

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

Original Application No. 69/2015/EZ

CORAM:

**Hon'ble Mr. Justice V.R.Kingaonkar, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member**

- 1. Sukumar Ballav
S/o Umapada Ballav,
R/o Vill. Natun Chandipur (Shibpur),
P.O. Chandipur, PS, Baduria,
Dist. North 24 Parganas,
PIN : 743274**
- 2. Gopal Biswas
S/o Late Kali Pada Biswas,
R/o Vill. Natun Chandipur (Shibpur),
P.O. Chandipur, PS, Baduria,
Dist. North 24 Parganas,
PIN : 743274**
- 3. Sadhana Ballav
S/o Nava Kumar Ballav
R/o Vill. Natun Chandipur (Shibpur),
P.O. Chandipur, PS, Baduria,
Dist. North 24 Parganas,
PIN : 743274**
- 4. Adhir Kumar Das
S/o Late Sannasi Kumar Das
R/o Vill Natun Chandipur (Shibpur),
P.O. Chandipur, PS, Baduria,
Dist. North 24 Parganas,
PIN : 743274**
- 5. Bina Mondal
W/o Sudhir Mondal
R/o Vill Natun Chandipur (Shibpur),
P.O. Chandipur, PS, Baduria,
Dist. North 24 Parganas,
PIN : 743274**

VS

- 1. Union of India service through the
Secretary, Ministry of Environment, Forest &
Climate chanda, Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi-110 003**

2. The State of West Bengal service through
The Principal Secretary, Home Department
Nabanna, 325, Sarat Chatterjee Road,
Shibpur, Howrah, Pin 711 102
3. The State of West Bengal service through the
Principal Secretary, Deptt. of Environment
415/A, Poura Bhawan, FD Block, 4th Floor,
Salt Lake, Kolkata-700 106
4. West Bengal Pollution control Board represented
By the Member Secretary, Paribesh Bhawan,
10A, Block-LA, Sector-III, Bidhannagar,
Kolkata-700 098
5. The Chairman, West Bengal Pollution Control Board,
Paribesh Bhawan, 10A, Block-LA, Sector-III
Bidhan Nagar, Kolkata-700 098
6. The District Magistrate, North 24 Parganas,
Barasat, Dist, Barasat, PIN 700 124
7. The Sub-Divisional Officer, Bashirhat
District North 24 Parganas, PIN 743 292
8. The Block Development Officer, Baduria
Development Block, Baduria, District
North 24 Parganas, PIN 743 247
9. The Officer-in-Charger, Baduria PS
District North 24 Parganas Pin 743 247
10. Forooq Mondal,
S/o Abdul Bari,
R/o Vill Natun Chandipur (Shibpur),
P.O. Chandipur, PS, Baduria,
Dist. North 24 Parganas,
PIN : 743274
- 10A. The Mosque of Shibpur
Represented by Forooq Mondal
S/o Abdul Bari
R/o of Vill Natun Chandipur (Shibpur),
P.O. Chandipur, PS, Baduria,
Dist. North 24 Parganas,
PIN : 743274

PRESENT:

Applicants	: Mr. Deborshi Dhar, Advocate
Respondent Nos. 4 & 5	: Mr. Sibojyoti Chakraborty, Advocate
Respondent Nos. 3,6,7,8	: Mr. Bikas Kargupta, Advocate
Respondent No. 9	: Mr. Mir Anowar, Advocate
Respondent No. 10	: Mr. Bidhan Biswas, Advocate (Not signed)
Other Respondents	: None

Heard on 19.11.2015 : Order on : 19.11.2015

J U D G E M E N T (O R A L)

Per Justice V.R.Kingaonkar, JM

By this application, the original applicants have prayed for issue of mandatory direction against respondent No. 7 to prohibit the use of amplifier system for which permission was granted vide Memo No. 685/Con dated 20th June 2015 by the Sub Divisional Officer to use microphones/amplifiers for religious functions during the holy Ramjan month.

