
(1996) 01 CAL CK 0028
In the Calcutta High Court

Om Birangana Religious Society

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 09-01-1996

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(2), 25, 25(1)

Citation : (1996) 2 ILR (Cal) 404

Hon'ble Judges : Bhagbati Prasad Banerjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bhagbati Prasad Banerjee

1. In this writ application the petitioner, a religious organisation, claims that the respondents should not interfere with the right of user of microphones, loudspeakers, and for amplifying human voice and for amplifying other sounds while playing daily pujas and other religious activities and display of religious songs. The petitioner prayed for a writ in the nature of mandamus commanding the District Magistrate and/or the Sub-Divisional Officer, Ghatal, to accord necessary permission in favour of the said society in terms of Section 34A of the Police Act, 1963, (West Bengal Amendment).

2. The point raised in this writ application is of great public importance and significance.....

3. It is the case of the petitioner that microphones are required by the society during puja performance, arati, nitya puja, etc., and that nobody ever raised any objection to the performance of the aforesaid religious activities in the manner and in the way as had been done, but the Sub-Divisional Officer, Ghatal, directed the petitioner/society not to use any microphone while performing puja and other religious activities without serving any notice in the month of September, 1993.

4. It also appears that the petitioners filed an application before the Sub-

Divisional Officer, Ghatal, on October 11, 1993, so that permission would be granted in favour of the said society for free use of microphones.

5. Similar application was filed by the petitioner before the Circle Inspector of Police, Ghatal, on 17th October, 1993, so that necessary permission may be granted in favour of the said society for the use of the microphones for the aforesaid purpose.

6. The petitioner has alleged inaction on the part of the District Magistrate or the Sub-Divisional Magistrate to deal with and dispose off the petitioner's application for permission to use microphone.

7. Section 34A of the Police Act, 1861, provides power to prohibit, restrict, regulate or impose conditions on the use of microphones, if in the opinion of the Magistrate of the District or any Sub-Divisional Magistrate or a Magistrate of the First Class it is necessary so to do for the purpose of preventing annoyance or injury to health of the public or any section thereof or for the purpose of maintaining public peace and tranquillity, such officer may, by an order, prohibit, restrict or regulate or impose conditions on the use or operation in any area within his jurisdiction or in any vehicle within such area of microphones or loudspeakers or other apparatus for amplifying human voice or for amplifying music and other sounds.

8. Under Sub-section (3) thereof, the police officer not below the rank of Sub-Inspector, may also take such steps or use such force as may be reasonably necessary for securing compliance with any order made under Sub-section (1) and may also take penal action.

9. It is not in dispute that for use of microphones permission is required from the authorities and that the authority, it appears that, is the sole authority to allow or not to disallow and/or to prohibit and/or to restrict, regulate and/or to control the use of microphones.

10. The rights of the petitioner or any association religious or otherwise, cannot be said to be absolute, nor it can be said that the District Magistrate, Sub-Divisional Officer or the police authorities are the absolute authority in the matter of granting of such permission without having any regard to other factors.

11. Article 19(1)(a) provides Fundamental Rights on all citizens to Freedom of Speech and Expression....

12. The freedom of speech and expression of a citizen should not be interfered with save and except in accordance with the provisions of Article 19(2) of the Constitution. It is a matter to consider whether the public arc captive audience or listeners when permission is given for using loudspeakers in public and the person who is otherwise unwilling to bear the sound and/or the music or the communication made by the loudspeakers, but he is compelled to tolerate all these things against this will and health. If permission is granted to use microphones at a louder voice, such a course of action takes away the rights of a

citizen to speak with others, the right to read or the right to know and the right to sleep and rest or to think any matter. Can it be said that a person and/or an organisation simply applying a permission and after obtaining permission is entitled to display loudspeakers from local authorities. Does it concern simply a law and order situation ? Does it not generate sound pollution ? Does it not affect the other known rights of a citizen ? Even if a citizen is ill and even if such a sound may create adverse effect on his physical and mental condition, yet he is made a captive audience to listen.

13. Freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India includes, by necessary implication, freedom not to listen and/or to remain silent. One cannot exercise his right at the cost and in total deprivation of others' rights. A right cannot be conferred by the authorities concerned upon a person or a religious organisation to exercise their rights suspending and/or taking away the rights of others.

14. In this connection, Mr. Samanta, learned Counsel appearing on behalf of the petitioner, submitted that right to propagate religion is guaranteed under Article 25 of the Constitution. Article 25(1) of the Constitution provides that subject to public order, morality and health and to other provisions of Part-III of the Constitution, all persons are equally entitled to freedom of conscience, and that right to freely profess, practise and propagate religion.

15. It is well-settled that the right to propagate one's religion means the right to communicate a person's belief to another or to expose the tenets of that faith. The question is whether the right to propagate religion includes the right to use loudspeakers and microphones for the purpose of chanting religious tenets or religious texts and/or the indiscriminate use of microphones or loud-speakers during religious performance in the society.

