

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 10TH DAY OF MARCH 2020 / 20TH PHALGUNA, 1941

WP(C).No.7195 OF 2020(Y)

PETITIONERS:

- 1 T. SASIDHARAN NAIR
AGED 72 YEARS
SARASWATHY BHAVAN, KAVALAKULAM, NILAMELWARD, RC
STREET, NEYYATTINKARA P. O., THIRUVANANTHAPURAM, PIN
- 695 121.
- 2 SARASWATHY AMMA
SARASWATHY BHAVAN, KAVALAKULAM, NILAMELWARD, RC
STREET, NEYYATTINKARA P. O., THIRUVANANTHAPURAM, PIN
- 695 121.

BY ADVS.

SRI.V.G.ARUN (K/795/2004)
SMT.V.JAYA RAGI
SRI.NEERAJ NARAYAN
SRI.R.HARIKRISHNAN (KAMBISSERIL)

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE SECRETARY , HOME AFFAIRS
DEPARTMENT, THIRUVANANTHAPURAM - 695 001.
- 2 CHAIR PERSON
STATE POLLUTION CONTROL BOARD, PATTOM,
THIRUVANANTHAPURAM, PIN - 695 004.
- 3 THE DISTRICT COLLECTOR
2ND FLOOR, CIVIL STATION BUILDING, CIVIL STATION
ROAD, THIRUVANANTHAPURAM, KERALA - 695 043.
- 4 THE REVENUE DIVISIONAL OFFICER
1ST FLOOR, KUDAPPANAKUNNU, THIRUVANANTHAPURAM, KERALA
- 695 043.
- 5 SUB INSPECTOR OF POLICE
NEYYATTINKARA, KATTAKADA ROAD, ALUMOODU,
NEYYATTINKARA, THIRUVANANTHAPURAM, KERALA, PIN - 695
121.

- 6 SUPERINTENDENT OF POLICE (RURAL)
PATTOM PALACE S. O., THIRUVANANTHAPURAM, PIN - 695
004.
- 7 DIRECTOR GENERAL OF POLICE
POLICE HEAD QUARTERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN - 695 010.
- 8 AMALOLBHAVAMATHAVU CHURCH
REPRESENTED BY VICAR OF THE CHURCH, KAVALAKULAM,
NILAMEL WARD, RC STREET, NEYYATTINKARA P. O.,
THIRUVANANTHAPURAM, PIN - 695 121.

SRI.K.J.MANU RAJ, GOVT.PLEADER, SRI.T.NAVEEN,SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.03.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

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WP(c) NO. 7195/2020

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Dated this the 10th day of March 2020

JUDGMENT

The case set up in this WP(c) are as follows: That the petitioner is aggrieved by the unauthorised use of loudspeakers at impermissible hours by the 8th respondent in the alleged premise for conducting prayer in a religious establishment. The petitioner has filed various representations before the respondents No.1 to 7 on several occasions vide Ext.P1 to P6 and P9 representation but there is no positive steps taken from the side of above said official authorities. The said unauthorized use of the loud speakers by the 8th respondent is against the spirit of **Circular No.U6-30380/2002, dated 28/11/2002** and the dictum laid down by this Court as well as the Apex Court.

2. It is in the light of these averments and contentions, the petitioner has filed this instant writ petition (civil) with the following prayers.

(I) Issue a writ of mandamus or any other writ, order or direction directing the respondents No.1 to 7 to take action to prevent the 8th respondent from continuing the illegal usage of microphones and loudspeakers flouting rules and regulations.

(ii) Issue a writ of mandamus or any other writ, order or direction directing the 7th respondent to consider the Ext.P8 representation with a time frame

prescribed by this Court.

3. Heard Sri.V.G.Arun, learned counsel appearing for the petitioner and Sri.K.J. Manuraj, learned Government Pleader appearing for the R1, R3 to R7, and Sri. T. Naveen, learned standing counsel appearing for the Kerala State Pollution Control Board, appearing for R2. In the nature of the orders proposed to be passed, notice to R8 will stand dispensed with.

4. The complaint of the petitioner is that, under the guise of religious worship, high level of noise pollution is created by the extreme use of loudspeakers and sound amplification of the 8th respondent Church and and that though the petitioner has approached various authorities concerned for ensuring effective redressal of grievances in that regard, so far none of the authorities have cared to consider and take appropriate action thereon. According to the petitioner, he has submitted, Ext.P4 complaint/petition dated 30/09/2019 before the 3rd respondent District Collector and has now submitted Ext.P8 submission before the 7th respondent Director General of Police, but that no effective action is forthcoming from any of those officers concerned.

