CASE NO.:
Appeal (civil) 3735 of 2005

PETITIONER:
Forum, Prevention of Envn. & Sound Pollution

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 28/10/2005

BENCH:
CJI R.C. Lahoti & Ashok Bhan

JUDGMENT:
J U D G M E N T

R.C. Lahoti, CJI

In exercise of the powers conferred by clause (ii) of sub-section (2) of Section 3, sub-section (i) and clause (b) of sub-section (2) of Sections 6 and 25 of the Environment (Protection) Act, 1986 (29/1986), read with Rule 5 of the Environment (Protection) Rules, 1986 the Central Government made the Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as 'the Noise Rules') which have come into force w.e.f. 14th February, 2000.

Rule 5 of the Noise Rules reads as under:
"5. Restrictions on the use of loud speakers/public address system:-

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

(2) 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, e.g. auditoria, conference rooms, community halls and banquet halls.

(3) Notwithstanding anything contained in sub-rule (2), the State Government may, subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems during night hours (between 10.00 p.m. to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year."

Sub-rule (3) has been inserted in the present form by the Noise Pollution (Regulation and Control) (Amendment) Rules, 2002 with effect from 11th October, 2002. The constitutional validity of sub-rule (3) was put in issue by the appellant herein by filing a writ petition in the High Court of Kerala. By its Judgment dated 14th March, 2003, the High Court has directed the petition to be dismissed and the sub-rule has been held to be intra vires. The

aggrieved petitioner has filed this petition by special leave.

On behalf of the appellant, it has been submitted that this Court in its Judgment dated July 18, 2005 Noise Pollution (V), in Re., (2005) 5 SCC 733, has held that freedom from noise pollution is a part of the right to life under Article 21 of the Constitution. Noise interferes with the fundamental right of the citizens to live in peace and to protect themselves against forced audience. This Court has also held that as between 10 p.m. and 6 a.m. which is the time for the people to sleep and have peace, no noise pollution can be permitted. The appellant also submits that the impugned sub-rule (3) which permits the State Government to relax the applicability of sub-rule (2) and grant exemption therefrom between 10 p.m. and 12 midnight, is violative of Article 21 of the Constitution and runs counter to the law laid down by this Court in Noise Pollution (V), in Re. (supra).

The learned Solicitor General has defended the vires of the said sub-rule (3) and also the Judgment of the High Court. In his submission, the power to grant exemption is a reasonable restriction placed in public interest. The relaxation is for a period of 2 hours only and that too for a maximum of 15 days in all during a calendar year confined to cultural or religious occasions. Since the power has been conferred on the State Government by the Central Government it cannot further be delegated. The power would be exercised by the State Government by keeping in view the interest of the entire State population.

Our attention was invited to Government of Goa Order No. 7/4/98/STE/DIR/Part-I/1116 published in the Official Gazette, Government of Goa, Extraordinary No. 5, dated 5th February, 2005, wherein exercising the powers conferred by the said sub-rule (3) of Rule 5, the Government of Goa has specified nine days, in advance, on which the exemption granted by sub-rule (3) of Rule 5 would be available. The Government has reserved the power to notify six more days for cultural/religious festive occasions. Similarly, our attention was invited to Notification No. NP 200/24/3 (Part 3) dated 7th April, 2003 whereby the Maharashtra Government exercising the power under sub-rule (3) of Rule 5 has notified 12 specific days, in advance, on which such relaxation shall be permissible and remaining 3 days have been reserved to be notified, on demand from the local people for religious festivals and cultural programmes.

A query was raised that once the power to grant exemption is allowed, often the exemption becomes the rule. Exemptions tend to be granted as a matter of course and are thus often misused. Another query raised during the course of hearing was that in the event of the vires of the said sub-rule (3) being upheld, nothing prevents the Government from amending the Noise Rules and enhancing the number of days on which the power to grant exemption would be available or increasing the permissible hours of relaxation and that would again defeat the very object of preventing noise pollution. The learned Solicitor General responded by submitting that the impugned sub-rule has very limited operation which is reasonable and may not be interfered with by the Court, subject to certain further restrictions. The learned Solicitor General submitted that the Government does not propose to widen the scope of the exemption either by increasing the number of days or by enhancing the duration of hours of exemption. In spite of the exemption being granted, the Government would take care to see that the noise level does not exceed prescribed decibel limits.

