

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO.15 OF 2023

1) Rajesh Sinary,
Son of late Purshottam Sinary,
Aged 59,
Pan card no. DPQPS2088J
Email address:
rajeshsinary@hotmail.com
Annual income – NIL
Resident: House No. 1014
Opp. Luiza Bar, Grand Peddem,
Anjuna, Bardez, Goa 403509.

... Petitioner

Versus

1) State of Goa
Through Chief Secretary
Having office at Secretariat,
Porvorim, Goa.

2) The Director Tourism,
1st Floor, Paryatan Bhavan,
Patto, Panaji, Goa 403001.

4) The Collector and District
Magistrate, (North) Collectorate
Building, Opp. Municipal Garden,
Panaji Goa 403001.

5) The Dy. Collector,
~~North Goa Collectorate Building,~~ Deleted
~~Opp. Municipal Garden, Panaji Goa~~
~~403001.~~ Mapusa, Bardez-Goa.

6) The Member Secretary,

Goa State Pollution Control Board,
Opp. Saliegao Seminary,
Near Pilerne Industrial Estate,
Saliegao — Goa.

7) The Member Secretary,
GCZMA, North Goa,
4th Floor, Dempo Towers, Patto,
Panaji Goa 403001.

8) The SDPO, North Goa
~~Goa Police Headquarters,~~
~~Near Azad Maidan,~~
~~Panaji Goa 403001,~~
Mapusa, Bardez-Goa.

Deleted

9) The Police
Anjuna Police Station,
Opp. Childrens Park,

10) M/s. Spacebound Web Labs Pvt.
Ltd.
Shar Road, Ville Parle,
Mumbai-400099. Having temporary
address at Survey No.206/1, Vagator
Varsez Village, Anjuna-Goa.

... Respondents

Ms Swati Kamat Wagh, Advocate for the Petitioner.

Mr D. Pangam, Advocate General with Mr P. Arolkar, Additional
Government Advocate for Respondent Nos.1 to 5 and 7 to 9.

Mr Pavithran A.V. with Mr P. Kholkar, Advocates for Respondent
No.6.

Mr Nitin Sardesai, Senior Advocate with Mr Nikhil Pai and Mr S.
Sardesai, Advocates for Respondent No.10.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

Reserved on: 25th JULY 2023
Pronounced on: 15th DECEMBER 2023

JUDGMENT: (*Per M.S. Sonak, J.*)

1. Heard Ms Swati Kamat Wagh for the petitioner, Mr D. Pangam, learned Advocate General with Mr P. Arolkar, learned Additional Government Advocate for the State, Mr Pavithran with Mr P. Kholkar for Goa State Pollution Control Board (R-6), Mr Nitin Sardesai, learned Senior Advocate with Mr Nikhil Pai and Mr S. Sardesai for respondent no.10 (R-10).

2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel appearing for the parties. Learned Counsel for the respondents waived service.

3. This Public Interest Litigation challenges the permission dated 28.12.2022 issued to M/s. Spacebound Web Labs Pvt. Ltd. (R-10) to hold the Sunburn Music Festival from 28th December 2022 to 30th December 2022. The petition also complains about the breaches of the terms and conditions of this permission by exceeding, with impunity, the noise levels prescribed in the permission and the Rules. The main objection regarding the grant of permission relates to the breach of the notified action plan under which such permissions had to be granted and the Noise Pollution (Control and Regulation) Rules 2000. Since

the permission was granted at the last minute, that is on 28.12.2022, this petition was instituted on 29.12.2022 and circulated before the learned Vacation Judge (Valmiki Sa Menezes, J.) on 30.12.2022.

4. The learned Vacation Judge, after hearing the learned Counsel for the petitioner, the State Government and the GSPCB, considered the provisions of the Environment (Protection) Act 1986 (EPA), the Air (Prevention and Control of Pollution) Act, 1981 (Air Act), Noise Pollution (Regulation and Control) Rules 2000 (Noise Pollution Rules) and the Action Plan dated 05.01.2022 notified and published in the Official Gazette, Government of Goa, on 13.01.2022 (Action Plan), the material on record and issued the following interim directions vide order dated 30.12.2022.

“(a) The Goa State Pollution Control Board, i.e. respondent no.6, the respondent nos.4 & 5 (Collector and the concerned Deputy Collector), the concerned Deputy Superintendent, Mapusa, who is the Sub-Divisional Officer in charge of the Taluka along with the PI Anjuna Police Station (respondent no.9) shall maintain strict vigil at the concerned site to ensure that under no circumstances would music be played on 30.12.2022 from 3.30 pm to 10.00 pm at levels above 55 dB(A) Leq. There shall be no music played after 10.00 pm.

(b) The Goa State Pollution Control Board shall ensure that its decibel meter devices to record the ambient noise level at the site shall collect data on real time basis from 3.30 pm to beyond 10.00 pm. Such data shall be downloaded and be printed and placed before this Court along with its affidavit on 03.01.2023.