5. Counsel for the petitioner has pointed out that as per the mandate contained in Rule V of the Noise Pollution (Regulation and Control) Rules framed under the provisions of the Environment Protection

Act 1996 read with Rule V of the Environment Protection Rules 1996, the following restrictions have been made on the use of loudspeakers.

(I) A loudspeaker or a Public address system shall not be used except after obtaining written permission from the authority.

(ii) 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, eg. Auditorium, conference rooms, community halls and banquet halls.

6. Further that, as per circular No.U6-30380/2002, dated 28/11/2002 which was issued by the Home Department of Kerala, in pursuance to the Noise Pollution (Regulation and Control) Rules, 2000 the users of microphones should get a license from the concerned Taluk authorities.

7. It has also been held in a catena of cases as in the cases as in ***Church of God (Full Gospel) Vs KKR Majestic Colony Welfare (AIR 2000 SC 2773)***, ***Acharya Maharajshri NarendraPrasadji Anand Prasadji Maharaj and Others Vs The State of Gujarat and Others, [1975 (1) SCC 11]***, ***PA Jacob Vs. Superintendent of Police, Kottayam, (AIR (1993 (Kerala) 1)*** that illegal and unauthorized use of loudspeakers in religious establishments at the expense of peaceful life of the people of the locality is violative of the right

prescribed under Article 21. Further it is pointed out in **Section 77(1) of the Kerala Police Act 2011**, the powers of the District Police Chief concerned to prevent nuisance, harm, odium damage or risk to the public or to any person residing in an area, if satisfied, is necessary to issue special or general directions for preventing or regulating in any street, open space or any other building, any vocal or instrumental music or speech, any sound caused by the use in any manner whatsoever of any instrument or contrivance which is capable of any trade, vocation or activity which creates or causes any sound or noise. Further **section 77** of the Kerala Police Act provides as follows:

(1) the District Police Chief may, in order to prevent nuisance, harm, odium damage or risk to the public or to any person residing in an area, if satisfied, is necessary to issue special or general directions for preventing or regulating in any street, open space or any other building.

(a) Any vocal or instrumental music or speech

(b) Any sound caused by the use in any manner, whatsoever of any instrument or contrivance which is capable of any trade, vocation or activity which creates or causes any sound or noise.

(2)The District Police Chief may either on his own motion or on the application of any person aggrieved by an order made under sub-section (1) rescind, modify or alter any such order.

8. Further Rule 2(c) of the Noise Pollution (Regulation and Control) Rules 2000 framed under the enabling provisions contained in the Environmental Protection Act, 1986 defines authority as follows:

“authority means and includes any authority or officer authorized by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer not below the rank of the Deputy Superintendent of Police designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force”

9. Rule 7 of the said Rules deals with complaints to be made to the said authority and the same provides as follows:

Complaints to be made to the authority. —

(1) A person may, if the noise level exceeds the ambient noise standards by 10 d b (A) or more given in the corresponding columns against any area/zone¹⁵ [or, if there is a violation of any provision of these rules regarding restrictions imposed during night time], make a complaint to the authority.

(2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.

10. Rule 8 confers power to prohibit continuance of sound, noise etc.

Power to prohibit etc. continuance of music sound or noise.

(1) If the authority is satisfied from the report of an officer in charge of a police station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating:—

(a) the incidence or continuance in or upon any premises of—

(i) any vocal or instrumental music,

(ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, public address system, application or apparatus or

contrivance which is capable of producing or re-producing sound, or

(b) the carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

(2) The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order: Provided that before any such application is disposed of, the said authority shall afford to the applicant and to the original complainant, as the case may be an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.

11. Further the State Government has issued notification as per GO(P) No.111 of 2002 dated 29/07/2002, whereby in exercise of the powers conferred under Rule 2(c) of the above said Rules, the State Government has designated District Magistrates, Commissioners of Police, Superintendents of Police and Dy. Superintendent of Police (sub divisional Officers) as authorities under the above said Rules for maintenance of ambient quality standards in respect of noise pollution within the respective jurisdiction of the State. It appears that the petitioner has now preferred complaint as per Exts.P3 and P4 complainants before the 3rd respondent District Collector and Ext.P8 petition has been preferred by the petitioner before the 7th respondent Director General of Police. In response to Ext.P5 petition dated 03/10/2020 submitted earlier by the petitioner before the Hon'ble Chief Minister, the 6th respondent District

Police Chief has issued Ext.P7 letter dated 14/12/2019, which reads as follows:

