

# N.Shaw Nawaz Khan vs The Home Secretary on 28 August, 2019

Equivalent citations: AIRONLINE 2019 MAD 1516

Bench: S.Manikumar, Subramonium Prasad

W.P.No.21744 of 20

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2019

Coram

The Honourable Mr.Justice S.MANIKUMAR  
and  
The Honourable Mr.Justice SUBRAMONIUM PRASAD

W.P.No.21744 of 2017  
and W.M.P.No.22752 of 2017

N.Shaw Nawaz Khan .. Petitioner  
vs.

1. The Home Secretary,  
Government of Tamil Nadu,  
Secretariat, Fort St.George,  
Chennai – 600 009.
2. The Director General of Police,  
O/o Director General of Police,  
Rajaji Salai, Mylapore, Chennai – 600 004.
3. The Superintendent of Police,  
Pollachi, Coimbatore Rural District.
4. The Additional Superintendent of Police (Crime),  
Pollachi, Coimbatore Rural District. .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus forbearing the respondents from in any manner seizing or confiscating the sound emission equipments belonging to the Mosques without examining the decibel levels of such sound emission equipments and further forebear the respondents from in any manner interfering or

<http://www.judis.nic.in>

disturbing or infringing the rights of the Mosques to call for prayer for five times daily in accordance to their timings through the sound emission system within the permissible limits as mandated under the Noise Pollution (Regulation and Control) Rules 2000.

For Petitioner : Mr.R.Abdul Mubeen

For Respondents : Mr.E.Manoharan  
Additional Government Pleader  
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ORDER

Instant writ petition is filed seeking a Writ of Mandamus forbearing the respondents herein from in any manner seizing or confiscating the sound emission equipments belonging to the Mosques without examining the decibel levels of such sound emission equipments and further forebear the respondents from in any manner interfering or disturbing or infringing the rights of the Mosques to call for prayer for five times daily in accordance to their timings through the sound emission system within the permissible limits as mandated under the Noise Pollution (Regulation and Control) Rules 2000.

2. Petitioner submitted that he is the President of Pollachi Aikkiya Jamath, Pollachi and that pursuant to the orders <http://www.judis.nic.in> passed by this Court in W.P.No.5871 of 2016, and in full obedience to the orders passed by this Court to maintain the decibel levels of the loud speakers in the Mosques during the call for prayers which is a mandatory duty for the Muslims every day for five times, they have been educating all the Mosques in and around Pollachi, Valparai, Kinathukadavu Taluk to maintain the decibel levels within the permissible limits as directed by this Court.

3. Petitioner further submitted that while so, they convened a meeting with all the custodians of Mosques in their district and instructed them to give a call for prayer (Azan) five times daily within the prescribed limit of emission of sound as mandated under the Noise Pollution (Regulation and Control) Rules 2000.

4. Petitioner further submitted that subsequent to the orders of this Court and to comply with the directions of the Hon'ble Supreme Court, all the Mosques in their District were inspected by a Sound Engineer expert and subsequently the sound emission system was adjusted to the permissible limits through the sound control equipments. <http://www.judis.nic.in>

5. Petitioner further submitted that as on date the emission of sound for two minutes to call for prayers each time for five times daily is well within the parameters prescribed under the Noise Pollution (Regulation and Control) Rules 2000.

6. Petitioner further submitted that the call for prayer for five times daily runs around 10 minutes out of the entire day and further it is an essential religious practice which is mandatory to be followed and due to development and increase in population, it has become necessary that we use amplifiers and loud speakers to give a call for prayer for five times daily. It is pertinent to note that the sound emitted to the call for prayer is from the highest pedestal of the Mosque (Minaret) which is more than 15 meters from the ground level. Therefore it is accepted truth that the emission of sound from a place which is 15 meters height from the ground level does not cause Noise Pollution violating the Pollution Control Rules. They have taken the services of Sound engineering experts and they have also opined the same.