(c) As required by the sub-clause (f) of clause 7 of the Action Plan, the respondent no.10 has reportedly not installed at the concerned site/venue online noise level monitoring system nor provided display boards along the periphery of the venue to display the noise level recorded at the venue, for the benefit of the public. The Pollution Control Board and the concerned PI/Deputy S.P. are hereby directed to ensure the enforcement of these provisions and see that the respondent no.10 provides a display board in terms of sub-clause (f) of clause 7 of the said Action Plan at the site, prior to the commencement of the event at 3.30 pm today and in the event of such noise online level monitoring system not being provided at the site, which equipment shall be directly connected to the server of the Pollution Control Board, they shall ensure that the event would not take place and the venue would be shut down.

(d) The Goa State Pollution Control Board - respondent no.6 has been collecting data of the noise levels at the relevant site since 28.12.2022. It has today made a statement that from its data the noise levels have crossed the threshold of 55dB(A)Leq as provided under the Act at various points of time. It was submitted that the Pollution Control Board has stopped the event when such incident took place. This being the case, there is clearly a violation of the provisions of Section 15 of the Environment (Protection) Act and Sections 39 and 40 of the Air Act. Accordingly, there would be a case made out for an investigation based upon this data, for collection of all the necessary material which would form the basis for prosecution of the respondent no.10 and its Directors/Officers who are responsible for the event. Under these circumstances, I direct the Member Secretary of the Board, on the basis of material collected till date, and in the event of any further infraction of the above provisions is noted on the basis of the material collected

from the event site between 3.30 and 10.00 pm or thereafter today, to institute/commence the process of prosecution of the concerned persons in charge of respondent no.10 in terms of provisions of Section 15 of the Environment (Protection) Act and Section 39 of the Air Act. The concerned PI of the Anjuna Police Station and the SDPO, Mapusa shall render all assistance as may be required for the effective prosecution of the respondent no.10 and persons directly in charge of and responsible for the event and the commission of the offences. Necessary chargesheet in terms of the provisions of these Acts shall be filed before the concerned Magistrate in terms of law.

(d) The Pollution Control Board and the concerned PI/SDPO shall immediately ascertain and investigate and collect the names and addresses of the persons who are directly in charge of and responsible for the event at the site.”

5. From the perusal of the interim order dated 30.12.022, it is evident that the learned Vacation Judge entertained grave doubts about the manner and the legality of the permissions granted by the authorities to R-10 for operating the music festival between 28th and 30th December 2022. Still, the learned Vacation Judge, with a view to impress upon the authorities that R-10 must comply with the terms and conditions subject to which such permissions were granted, issued the above series of interim directions to the various authorities. In particular, the GSPCB, the Collector or the concerned Deputy Collector, the concerned Deputy Superintendent of Police and the PI of Anjuna Police Station were directed to maintain a direct vigil at the festival site to ensure that under no circumstances music should be played on 30.12.2022 from 3.30 p.m. to 10.00 p.m. at levels exceeding

55dB(A)Leq. Further, the interim order clarified that in terms of the permissions granted as well as the Noise Pollution Rules, no music should be played beyond 10.00 p.m.

6. The interim order dated 30.12.2022 records that the music played at the festival on 28.12.2022 was *prima facie* beyond the prescribed levels of 55dB(A)Leq at various points in time. Accordingly, the interim order directed investigation based upon the collected data and if the investigation revealed violations, then, for launch of prosecution. The matter was posted on 03.01.2023 for reporting compliance.

7. On 03.01.2023, the Member Secretary of GSPCB filed an affidavit enclosing a monitoring report about the data of noise generated at the festival/venue from 27.12.2022 till 30.12.2022. The report furnishes the monitoring data for the dates of the festival, that is, 28.12.2022, 29.12.2022 and 30.12.2022 (the festival dates) gathered practically on one or two hourly basis. This data indicated that the noise levels generated by the festival near the main stage (inside the venue), near the main entrance along the periphery and in the residential area at a specified distance from the venue. The report indicated that on all three dates, the noise level generated by the festivals was above 55dB(A). The report states that on most occasions the noise levels exceeded 65dB(A) and were in the range of 70 to 90dB(A). The report also refers to other breaches of the terms and conditions subject

to which permission was granted, not to mention the breaches of the Noise Pollution Rules.

8. Before going into the issue of legality and validity of the permission dated 28.12.2022, it needs to be noted that clause (C) of the permission dated 28.12.2022 issued by the Deputy Collector under the Noise Pollution Rules had very clearly required R-10 to ensure that the ambient air quality does not exceed 55dB(A), clauses 24 and 25 of this permission had directed the SDPO, Mapusa and In-charge of police Station, Anjuna to strictly follow the directions issued by this Court on 15.12.2021 in Writ Petition No.7/2021. Additionally, the In-charge Police Station, Anjuna was directed to follow the directions in this Court's order dated 23.12.2021 in the said Writ Petition very strictly.