16. Freedom of speech is guaranteed to every citizen so that he may reach with the winds of willingness and not coerced unwillingness.

17. There cannot be any dispute that sound is a known source of pollution. The adverse and ill effect of sound on human body is also known. It has a tremendous impact on the nervous system of human being.

18. The American Supreme Court in the case of *Ward v. Rock Against Racism*, 491 US 781, upheld the city regulations designed to regulate the volume of excessively amplified music at the Naumberg Acoustic Bandshell in New York City's Central Park to protect those who use a quiet, recreational area of the park called the Sheep Meadow and also to protect residence in Central park West area.

19. In this case, the American Supreme Court rejected the challenge to these city noise regulations.

20. The religion that has been performed by the petitioner and others, is nothing new, but the same is there for several centuries. It cannot be said that the

religious teachers or the spiritual leaders who had laid down these tenets, had any way desired the use of microphones as a means of performance of religion. Undoubtedly, one can practise, profess and propagate religions, as guaranteed under Article 25(1) of the Constitution, but that is not an absolute right. The provisions of Article 25 is subject to the provisions of Article 19(1)(a) of the Constitution. On true and proper construction of the provisions of Article 25(1), read with Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require.

21. Amplifier and microphone create tremendous noise and sounds which may travel at least half to one kilometre away. Having regard to the provisions of Article 19(1)(a) of the Constitution, it cannot be said that the District Magistrate, Sub-Divisional Officer and the police authorities are the sole authority who can grant at will permission without having any regard to the fundamental rights of the fellow citizens. Such authorities, by granting permission to display microphone, cannot make the public the captive listeners. The citizens have a right to enjoy their lives in the way they like, without violating any of the provisions of the law. A citizen has a right to leisure, right to sleep, right not to hear and right to remain silent. He has also the right to read and speak with others. Use of microphones certainly takes away the right of the citizens to speak with others, their right to read or think or the right to sleep. There may be heart patients or patients suffering from nervous disorder may be compelled to bear this serious impact of sound pollution which has had an adverse effect on them. It may create health problems.

22. Pollution is a factor which has now a prime importance in the modern society. The effect of sound on human bodies is very serious.

23. Accordingly, no authority would grant permission to use microphones without having any regard to the rights of the fellow citizens or the people of the area. Such a sound pollution cannot be altogether stopped, but the sound level has to be reduced in such a manner and in such a form so that the sound may not travel beyond a certain limit, as for example, in a public meeting microphones or amplifiers may be necessary so that the listeners may hear the speeches delivered by the leaders and for that purpose the sound has to be regulated in such a manner so that it may not travel beyond a reasonable limit and/or such a sound cannot be allowed to travel beyond the zone in which the listeners are there.

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 organisation can be allowed to use microphones at a high noise level or without any volume control.

25. So far as right of religious organisations to use loud-speaker 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.

26. The Supreme Court in the case of Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others, , has considered the aspect of the matter that Article 19(1) confers various rights specified therein from (a) to (g) of the said Article for the citizen. The right under Article 25 of the Constitution is subject to the rights of Article 10. This case is the clear authority for the proposition that while exercising a right under Article 25 no person can interfere with, take away or abridge the right of a citizen guaranteed under Article 25(1) of the Constitution.

27. Any provision of law authorising the police and/or the administration to grant permission for using of loud-speaker cannot be absolute, uncontrolled and independent of constitutional rights. All laws in this behalf are subject to the provisions of Article 19 of the Constitution as there cannot be any law which may interfere with abridge or take away the right as guaranteed under Article 25(1) of the Constitution save and except the provisions laid down in Article 19(2) of the Constitution. Use of loud-speaker cannot be said to be a reasonable restriction on the freedom of speech and expression. Even Article 25 of the Constitution grants freedom of conscience and expression. Freedom of conscience is followed up by the right to freely profess, practice and propagation of religion. Use of loud-speaker emanates noise which is not only a nuisance, but also a pollution.....

28. In West Bengal there is an authority known as "West Bengal Pollution Control Board". The tremendous sound and/or noise emanate from use of loud-speaker has to be controlled by all means in as much as use of such loud-speaker and/or microphones is a serious threat to public life and health.