<http://www.judis.nic.in>

7. Petitioner further submitted that it is further pertinent to note that the call for prayer should not be a formality but the call should reach all the houses to make them pray before God. Hence this being an essential religious practice, they are guaranteed with the right under Articles 25 and 26 of the Constitution of India. It is further submitted that the Mosques do not intend to disturb the peace and tranquillity in the Society and further the Petitioner once again reiterate that the Mosque do not conduct prayers through such speaker which is audible sound outside but only call for prayer which lasts only for two minutes every time in a day for five times prayers.

8. Petitioner further submitted that while so, the 3rd Respondent through its subordinates have raided the Mosques and seized the speakers without any reason. Petitioner further submitted that when they questioned such acts of the 3rd Respondent, the 3rd Respondent replied that the 3rd Respondent is acting in compliance to the orders of this Court. Petitioner further submits that the they had sought for information under the Right to Information Act about the list of cases registered against the Mosque in Pollachi Taluk. <http://www.judis.nic.in> Petitioner further submitted that the 4th Respondent listed out the cases registered against the Mosques. Petitioner, further submitted that the action initiated by the 3rd and 4th Respondents is arbitrary and illegal for the sole reason that the loud speakers were not checked as to whether the emission of sound is beyond the permissible limits as mandated under the rules.

9. Petitioner further submitted that the 3rd and 4th Respondents have misread the order dated 21.11.2016, passed by this Court and therefore they are indulging in rampant seizure of the loud speakers without even measuring the emission of sound. Petitioner further submitted that the Hon'ble Supreme Court in its decision in Re Noise Pollution reported in 2005 (5) SCC 733 has framed certain guidelines and directions, wherein, in respect of the loud speakers the Hon'ble Supreme Court has ordered that the State shall make provision for seizure and confiscation of loud speakers, amplifier and such other equipment as are found to be creating noise beyond the permissible limits. Petitioner further submitted that from the decision of the Hon'ble Supreme Court <http://www.judis.nic.in> it is crystal clear that only after subjectively satisfying itself that the emission of sound is beyond permissible limits, the law enforcing agency shall initiate action to seize such equipments. However, the 3rd and 4th respondents are indulging in rampant seizure of the loud speakers from the Mosques in their Taluk and other districts without verifying as to whether the decibel levels are within the permissible limits through a sound measuring equipments.

10. Aggrieved by such acts of the 3rd and 4th respondents, petitioner has filed the instant writ petition for the relief stated supra.

11. When this matter came up for hearing on 16.08.2017, this Court passed the following order:

“In this writ petition, the petitioner has sought orders in the nature of writs restraining the respondents from seizing or confiscating the sound emission equipment belonging to the Mosques without examining the decibel levels of such sound emission equipment.

2. The petitioner has also sought orders <http://www.judis.nic.in> restraining the respondents from interfering or disturbing or infringing the rights of the Mosques to call the faithful for prayers five times a day through the sound emission system within the permissible limits as mandated under the Noise Pollution (Regulation and Control) Rules, 2000.

3. There can be no doubt that freedom of religion is a fundamental right and religious practices that do not contravene the laws of the land ought not generally be interfered with.

4. The custom of calling the faithful for prayers five times a day which has long been in existence has become an essential part of the religious practice in Mosques. However, this practice, as admitted by the petitioner, has to be as per the law and within the limits of decibel levels.

5. No person, whatever be the religion, whether he be a Mohammedan, a Hindu, a Christian or of any other religion, has any inherent right to use the microphone which exceeds the decibel limits imposed by the statutory Noise Pollution (Regulation and Control) Rules, 2000. The laws as laid down by the Hon'ble Supreme Court and the High Courts have to be complied with. The <http://www.judis.nic.in> authorities are duty bound to prevent the breach of pollution laws.

6. The petitioner has not given instances of seizure of loud speakers which were within the decibel level as alleged in the writ petition.

