than 65 dB(A) which was subsequently upheld by the Hon'ble High Court. Calcutta.

Some members were in favour of the second criterion. Reference was made to the draft guidelines prescribed by the Bureau of Indian Standards which stipulate that the noise levels of fireworks should not exceed 100 dB (Impulse) at 4 m. distance. Earlier, an Expert committee set up by CPCB, in 1989, had recommended that the noise levels of fireworks should not exceed 90 dB (Impulse) at 5m. distance.

After detailed discussion, the Committee recommended that noise making fireworks which generate noise more than 100dB (Impulse) at 4m. distance, be phased out within next two years. If any State Board desires to ban such fireworks earlier, they may do so depending on local conditions."

34. The recommendations of the Committee upon which Mr. Sarkar had placed strong reliance is not different from the recommendations of the State Board at 90 dB (Impulse) at 5 m. distance would be the same as 100 dB (Impulse) from 4m. distance.

35. A suggestion had also been made to adopt a mandatory noise levelling practice i.e. prevalent in European Countries since January 1, 1995.

36. Mr. Sarkar, however, has placed before us a draft Rules proposed to be issued by the Central Government in terms of clause (ii] of sub-section (2) of section 3 and section 25 of the Environment (Protection) Act, 1986 read with rule 5 of the Environment (Protection) Rules, 1986. Rule 4 of the said Draft Rules reads thus :-

"The manufacture, sale and use of fire crackers which may cause noise exceeding 125 dB(A) or 145 dB(C) pk, measured at a distance of 4 meters from the source of noise are prohibited."

37. Mr. Sarkar, on his own showing, is not correct in contending that the 1981 Act or the 1986 Act do not contemplate prohibition of user of fireworks. What this Court did was to prohibit user of fireworks and not even manufacture of fireworks as and when rules are published after considering the objections of all concerned including the West Bengal Pollution Control Board, even a manufacturer of fire works can be banned. But the fact remains that only this Court or the State Board fixed the sound limit arising out of bursting of the fire crackers.

38. It has not been disputed nor could be disputed that Noise Pollution comes within the purview of the said Act.

39. Furthermore the principles of res judicata applies in this case, the decision of this Court has been upheld by the Supreme Court specifically. The decision of this Court, therefore merged with the order of the Supreme Court and, thus, it is not possible for this Court to take a different view from what has been expressed in Barrabazar Fire Works (supra). The contention of Mr. Sarkar, therefore, is

rejected.

40. However, as regard the other difficulties which have been pointed out by the petitioner herein as regard transport of fire works outside the State of West Bengal etc., the decision of this Court on Om Birangana Religious Society v. State of West Bengal & Ors.. (CO NO. 4303(W) of 1995) disposed of and shall also govern this case.

This writ petition is disposed of with the aforementioned direction.

R.K. Mitra, J.

41. I agree.

42. Petition disposed of