"ടി പരാതിയെ തുടർന്ന് നെയ്യാറ്റിൻകര ടി.വൈ.എസ്.പി സ്ഥലം സന്ദർശിക്കുകയും പള്ളി ഭാരവാഹികളോട് ടി ഉച്ചഭാഷിണികൾ മാറ്റുവാൻ നിർദ്ദേശിക്കുകയും ചെയ്ത പ്രകാരം ടി കുരിശടിയിൽ സ്ഥാപിച്ചിരുന്ന ഉച്ചഭാഷിണികൾ നീക്കം ചെയ്യുകയും പകരം നിയമാനുസരണം ഉള്ള നാല് ബോക്സുകൾ സ്ഥാപിക്കുകയും ചെയ്തിട്ടുള്ളതാണ്. 4 ബോക്സിൽ നിന്നും ദിവസവും കൃത്യമായ ഇടവേളകളിൽ ആറ് പ്രാവശ്യം മൂന്ന് മിനിട്ട് ദൈർഘ്യമുള്ള ബെല്ലോടു കൂടിയ പ്രാർത്ഥനയാണ് ക്രമീകരിച്ചിരിക്കുന്നത് എന്ന് പള്ളി ഭാരവാഹികളോടും കുരിശടി സമീപം താമസിക്കുന്നവരോടും അന്വേഷിച്ചതിൽ അറിയാൻ കഴിഞ്ഞിട്ടുള്ളത്. ടി ബോക്സുകളിൽ നിന്നു വരുന്ന ശബ്ദം വളരെ കുറഞ്ഞ ആവൃത്തിയിൽ ആണെന്നും മുൻപുണ്ടായിരുന്ന ശബ്ദംപോലും ഇല്ലായെന്നും ടി കുരിശടി സമീപം താമസിക്കുന്നവർ പറഞ്ഞിട്ടുള്ളതും ആണ് എന്ന വിവരം ഐ ഒ ബി നെയ്യാറ്റിൻകര റിപ്പോർട്ട് ചെയ്തിരിക്കുന്നു."

12. The petitioner would point out the factual aspects narrated in Ext.P7 are incorrect and wrong and does not reflect the real scenario and that the 8th respondent Church is using loudspeakers and high sound amplification mechanisms, which is creating high levels of noise pollution to the nearby residents like the petitioner etc. It is for the petitioner to file appropriate complaint/petition in that regard before the 6th respondent Superintendent of Police, who is the District Police Chief of the area concerned and the 6th respondent may examine whether the said petition/representation discloses a complaint as conceived in Rule 7 of the Noise Pollution (Regulation and Control) Rules 2000 and Section 77 of the

Kerala Police Act, 2011 and in that regard, surprise inspection may be conducted by the sub ordinate official so as to ascertain whether noise pollution is generated during the church worship activities of the 8th respondent and thereafter, the 6th respondent may afford reasonable opportunity of being heard to the petitioner and the 8th respondent and then may take a considered decision thereon in accordance with law and in the light of the above said statutory provisions without much delay, preferably within a period of 6 weeks from the date of submission of such complaint/petition to be filed by the petitioner along with a certified copy of this judgment.

13. Registry will forward, copy of this judgment to the 8th respondent for necessary information, at the cost of the petitioner.

With these observations and directions, the above WP(c) will stand disposed of.

sd/-

ALEXANDER THOMAS

JUDGE

Nsd
//true copy//
PA to Judge

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF REPRESENTATION DATED
17.6.2019 SUBMITTED BY THE PETITIONERS
BEFORE THE 5TH RESPONDENT.
- EXHIBIT P2 A TRUE COPY OF REPRESENTATION DATED
23.7.2019 SUBMITTED BY THE PETITIONER
BEFORE THE 6TH RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF REPRESENTATION DATED
23.7.2019 SUBMITTED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.
- EXHIBIT P4 THE TRUE COPY OF THE COMPLAINT FILED BEFORE
THE 3RD RESPONDENT DATED
- EXHIBIT P5 TRUE COPY OF THE REPRESENTATION SUBMITTED
BEFORE THE CHIEF MINISTER OF KERALA DATED
3.10.2019.
- EXHIBIT P6 TRUE COPY OF REPRESENTATION DATED
13.10.2019 BEFORE THE POLLUTION CONTROL
BOARD.
- EXHIBIT P7 TRUE COPY OF COMMUNICATION DATED 14.12.2019
ISSUED BY SUPERINTENDENT OF POLICE,
THIRUVANANTHAPURAM.
- EXHIBIT P8 TRUE COPY OF THE REPRESENTATION DATED
02.03.2020.