In the absence of particulars, no blanket order can be passed. Individual wrongful seizures, if any, would necessarily have to be challenged by those aggrieved on the ground of illegality. A blanket order as prayed for, would not be appropriate in the absence of particulars of the alleged seizure.

7. On the prayer made on behalf of the learned counsel appearing for the petitioner, liberty is given to the petitioner to file an affidavit in this Court furnishing the particulars of alleged illegal actions/seizure of sound emission equipment and/or interference with the rights of Mohammedans to pursue the long standing religious custom of calling the faithful for prayers five times a day. Such an affidavit be filed by 1st September, 2017.

8. List on 04.09.2017.”

12. Subsequently, when the matter came up for further hearing on 22.08.2019, we passed the following Order:

<http://www.judis.nic.in> “At paragraph No.5 of the order made in W.P.No.5871 of 2016, dated 21.11.2016, a Hon'ble Division Bench of this Court, has placed on record the submission of learned Additional Advocate General that, in terms of judgment of the Hon'ble Supreme Court, necessary government orders, would be issued.

2. Mr.E.Manoharan, learned Additional Government Pleader, is directed to ascertain as to whether Government have issued any such order.

3. Post on 26.08.2019.”

13. In compliance to our direction made on 22.08.2019, Mr.E.Manoharan, learned Additional Government Pleader filed Official Memorandums dated 10.08.2016 and 19.08.2019 issued by the Director General of Police, second respondent herein. The said Memorandums are extracted as under:

“Rc.No.27702/Genl.1/2016 Office of the Director General of Police, Chennai – 600 004.

Dated:10.08.2016 MEMORANDUM Sub:- Police - Ban of Cone / Horn type loud speakers -

Ban on the usage of Cone/Horn type loud speakers <http://www.judis.nic.in> in religious and non-religious institutions - Instructions reiterated - Regarding. Ref:- 1. G.O. (Ms) No. 3485, Hortie (Pol IV) Department, Dated 29.12.1977.

2. Judgement of the Hon'ble High Court Madras in “M.S. Appa Rao (Vs) The Government of Tamil Nadu and others” [W.P.No. 12165/1985 etc dated 15.02.1995]

3. Judgement of the Hon'ble Supreme Court in “In Re Noise Pollution Case” dated 18.07.2005 \*\*\*\*\* In the reference first cited, the Government have issued orders stipulating conditions to issue licence for the use of loud speaker under the Madras City Police Act, 1888 and the Tamil Nadu Towns Nuisances Act, 1889 wherein, among other things, it has been ordered that only box type speaker should be used and loud speakers should not be allowed to be installed on towers and temple walls, churches and mosques so as to face the surrounding streets and areas, should be installed within the precincts and turned inwards so that the music is audible only within the precincts of the temple / church / mosque.

2. In the reference second cited, the Hon'ble High Court had, among other things, taking note of the serious health hazard and disturbance to public order and tranquillity caused by the uncontrolled noise pollution prevailing in the State issued a writ of mandamus directing the State Government to impose strict conditions for issuance of licence for the use of <http://www.judis.nic.in> amplifiers and loud speakers and also directed to impose total ban on use of horn type loudspeakers and amplifiers and air horns of automobiles. The Hon'ble High Court had also upheld the Government orders in the reference first cited.

3. In the reference third cited, the Hon'ble Apex court has, inter alia, taking note of the judgement of the Madras High Court in M.S.Appa Rao case (supra), issued directions to the effect that the noise level at the boundary of the public place, where loudspeakers or public address system or any other noise source is being used shall not exceed 10 dB (A) above the ambient noise standards for the area or 75 dB (A) whichever is lower.

4. As per the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 (i) no horn shall be used in silence zones or during night time in residential areas except during a public emergency;

(ii) a loud speaker or a public address system shall not be used except after obtaining written permission from the authority, which shall not exceed the noise level of 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.