Certain intervention applications were also filed. One application is by nine organizations/bodies situated in Pune, seeking impleadment at the hearing in the appeal, so as to support the impugned judgment of the High Court. There were other prayers for interventions seeking directions for widening the scope of exemption under sub-rule (3) of Rule 5. We make it clear at the very outset, as we did in Noise Pollution (V), in Re. (supra) that we are not concerned with any religion or religious practices; we are concerned only with the fundamental right of the citizens and the people to protect themselves against noise pollution and forced audiences. We are inclined to quote the following passage from Times of India (The Speaking Tree) dated 7.10.2005:

"Those who favour the use of loudspeakers plead that it is a devotee's religious duty enjoined by the shastras to make others listen and enjoy the singing of bhajans. Azaan too is necessary to inform others that it is time for namaz, a job assigned to the muezzin of the mosque.

Wait a minute. There were no loudspeakers in the old days. When different civilisations developed or adopted different faiths or when holy books were written to guide devotees, they did not mention the use of loudspeakers as being vital to spread religious devotion. So the use of loudspeakers cannot be a must for performing any religious act. Some argue that every religion asks its followers to spread its teachings and the loudspeaker is a modern instrument that helps to do this more effectively. They cannot be more wrong. No religion ever says to force the unwilling to listen to expressions of religious beliefs.

In the Bhagavad Gita, Krishna says to Arjuna: "This secret gospel of the Gita should never be imparted to a man who lacks penance, nor to him who is wanting in devotion, nor even to him who lends not a willing ear; and in no case to him who finds fault with Me... He who, offering the highest love to Me, preaches the most profound gospel of the Gita among My devotees, shall come to Me alone; there is no doubt about it" (18.67-68).

The gospel should be delivered to only those who enjoy listening to it and who have the patience to do so. It shall never be forced upon those who do not want it. The holy Qur'an says, "Lakum Deenokum Walia Deen" \027 your religion and belief is for you and my religion and belief is for me. Each stay happy with her own religion and belief. It never says, make others listen to the gospel of your faith by using loudspeakers.

A similar instance is found in Biblical literature. The Gospel according to Saint Luke says: "When Jesus had called the Twelve together, he gave them power and authority to drive out all demons and to cure diseases, and he sent them out to preach the kingdom of God and to heal the sick.

He told them: 'Take nothing for the journey \027

no staff, no bag, no bread, no money, no extra tunic. Whatever house you enter, stay there until you leave that town. If people do not welcome you, shake the dust off your feet when you leave their town, as a testimony against them'. So they set out and went from village to village, preaching the gospel and healing people everywhere" (9.1-10).

The earlier Supreme Court judgment banning the un-solicited use of loudspeakers at inconvenient times is in conformity with religious tenets."

The above-said passage appeals to us and in our opinion very correctly states the factual position as to the objective of several religions and their underlying logic.

Looking at the diversity of cultures and religions in India, we think that a limited power of exemption from the operation of the Noise Rules granted by the Central Government in exercise of its statutory power cannot be held to be unreasonable. The power to grant exemption is conferred on the State Government. It cannot be further delegated. The power shall be exercised by reference to the State as a unit and not by reference to districts, so as to specify different dates for different districts. It can be reasonably expected that the State Government would exercise the power with due care and caution and in public interest. However, we make it clear that the scope of the exemption cannot be widened either by increasing the number of days or by increasing the duration beyond two hours. If that is attempted to be done, then the said sub-rule (3) conferring power to grant exemption may be liable to be struck down as violative of Articles 14 and 21 of the Constitution. We also make it clear that the State Government should generally specify in advance, the number and particulars of the days on which such exemption will be operative. Such specification would exclude arbitrariness in the exercise of power. The exemption, when granted, shall not apply to silence zone areas. This is only as a clarification as, this even otherwise, is the position of law.

Before parting, we would like to clarify further that we may not be understood as diluting in any manner our holding in Noise Pollution (V), in Re. (supra). We are also not granting any exemption or relaxation in favour of anyone by our verdict. We are only upholding the constitutional validity of the Noise Rule framed by the Central Government in exercise of its statutory powers.

Subject to the observations made hereinabove, the appeal is dismissed and the Judgment of the High Court is affirmed.

All the intervention applications be treated as disposed of.