2. After considering the contentions of the parties as advanced by the Id. advocates appearing for them, this Tribunal by order dated 4th November 2015 directed the respondent No. 10 to remove the sound system which was already installed inasmuch as the permission to use the same had already lapsed due to efflux of time for which the permission was granted. The Tribunal sought compliance report by the private respondent No. 10 and also from the authorities concerned regarding removal of the microphones/amplifiers from the religious place wherefrom noise was being amplified during the period of holy Ramjan with permission of the competent authority.

3. The SDO, Bashirhat (Respondent No. 7) and the District Magistrate, North 24 Parganas (Respondent No. 6) have filed their respective affidavits today as directed by us. Let it be kept with the record. It appears from the affidavit that the Microphone has

not been removed. The Id. advocate appearing for the applicant showed us a photograph taken on 18.11.2015 showing the loudspeaker still fixed to a pillar.

4. There can be no dual opinion to the ground reality that in particular circumstances, during religious activities like Azan in the month of holy Ramjan, there may be necessity of requiring amplification of sound, so temporary permission could be granted by the competent authority during the said period, as provided in the relevant Rules. In the present case, the competent authority granted permission in terms of the **Noise Pollution (Regulation and Control) Rules, 2000 (for short Rules)** under provisions of Rule 3, Rule 5 thereof. It is important to know that in rule 5 of the Rules there is restriction on the use of loud speakers/public address system and sound producing instruments. It is clearly provided therein that loud speakers/public address system and sound producing instruments shall not be used at night time except with prior written permission of the authority. Sub-rule (3) of Rule 3 of the Rules reads as follows :-

“ 3.

“(3) The State Government shall take measures for abatement of noise including the noise emanating from vehicular movements, blowing of horns, bursting of sound emitting fire crackers, use of loud speakers or public addressing system and sound producing instruments and ensure that existing noise levels do not exceed the ambient air quality standards specified under these rules. “

5. There is right to perform religious activity but it has to be balanced with environmental law and that is why the Noise Rules and other laws have been enacted. We cannot overlook the fact that before amplifier or loudspeakers were invented, religious activities were going on and similarly before the Dolby sound or DG system was introduced, Durga Puja and other religious activities like Ganesh Puja were being celebrated. For the purpose of using amplifier or loudspeaker, a temporary permission

for a particular period is granted by the competent authority in accordance with rules but that does not mean that there is a perennial right to use the amplifier permanently.

6. The Hon'ble Calcutta High court in the case of **Om Birangana Religious Society through Kalipada Das –vs- The State & Ors** in CO 4303(W) of 1995 decided on 1.4.1996 consciously mandated that the right available is not absolute and authorities can put reasonable restrictions which cannot be taken as infringement upon the right. We may quote the relevant portion of the said judgement from para 9, 23 and 24 as follows :-

“ 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 prohibit and/or restrict, regulate and/or to control the use of microphone.

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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 cannot be allowed to use microphones at a high noise level or without any volume control. “

7. Considering the entire legal position, particularly the rights of parties, and also the fact that so far there is no compliance of the order of the Tribunal regarding removal of the microphone/amplifier as directed in the earlier order, we are of the view that there

is no due regard to the law paid by the defaulter whom we do not wish to name at this juncture.

8. Under the circumstances, we direct the authorities to immediately, within a week, remove the amplifier/microphone or any other system like Dolbi system/DJ system, from the premises in question. If there is any resistance from anybody, due protection shall be given to the executor of law in doing their work under police protection. The District Magistrate, North 24 Parganas and the Superintendent of Police, North 24 Parganas are directed to act accordingly. The Registry to communicate this order to the District Magistrate and Superintendent of Police, North 24 Parganas by speed post immediately.

9. A copy of the order be immediately served to the said officers by the PCB by delivering the same to the respective Personal Assistants of District Magistrate and SP and obtaining due acknowledgement thereof.

10. The authority competent to issue the permission letter is also directed to serve prior notice/intimation on the licensee to the effect that in the event of any breach of permission the authority may not issue permission in future because of default of certain condition as may be legally permissible.

11. We do not wish to pass any order as to cost upon the either of the parties.

12. Mr. Kargupta is granted leave to file the affidavit in the Registry.

13. The application is accordingly disposed of.

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Justice V.R.Kingaonkar, JM

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Prof. (Dr.) P. C. Mishra, EM