29. Accordingly, it must be held that powers of the Police, District Magistrate or Sub-Divisional Officers to grant permission to use microphones is subject to certain restrictions and conditions which are necessary in order to protect and preserve a very fundamental right of citizen under Article 25(1) of the Constitution of India on the following terms :

(a) The Pollution Control Board shall maintain noise level registers for measuring the level of noise;

(b) The said authority shall indicate the level of noise which could be permitted by use of microphones on any occasion;

(c) Powers of the District Magistrates, Sub-Divisional Officers and other authorities are subject to any direction and/or conditions imposed by the West Bengal Pollution Board;

(d) The person or persons or any business house dealing with or letting or selling

the micro-phones/ loudspeakers and the operating apparatus shall be bound to seal the volume and the noise level according to the directions of the Pollution Control Board, before letting or parting with or selling such apparatus for any purpose. In default thereof, they should not be permitted to deal with such items. For this purpose, the Pollution Control Board shall issue directions from time to time in this behalf;

(e) Loud-speakers should not be allowed to operate in the streets between 9 p.m. in the evening and 7 in the following morning for any purpose at any time including for the purpose of advertisement of any entertainment, trade or business. However, this restriction shall not operate in respect of loud-speakers operating by the police, Ambulance or Fire Brigade in the exercise of any of the functions or by local authority within its area and for making announcement or making a declaration or giving some information which is necessary to the public subject to such level of volume as specified by the West Bengal Pollution Control Board;

(f) If a loud-speaker is in or fixed to a vehicle is operated solely for entertaining or communicating to the driver or passenger of the vehicle or for giving warning to other traffic and so operated without causing any annoyance to any person of the vicinity;

(g) For communicating with persons on a vessel for the purpose of directing them movement of that or any other vessel;

(i) If the loud-speaker forms part of a public telephone system;

(j) So far as use of micro-phones and/ or loud-speakers by any religious organisation or at any religious place or for the use of religious communication it should also be used solely for the purpose of communicating the speeches and/or religious teachings and/or tenets to the persons who have attended such functions and so operated does not to give reasonable cause for annoyance to any person in the vicinity.

30. The volume and noise level should be approved by the West Bengal Pollution Control Board and the same should be enforced by the police and the administration. So far as public meeting is concerned, the same should be used in such a manner and with such a volume which should not exceed the level fixed by the Pollution Control Board which should be treated as registered level and the volume may be regulated in such a fashion so that it may reach to all persons who join in the meeting in a particular area and not beyond that. It should not be operated in such a manner so as to give reasonable cause of annoyance to the persons in the vicinity.

31. Before granting any permission the purpose of use of microphones and/or loud-speakers and the area where such machines would be fitted, the police authorities will inspect and seal the noise level in that particular micro-phones apparatus so that on no occasion the noise level exceeds the fixed and registered

noise level. A noise level register should be maintained by the West Bengal Pollution Control Board under the control and supervision of the Member-Secretary. The Member-Secretary of the West Bengal Pollution Control Board or any other person authorised by him is given liberty to enter in any place with the help of police for the purpose of ascertaining whether the noise level has exceeded the registered noise level fixed by the said Noise Control Board, and if it is found that there was any contravention, the police will immediately seize and confiscate such loud-speakers and start necessary case for causing nuisance and/or annoyance in accordance with the provisions of law so that the offenders may not go unpunished. All concerned authorities including the State Government and its officers must remember that it is restriction of noise level is necessary in the interest of public health and is a matter not to be ignored in as much as ultimately this unregulated noise will cause a threat to the life and health of the people of the State and it is the duty of the State to preserve and protect the liberty of thought and expression and/or freedom of speech and expression as guaranteed under Article 25(1) of the Constitution of India and by indiscriminating and unregulated use of microphones people of the vicinity cannot be kept as mere captive listeners and their rights cannot be forcibly suspended by any people or organisation simply on the basis of administrative order obtained from the public authority by indiscriminate use of microphones or loud-speakers. It should be the endeavour of the State Government to preserve and protect fundamental rights of citizens, otherwise the said fundamental right as guaranteed under Article 25(1) of the Constitution will become mere a lip service to the people. These conditions and restrictions should be imposed rigorously throughout the State and within a period of two months from the date of communication of this order and the Member-Secretary of the West Bengal Pollution Control Board shall submit a report to this Court about the compliance and steps taken in the matter in respect of the aforesaid order. The writ petition is thus disposed of with the mandatory directions.

32. Following these guidelines the Respondent concern shall grant permissions to use loud-speakers to the petitioner according to law.

33. Let a copy of the order be forwarded to the Hon. Secretary, Government of West Bengal, who is required to forward copies of this order to all the District Authorities including the District Magistrates, Sub-Divisional Officers, Superintendents of Police as also the Commissioner of Police, Calcutta, so that they may discharge their duties in this regard in respect of use of microphones/loudspeakers in this State.

34. Let a copy of this order be forwarded to the member-Secretary, West Bengal Pollution Control Board, 10 Camac Street, Calcutta, for taking necessary steps and complaints.

35. The Registrar, Appellate Side, of this Court is also directed to forward copies of this order to the Calcutta Doordarshan and the All India Radio at Calcutta as this a matter of great public importance for regular announcement through their

media so that everybody shall know their duties and obligations in respect of use of microphones/loud-speakers.