9. Despite the above conditions in the permission dated 28.12.2022, there were violations and breaches as noticed and ultimately confirmed by the GSPCB. Therefore, the learned Vacation Judge was constrained to pass a detailed interim order dated 30.12.2022. Despite the clear and categorical directions in the order dated 30.12.2022, the GSPCB reported that the music levels even on 30.12.2022 exceeded 55dB(A). The report shows that even near the main entrance along the periphery the noise levels between 16.45-17.45 hrs and 19.55-20.55 hrs on 30.12.2022 were in the range of 69.10dB(A) and 80.80dB(A).

10. From the GSPCB report, it is evident that none of the parties bothered to comply with the clear and unambiguous directions issued by the learned Vacation Judge on 30.12.2022. The noise levels exceeded the permissible limits. The records show that the Collector, Deputy Collector and SDPO who were specifically enjoined with the responsibility of monitoring the festival and ensuring that the noise levels do not increase the prescribed limits, did not even bother to prevent this at the venue or otherwise ensure compliance with the directions.

11. The records disclose that the GSPCB posted its officials at the festival site. The PI of Anjuna police station was also present at the festival site. Despite the presence of GSPCB officials and Police officials, the conditions subject to which permissions were granted were breached by R-10 with impunity. The GSPCB and the police officials for the reasons best known took no steps to either stop the festival and control the breaches or otherwise ensure that the noise levels were within the prescribed limits.

12. Orally, it was submitted by Mr Pavithran, the learned Counsel for the GSPCB that the GSPCB officials did inform the police officials present that noise levels were exceeding the permissible limits. Therefore, the police officials must act. However, on behalf of the police officials, it was orally submitted that no such information was given by the GSPCB officials to them and, therefore, the police officials took no action. In short, the GSPCB officials and the police officials

mutely watched the breach of terms and conditions subject to which permissions were granted to R-10, the breach of Noise Pollution Rules and the breach of directions issued by this Court but felt helpless to act. The entire breach was to blame one another but somehow see that R-10 continues with its festival by breaching the Noise Pollution Rules with impunity.

13. At least, *prima facie*, this Court found it a little difficult to believe that the GSPCB officials present at the site with monitoring equipment failed to inform the police officials that the noise levels were way beyond the permissible limits. To the Court's query as to why noise-changing equipment was not seized, the learned Counsel for the GSPCB submitted that it was for the Deputy Collector and SDPO to seize the equipment. In short, almost all the authorities watched the breach of the terms and conditions, the Noise Pollution Rules and the directions of this Court but did nothing to prevent R-10 from continuing with such breaches.

14. Therefore, this Court was constrained to make a detailed order dated 03.01.2023 observing how the authorities who were entrusted with the responsibility of administering and implementing the Noise Pollution Rules seem to take great pride in tolerating the breaches of some rules with impunity. This Court was forced to note that this instance appears to be a case of deliberate inaction or the lack of will to enforce the law and the Court's directions. This Court was also constrained to note that the anxiety of the authorities tasked with the

duty to ensure compliance with the Noise Pollution Rules, not to mention the orders made by this Court from time to time, was to ensure that this festival proceeds unhindered, even though the GSPCB report now shows that the noise level limits were breached with impunity. This Court was constrained to note that both R-10 and the authorities were confident that once such an event was over, there would be no further inquiries into repeated complaints made by the citizens against the breaches of Noise Pollution Rules or the inaction of the authorities. This Court was constrained to note that if this approach continues, the rule of law will be rendered a casualty.

15. This Court, in its order dated 03.01.2023, was constrained to note that the blame game between the GSPCB officials and the PI of Anjuna Police Station that unfolded in the open Court was, to say the least, most shameful. This was a case of two sets of public officials blaming each other for not taking any action and, in the meantime, breaching the law by exceeding the noise limits set out in the Noise Pollution Rules. From the report submitted, it was clear that the limits set out in the permissions and the Noise Pollution Rules were flouted with impunity on all three days of the festival. The GSPCB and the police officials, despite clear and unambiguous directions from this Court, failed to prevent such breaches and only indulged in blaming each other. None of the authorities confiscated or seized noise-generating equipment or took any other measures to ensure that the

breaches did not continue with impunity with impunity in their presence.

16. This Court noted that if the authorities or executive failed to prevent the breaches of the Noise Pollution Rules and the reported orders issued by this Court directing the implementation of such Rules, then the authorities would be making a mockery of the rule of law, which is one of the basic structures of our Constitution. In this case, Ms Wagh learned Counsel of the petitioner, produced written complaints made to the police station about the apparent breach of the Noise Pollution Rules and the extreme nuisance caused due to such breaches. The PI of the police station, with impunity, claimed that no action could be taken on these complaints because he was present at the festival site and not at the police station during the festival. Thus, the citizen was left with no remedies, and the authorities indulged in a blame game and refused to take any action to prevent the breach of Noise Pollution Rules, perhaps being supremely confident that no action would be initiated against them by their superiors once the festival was concluded.

