

CASE NO.:
Appeal (civil) 4533 of 2004

PETITIONER:
Sheikh Ikram Sheikh Israil & Ors

RESPONDENT:
State of Maharashtra & Ors

DATE OF JUDGMENT: 12/04/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court.

Background facts in a nutshell are as follows:

Appellants are residents of Bhandara since the time of their forefathers. They are engaged in the business of manufacturing brass utensils. Undisputedly they carry on the same business in their respective houses.

On 18.7.2003 the Superintendent of Police, Bhandara issued notices to the appellants directing them to stop their business within two days from the date of receipt of the order, failing which suitable legal action would be taken. The reasons disclosed in the notice were that in the process of preparing brass utensils, noise pollution is created which affects the neighbours, teachers and students around and nearby the houses of the appellants. The appellants took the stand that they were in business before the opening of the school in the vicinity of their houses and there cannot be any complaint of noise pollution against them. On that basis the writ petition was filed impugning order of the Superintendent of Police. Reply affidavit was filed by the said Superintendent of Police as respondent No. 3 in the writ petition indicating that the mechanical power is used in the production of brass utensils as it facilitates pressing, embossing, spinning, cutting and buff polishing. It was stated that because of the aforesaid activities noise pollution in the vicinity is caused and the area being thickly and densely populated area, it was causing annoyance in addition to noise pollution. The Superintendent of Police had called for a report from the Maharashtra Pollution Control Board, Nagpur (in short the 'Board') who had also suggested that the noise level in the area is very high and amounted to nuisance.

In view of the above position, the writ petition was dismissed.

In support of the appeal learned counsel for the appellants submitted that the noise pollution level was low and there was marginal variation and, therefore, the notice issued by the Superintendent is without any basis.

Learned counsel for the State of Maharashtra, the Board and the applicants for intervention supported the order. It appears that earlier a writ petition was filed in the Nagpur Bench of the High Court. In that case applications for interventions were filed on behalf of the school and some local residents. The writ petition was disposed of granting liberty to the parties to place the materials in support of their respective stands before the concerned authorities. The Noise Pollution (Regulation and Control) Rules, 2000 (in short the 'Rules') have been framed in exercise of powers conferred by clause (ii) of sub-section (2) of Section 3, sub section (1) and clause (b) and sub Section (2) of Section 6 and Section 25 of the Environment (Protection) Act, 1986 (in short the 'Environment Act') read with Rule 5 of the Environment Protection Rules, 1986 (in short the 'Environment Rules').

Rules 3, 4 and 6 of the Rules read as follows:

"(3) Ambient air Quality standards in respect of noise for different areas/zones

1) The ambient air quality standards in respect of noise for different areas/zones shall be such as specified in the schedule annexed to these rules.

2) The State Government may categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.

3) The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.

4) All development authorities, local bodies and other concerned authorities while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.

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

4) Responsibility as to enforcement of noise pollution control measures:-

1) The noise levels in any area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the schedule

2) The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.

6) Consequences of any violation in silence zone/area :-

Whoever, in any place covered under zone/area commits any of the following offence, liable for penalty under the provisions of the Act :-

(I) Whoever, plays any music or used any sound amplifiers,

(ii) whoever, beats a drum or tom-tom or blows a horn either musical or pressure, or trumpet or beats or sounds any instrument, or

(iii) whoever, exhibits any mimetic, musical or other performances of a nature to attract crowds."

In the Gazette of India : Extraordinary (Part II) it has been notified as under:

Ambient Air Quality Standards in respect of Noise.

Area		
Code		
Category of area/zone		
Limit in db(A) leq*		
Day Time	Night Time	
A		
Industrial Area		
75	70	
B		
Commercial Area		
65	55	
C		
Residential Area		
55	45	
D		
Silence Zone		
50	40	

Note:- 1. Day time shall mean from 6.00 a.m. to 10 p.m.
 2. Night time shall mean from 10.00 p.m. to 6.00 a.m.
 3. Silence zone is defined as an area comprising not less than 100 metres around hospitals, educational institutions and courts. The silence zones are declared as such by the competent authority.
 4. Mixed categories of areas may be declared as one of the four above mentioned categories by the competent authority.
 *. dB(A) Leq denotes the time weighed average of the level of sound in decibels on scale A which is relatable to human hearing.
 A "decibel" is a unit in which noise is measured.
 "A" in dB(A) Leq. Denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human hearing.
 Leq: It is an energy mean of the noise level over a specified period.

The Government of Maharashtra also has empowered the concerned authority for prohibiting the continuance of music or noise and the power includes prevention, prohibition, control or regulation of the carrying on in/or upon any premises of trade, avocation or operation or process resulting in/or attended with noise.

Learned counsel for the appellant submitted that they should be given an opportunity to reduce the noise level and remedial measures can be taken and suggestions in this regard shall be placed for consideration of the authorities.

In the circumstances we direct that the appellants are permitted to give a concrete proposal as to how they shall ensure sticking of the norms within two months. The proposal shall be dealt with a decision to be taken within three months.

The appellants may, if so advised, and as contended move the authorities for making available alternative site. The feasibility by such a request shall be duly considered by the authorities.

For a period of three months the interim orders, passed by this Court on 15.12.2003, shall be continued. By giving this interim protection it shall not be considered as if we have expressed any opinion on the merits of the case.

The appeal is accordingly disposed of. No costs.

JUDIS