5. In view of the above, the following instructions are issued:-

**(i) Cone/Horn type loud speakers are banned and should not be used whether for religious purpose or non-religious purpose. No permission shall be granted for the use of Cone/Horn type loud speakers <http://www.judis.nic.in> for any purpose.**

**(ii) Permission should be granted only for Box type speaker and the noise level should be maintained as per the Noise Pollution (Regulation and Control) Rules, 2000.**

**(iii) Cone/Horn type speakers should not be allowed to be installed on towers and temple walls, churches and mosques. If any religious or non-**

religious institutions including educational institutions is/are using Cone/Horn type loud speakers, necessary action should be taken against the authority of such institutions as per the provisions of the rules and any other law in force and the Cone/Horn type speakers should also be seized.

(iv) The noise level at the boundary of the public place, where loudspeakers or public address system or any other noise source is being used shall not exceed 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.

(v) The conditions stipulated in the reference cited Government orders and the directions of the Hon'ble High Court and the Apex Court should be adhered to strictly.

6. All the Commissioners of Police in cities and the Superintendents of Police in Districts are instructed to strictly adhere to the aforesaid instructions in letter and spirit and sensitise all the http://www.judis.nic.in Station House Officers under their jurisdiction in this regard. Action taken in this regard should be intimated to Chief Office by 31.08.2016.

for Director General of Police To All Commissioners of Police in Cities All Superintendents of Police in Districts Copy to All Inspectors General of Police in Zones All Deputy Inspectors General of Police in Ranges” \*\*\*\*\* “MOST URGENT Rc.No.93737/Genl.1(2)1/2019 Office of the Director General of Police, Chennai 600 004.

Dated :19.08.2019 MEMORANDUM Sub:- Police - Ban of Cone/ Horn type loud speakers- Ban on the usage of Cone/ Horn type loud speakers in religious and non - religious institutions - Instructions issued - Regarding.

Ref:- i) G.O. (Ms) NO. 3485, Home (Pol IV) Department, dated 29.12.1977

ii) Judgement of the Hon'ble High Court Madras in Appa Rao (Vs) The government of Tamil Nadu and others” (W.P. No. 12165/1985 etc dated 15.02.1995) http://www.judis.nic.in iii) Judgement of the Hon'ble supreme Court in “ Re Noise Pollution Case” dated 18.07.2005

iv) Judgement of the Hon'ble High Court ordered dated 21.11.2016

v) The Government Pleader letter dated 22.11.2016 of the Hon'ble High Court, Madras.

iv) Chief Office memorandum in Rc.No.27702/ Genl.l/2016, dt. 10.08.2016.

\*\*\*\*\* Attention of the all Commissioners of Police and all Superintendents of Police are invited to the reference cited.

2) All Commissioners of Police/Superintendents of Police instructed to take action against the use of cone speakers. In this connection, the following instructions are issued:-

(i) To conduct raid in sound service shops and seize the cone type speakers and register cases.

(ii) To remove the cone type speakers used in temples, churches and mosques.

(iii) It may be noted that a memorandum dt.

10.08.2016 was already issued to all COPs/SPs and a copy of same is enclosed. The other instructions given in the memo shall also be strictly complied with and enforced. An action taken

report should be sent in 10 days time.

3. Acknowledge the receipt of the memorandum. Encl: As above.

for Director General of Police <http://www.judis.nic.in> To All Commissioners of Police in Cities All Superintendents of Police in Districts Copy to:-

All Inspectors General of Police in Zones All Deputy Inspectors General of Police in Ranges.”

14. If any wrongful seizures is made, it would necessarily have to be challenged by those aggrieved on the ground of illegality. Omnibus prayer sought for cannot be granted.

Further the respondents are directed to act in accordance with the statutory provisions and the guidelines extracted supra.

15. With the above observation, instant writ petition is disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

[S.M.K., J.] [S.P., J.]  
28.08.2019

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<http://www.judis.nic.in>

S.MANIKUMAR, J.,  
AND  
SUBRAMONIUM PRASAD, J.,

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28.08.2019

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