17. In our order dated 03.01.2023, we referred to the decision of the Hon'ble Supreme Court in the case of *Indian Council for Enviro-Legal Action V/s. Union of India and Ors.*¹, in which the Hon'ble Supreme Court has held that tolerating its infringement is worse than

¹ (1996) 5 SCC 281

not enacting a law at all. The continued infringement of the law, over a period of time, is made possible by the adoption of such means, which are best known to the violators of the law. Continued tolerance of such violations of law not only renders legal provisions nugatory, but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot or ought not to, be tolerated in any civilised society. The law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the Legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for future generations, and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed, and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then it has to be enforced. Otherwise, infringement of the law, which is actively or passively condoned for personal gain, will be encouraged, which will, in turn, lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life, but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of the

environment, the adverse effect of which will have to be borne by future generations.

18. In *Noise Pollution (V)*, *In re*², the Hon'ble Supreme Court definitively dealt with the menace of noise pollution, and *inter alia*, held that anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent noise as pollutant reaching him. None can claim a right to create noise even in his own premises which would travel beyond his precincts and cause a nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is a nuisance. The Hon'ble Court observed that noise is defined as unwanted sound. Sound which pleases the listeners is music and that which causes pain and annoyance is noise. At times, what is music for some can be noise for others.

19. Further, the Hon'ble Supreme Court held that nobody could claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. *Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge in aural aggression.* If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious

² (2005) 5 SCC 733

levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21.

20. The judgment of the Kerala High Court in *P.A. Jacob v. Superintendent of Police, Kottayam*³, was approved of by the Hon'ble Supreme Court in *Noise Pollution (V), In re* (supra). The exposition on Article 21 was also adopted by the Hon'ble Supreme Court. It was held that a person can decline to read a publication or switch off a radio or television set. But he cannot prevent the sound from a loudspeaker from reaching him. He could be forced to hear what, he wishes not, to hear. That will be an invasion of his right to be let alone, to hear what he wants to hear, or not to hear, what he does not wish to hear. One may put his mind or hearing to his own use, but not that of another. No one has a right to trespass on the mind or ear of another and commit auricular or visual aggression. Limits must be drawn for liberties, lest they turn into licence and the antithesis of liberty in its true sense.

21. Due to the transient and intangible nature of noise pollution it is often treated with a lack of requisite seriousness, but as noted in *Noise Pollution (V), In re* (supra), *noise is more than just a nuisance. It constitutes a real and present danger to people's health.* Day and night, at home, at work, and at play, noise can produce serious physical and psychological stress. No one is immune to this stress. Though we seem to adjust to noise by ignoring it, the ear, in fact, never closes and the

³ 1992 SCC OnLine Ker 170

body still responds — sometimes with extreme tension, as to a strange sound in the night. Noise is a type of atmospheric pollution. It is a shadowy public enemy whose growing menace has increased in the modern age of industrialisation and technological advancement.

22. Noise, especially with prolonged exposure, apart from causing partial or complete hearing impairment, can also have wide-ranging, serious, and deleterious effects on the health of unsuspecting persons. Noise can disturb our work, rest, sleep, and communication. It can damage our hearing and evoke other psychological, and possibly pathological reactions. However, because of the complexity, variability, and interaction of noise with other environmental factors, the adverse health effects of noise do not lend themselves to a straightforward analysis. It has been determined that noise has an explicit effect on the blood vessels, especially the smaller ones known as pre-capillaries. Overall, noise makes these blood vessels narrower. Noise causes the peripheral blood vessels in the toes, fingers, skin and abdominal organs to constrict, thereby decreasing the amount of blood normally supplied to these areas.

23. Possible clinical manifestations of stress concomitant with noise are (i) galvanic skin response, (ii) increased activity related to ulcer formation, (iii) changes in intestinal motility, (iv) changes in skeletal muscle tension, (v) subjective response irritability perception of loudness, (vi) increased sugar, cholesterol, and adrenaline, (vii) changes in heart rate, (viii) increased blood pressure, (ix) increased adrenal

hormones, (x) vasoconstriction. Not only might there be harmful consequences to health during the state of alertness, but research also suggests that effects may occur when the body is unaware or asleep [Noise Effects Handbook: A Desk Reference to Health and Welfare Effects of Noise, by Office of the Scientific Assistant, Office of Noise Abatement and Control, US Environmental Protection Agency, October 1979, revised July 1981]. And this, to only name a few. [See *Dr. Mahesh Vijay Bedekar V/s. State of Maharashtra*⁴, P.A. Jacob (supra)].

24. Since this was a case where there was sufficient material on record which showed that the noise pollution limits exceeded those set out in the permission and the Noise Pollution Rules, still, the GSPCB officials, police officials, Collectors and Deputy Collectors failed to take any action and were not prepared to accept any responsibility, we requested the Chief Secretary of the State of Goa to inquire into what we then considered the *prima facie* lapses on the part of the authorities in preventing in their presence the breach of the Noise Pollution Rules and various orders issued by this Court, including the interim order made in this case on 30.12.2022. The Chief Secretary was directed to file a preliminary report on 19.01.2023. The report was directed to include not only the breaches at the festival held by R-10, but the report/affidavit was directed to address issues about whether the GSPCB and police authorities have the necessary competence, human

⁴ 2016 SCC OnLine Bom 8894

resources, equipment and most importantly, will to enforce the Noise Pollution Rules. The Chief Secretary was also requested to fix the responsibility of the subject event on the officials and state whether any action would be taken against such officials.

25. Though not within the timeline prescribed, the Chief Secretary filed his affidavit and report on 03.03.2023 in this matter. In the preliminary report, the Chief Secretary referred to the comments from the police department, Collector's office and GSPCB. After analysing the comments, the Chief Secretary recorded the following findings in his report accompanying the affidavit dated 03.03.2023:

“9. FINDINGS:

i. In exercise of the powers conferred by clause (ii) of subsection (2) of section 3, sub-section (1) and clause (b) of subsection (2) of section 6 and section 25 of the Environment (Protection) Act, 1986 (29 of 1986) read with Rule 5 of the Environment (Protection) Rules, 1986, the Central Government made the rules for the regulation and control of noise producing and generating sources, namely: The Noise Pollution (Regulation and Control) Rules, 2000. The GSPCB is the noise pollution monitoring body and the Nodal Agency. Further, officers appointed under the Official Gazette dated 17/11/2022 are the implementing Authorities who are duty bound to maintain the ambient Air quality standards in respect of Noise under the rules of the Noise Pollution (Regulation and Control Rules, 2000).

ii. The Hon'ble Courts has, in its various orders, directed the Board to monitor events ensuring compliance of sound decibels through the use of sound measuring equipments

inside and outside the place of the event with the help of the Police.

iii. With regards to this case, the GSPCB have themselves in its letter dated 28/12/2022 clearly stated that they would seek assistance from the Collector & District Magistrate North in case the noise exceeds the Permissible Limits. The Board, in its report, and before the Hon'ble High Court have clearly admitted that the music had exceeded the permissible limits.

iv. The Board officials in their affidavit have clearly stated that they approached the police officials outside the venue and the Police Officials intimated the Board officials to contact the SDPO of Mapusa. Subsequently, para eleven of the Affidavit of the Board submitted to the Hon'ble High Court stated that the first exceedance of the noise level was noticed on the very first day i.e., on 28th December as it reached a level of 72.10dB(A). Subsequently, on the second day as well, the Board officials noticed that there was a violation.

v. It is evident from the report of Superintendent of Police that Police were quite busy monitoring law and order situation so less attention was given on curbing noise pollution. Even though as per the Order no 7/4/98/ENV&CC/DIR/Part III/97 published in the Official Gazette Series II No. 33 dated 17/11/2022, the Superintendent of Police, SDPO Mapusa are designated officers who are duty bound to maintain ambient air quality standards in respect of noise under the rules of the Noise Pollution (Regulation and Control Rules, 2000). However, the Officers, even though present on site as per their admission in the report dated 17/1/2023, couldn't comply with the directions of the various orders of the Hon'ble Courts.

vi. From the report of the District Magistrate, North Goa District, inference can be drawn that even the Executive Magistrate on duty was engaged in controlling the crowd and maintaining Law and Order at the venue along with the Police. The Executive Magistrates have powers under law to take measures with a view to prevent commission of offences involving breach of peace or disturbance to public tranquillity in their jurisdiction or for any matter to follow compliance of the Directions issued by the Hon'ble Courts. However, the Officers, even though present on site as per their admission in the report dated 17/1/2023 have given priority in controlling the crowd and maintaining Law & Order instead of controlling the noise pollution.

vii. The Board, being the nodal authority and incharge of controlling and implementing the Noise Pollution Rules, has to be more vigilant and abide by the rules framed under law. It was incumbent upon the Board to develop a proper and effective monitoring and communication mechanism with other designated authorities. The lack of co-ordination between the Board and Police officials is evident in this case. The Board and Police need to constitute a Joint Special Cell to ensure that specified noise levels are not exceeded in future for any events.

viii. The Board has now filed a criminal case (with Registration Number 26/2023 registered on 21/01/2023) against the organizers of the event in Civil and Criminal Court, Mapusa.”

26. The Chief Secretary filed a further affidavit dated 10.04.2023, along with a further report. In this report, the Chief Secretary considered the following aspects:

“1. To look into the process by which permission was granted on 28.12.2022 based upon the application which was inwards only on 27.12.2022.

2. To look into the notification dated 05.01.2022 containing the Department of Environment and Climate Change action plan in the context of the Noise Pollution Rules.

3. To submit report on the officers who were involved in this process of grant of permission.”

27. The Chief Secretary considered the various permissions obtained by R-10, replies filed by various authorities, including the GSPCB, District Magistrate, Superintendent of Police, North District, Porvorim, and the provisions of the EPA 1986, Air Pollution Act, 1981, Noise Pollution Rules 2000 and the Action Plan dated 05.01.2022 notified by the Government of Goa. Based on the material before him, the Chief Secretary recorded the following findings in his report:

“FINDINGS:

- *From the above observations, it is evident that the Organizers did not approach the concerned authorities in advance as prescribed under law for seeking permission for amplified music. It is clear from the above analysis that the Organiser has clearly defaulted in the provision 7(b) of the Action Plan dated 5/1/2022; wherein it was the requirement under the Plan that the person requiring to use the Loud speakers has to submit an application to the Authority of the concerned areas at least seven days before the date of use. However, in the present case it is noted that the Organiser has failed to comply with this provision and has submitted the application only a day in advance.*

Further, the various other permissions obtained by the organizers are as tabulated below:

Sr.No.	Nature of Permission	Date on which applied	Date on which granted
1	Tourism Department	28/04/2022	16/12/2022
2	Sound Permission	27/12/2022	28/12/2022
3	NOC from SDPO	27/12/2022	28/12/2022
4	NOC from GSPCB	05/12/2022	28/12/2022

- *This being a clear violation of the rules by the organizers, the officials involved in the permission granting process viz. SDM, SDPO and Pollution Control Board have processed the application and have granted permission for the event within a day. It has also been stated by SDM that such instances have also occurred in past where the Organizers of the same event have applied just one day before the event and permissions have been granted.*
- *The DM in her submissions has stated that as the event was large scale international event, where lakhs of people were about to attend, the officials were put in a difficult situation. Non-organization of the event would have led to chaos. Therefore, the application was processed and permission was granted expeditiously after obtaining recommendations from all the concerned authorities. The Organizers, therefore, need to be directed to submit the application well in advance to examine the same thoroughly before granting permission.*
- *Although there was callousness on the part of Organizers in submitting the application one day prior to the event, the officials were not bound to grant permission within a day. For an event of such large magnitude, assessing the*

ground conditions before granting permissions is a must. However, it is pertinent to mention that the SDM has obtained all the necessary recommendations/NOCs from all the respective authorities, including recommendation from GSPCB, before granting the permission to the organizers within a day. In future, the officials need to adhere to rule provisions and independently assess the application before granting permissions irrespective of the scale of the event.

- As regards to Noise limit violations on site, the Organizers were allowed to start the event only after installation of the Noise Limiters to regulate the noise levels within the prescribed limits and installation of online noise monitoring system and providing display board along the periphery of the venue to display the noise levels recorded at the venue. Only on meeting these criteria, the music was allowed to be played by GSPCB. Further, the members of GSPCB have also attempted themselves to get the sound levels within permissible limits during the live event after directing the organizers to do so.
- Primarily, the violations of sound levels recorded on site could not be controlled due to lack of co-ordination between Police & GSPCB. The SDPO has stated that they were busy in monitoring and managing the huge crowd whereas the GSPCB have stated that they orally informed the Police multiple times that the noise levels are being exceeded. As there is no written record, it is actually difficult to ascertain whether the violations were actually brought to the notice of Police by GSPCB. Therefore, it is necessary that henceforth, if there any breach of Rules for any event, the incident should immediately be reported by GSPCB to the PI, SP, SDM and DM through mobile message or an email alongwith a mention to close the event immediately. Further, to avoid such recurrences in future,

a “Joint Special Cell” of officials from Police, GSPCB and SDM is to be formed for better co-ordination.

- *For the violations of provisions under the Environment Protection Act, Air (Prevention and Control of Pollution) Act 1981, and the Noise Pollution (Regulation and Control) Rules 2000, it is noted that the GSPCB has observed that the Organiser had violated the permission granted by the Authorities and hence the Board has taken the violations seriously and action has been initiated as per the provisions in law thereby filing a Criminal Complaint before the Court of the Judicial Magistrate First Class at Mapusa and subsequently issuing a Show Cause Notice to the Organisers seeking reasons as to why the Security Deposit should not be forfeited for not abiding by the guidelines and conditions prescribed in the permission granted for the Sunburn festival.*

Further, as per the provision of Section 40 of the Air (Prevention and Control of Pollution) Act 1981 it is observed that the GSPCB has also made the Company and its Directors a party in the Criminal Complaint thereby following the provisions of the Act.”

28. Thus, the Chief Secretary concluded that R-10 did not comply with the requirements of the Action Plan dated 05.01.2022, and there was a clear violation of the clauses of the Action Plan by R-10 and also the officials involved in the process of granting permission, viz. SDM, SDPO and GSPCB. The Chief Secretary noted that the permission was granted within a day and quoted the SDM stating that even in the past, the Organizers of the same event had applied just one day before the event and permissions were still granted. The Chief Secretary also noted that in future, the festival Organizers must apply well in advance, and

the officials need to adhere to the rules and provisions before granting permissions. The Chief Secretary also noted that the officials involved in the process of granting permissions must independently assess the application before granting permissions, irrespective of the scale of the event.

29. The Chief Secretary concluded that the GSPCB officials did try to require R-10 to bring the sound levels within the permissible limits during the live event. However, the GSPCB officials could not succeed in their attempts due to a lack of coordination between the police officials and the GSPCB officials. The Chief Secretary noted the SDPO's statement that they were busy in monitoring and managing the huge crowd and, therefore, could not control the noise levels. The Chief Secretary also noted GSPCB's contention that they had informed the police multiple times that the noise levels were being exceeded and that some action should be taken to prevent this. The Chief Secretary, therefore, concluded that henceforth, if there are any breaches of rules for any event, the incident should be immediately reported by GSPCB to the PI, SP, SDM and DM through mobile message or an email along with a mention to close the event immediately.

30. The Chief Secretary, in his report, suggested the constitution of a "Joint Special Cell" of the officials from police, GSPCB and SDM to be formed for better coordination and to prevent recurrences of incidents where Noise Pollution Rules are breached with impunity and no effective action is taken for lack of coordination between the

GSPCB, police officials and the SDPO. The Chief Secretary's report concludes by noting that GSPCB has already launched prosecution against R-10 and its directors. The report also notes that the show cause notice has already been issued to R-10 as to why the security deposit furnished by R-10 should not be forfeited for not abiding by the guidelines and conditions prescribed in the permission granted for the festival.

31. Apart from the two reports filed by the Chief Secretary, the material on record establishes that the R-10, as also the authorities involved in granting permission to R-10, acted in breach of the Government's Action Plan dated 05.01.2022 published in the Official Gazette dated 13.01.2022. The Chief Secretary has gone into this aspect and concluded that the permission granted to R-10 was in breach of the Government's Action Plan dated 05.01.2022. Even otherwise, there is material on record which establishes that the permission was granted in great haste, without any application of mind to compliances and potential for compliances. The explanation by the authorities that this was a large event for which hundreds of thousands of tourists and locals were expected to attend was rejected by the Chief Secretary.

32. Even according to us, this can hardly be the explanation that could be accepted. The scale of the event is a reason to ensure strict compliance with the terms and conditions set out in the Action Plan so that not only those that attend such festivals remain safe, but further, such festivals do not cause nuisance and harassment to those in the

vicinity who may not want to participate in such festivals. In any case, the scale of the festival is a factor that must be considered for determining whether the noise levels generated not only by the music that is to be played at the festival but the crowd itself would remain within the noise pollution limits prescribed under the Noise Pollution Rules.

33. The authorities, without considering applications for grant of permissions, must also assess the crowd that is expected for such festivals, the traffic arrangements, etc. because these are also factors which generate noise. The authorities, enjoined with the duty to consider applications for permissions, should also look into the history of previous breaches and seriously consider whether an applicant who has breached the permission conditions in the past is now seeking permission for the same festival but by putting forward some other applicant. The authorities enjoined to consider such application should not only focus on the noise generated by the electronic equipment used at the festival but must make an overall assessment of the ambient noise levels having regard to the crowd that is expected for the festival, the traffic position, in addition to the use of electronic equipment like microphones, loudspeakers, speakers, amplifiers, sound generating instruments, etc.

34. The Action Plan contemplates submission of an application in the prescribed format to the prescribed authority at least seven days before the date of intended use. In the present case, this requirement

was breached, and an application was made hardly a day before the event was to be held. The authorities ignored this requirement and hurriedly proceeded to grant permission to R-10. The object of prescribing requirement about making such an application at least seven days in advance is to enable the authorities to make inquiries, gather material and otherwise assess and evaluate the matter and then decide whether any permission can be granted or not. The authorities cannot be rushed through based upon an application made hardly one or two days prior to the event. The authorities must also not permit themselves to be rushed through in this manner and grant permissions hurriedly and without application of mind simply because of the scale of the proposed event. Therefore, the decision-making process leading to the grant of the impugned permission was defective rendering the permission granted defective.

35. Rule 7(b) of the Action Plan provides that after an application is received at least seven days before the date of the event, the authority shall undertake an enquiry, as deemed necessary and give permission indicating the conditions to be complied with. Further, the authority is duty-bound to take necessary action for ensuring that the directions indicated in the permission are complied with and in the event of any violation appropriate action must be taken as per the provisions of the relevant Rules. Such application seeking permission must be made to the Deputy Collector/Sub-Divisional Magistrate of the concerned Taluka.

36. Clause 7(c) of the Action Plan provides that in case of events/functions/programmes involving more than 50 participants, the application must be forwarded by the authority to the GSPCB, and the applicant must make a deposit of Rs.3000/- per event/programme/functions with the GSPCB. The GSPCB is then expected to prepare a report in Format and forward the same to the Department of Environment. That department will then, after assessment, issue a recommendation to the authority, that is, to the Collector/Deputy Collector.

37. Clause 7(e) provides that no Public Address System loudspeaker or any sound-producing instrument or a musical instrument or a sound amplifier shall be sold, purchased, supplied/used by any manufacturer/dealer/shopkeeper without the installation of Noise Limiter in outdoor areas. Further, these sound-producing instruments should not be permitted for use at night time from 10 p.m. to 6 a.m. except either in indoor setup or during any public emergency or during the 15 festive days so notified by the State Government.

38. Clause 7(f) of the Action Plan provides that in case of open-air venues for marriages/weddings/functions/parties, etc., each such venue shall install an online noise level monitoring system and shall also provide a display board along the periphery of the venue to display the noise levels recorded at the venue for the benefit of the public. In the present case, the material on record establishes that there was no such

display board along the periphery of the venue. However, R-10 has disputed this position.

39. Clause 7(f) further requires that the online system be connected to the GSPCB server as well as the office of the Sub-Divisional Magistrate and the office of the Deputy Superintendent of Police for monitoring the noise levels and ensuring compliance with the rules. The Open-Air Venue Operator must submit details of the equipment installed at the venue to the concerned SDM in Form E, and the said details will then have to be forwarded to the GSPCB for inspection and comments. This is after the Organizer has deposited the prescribed fees with the GSPCB. The GSPCB is then required to forward the inspection report with recommendation to the Department of Environment and the Department of Environment, as noted earlier, will thereafter forward the report to the SDM/DM with its recommendations. Clause 7(f) categorically provides that every Open-Air Venue should be assessed by the authority annually through the GSPCB and the Department of Environment.

40. In the present case, the clauses of the Action Plan were observed by R-10 and the various authorities like GSPCB, SDM, and Department of Environment, only in breach. The GSPCB directly entertained the application from R-10 even before the same could be forwarded by the Deputy Collector/SDM after making an assessment. From the material placed on record, it appears that all the authorities, like the SDM and the GSPCB, were in a great hurry to issue R-10

permission to commence the festival between 28th and 30th December 2022 when R-10 applied for permission only on 27.12.2022. Some of the departments were bypassed.

41. From the manner in which the permission was granted to R-10 by the authorities in breach of their Action Plan, it appears that the authorities were bent upon denying any public-spirited citizens the opportunity to question such permissions by approaching the Court. The Chief Secretary has recorded a statement by the SDM that even in the past, applications were made hardly a day or two before the event, and the permissions were granted either on the date of the event or a day prior. From all this, we gather an impression that this hurry and grant of last-moment permission is designed to deny public-spirited citizens access to justice or to seek review of the permission granted, even though, permission granted may be in complete breach of the Government's own Action Plan or in breach of the Noise Pollution Rules.

42. Such an approach is improper, particularly on the part of the authorities who are enjoined with the responsibility of considering applications for such events. Firstly, such authorities must grant permissions in terms of the Government's Action Plan and the Noise Pollution Rules. Secondly, such authorities must not entertain applications unless they are made at least seven days before the event so that the authorities get sufficient time to assess the credentials of the applicants and the capacity of the applicants to comply with the various

rules and regulations. The authorities must also consider several factors like the position of the venue, the crowds expected, traffic arrangements, etc. Besides, this practice of issuing permission at the last moment to prevent access to courts is not proper.

43. Clause 7(i) of the Action Plan provides that the peripheral noise level of a privately owned sound system or sound producing instrument shall not, at the boundary of the private place, exceed by 5dB(A) ambient noise standards specified for the area in which it is used. Clause 7(j) provides that the occupant of any public space, as defined, shall ensure that noise emitting from any activity shall not exceed the noise limit of more than 10dB(A) of the prescribed standard.

44. Finally, clause 7(k) provides that due care shall be taken for ensuring that the rules are obeyed in a graceful and civil manner as far as feasible and only in case of resistance by the violator punitive action to be taken. From what transpired between 28th and 30th December 2022, it is apparent that the noise levels were breached with impunity, and the authorities who were enjoined with the responsibility of preventing such breach did nothing in the matter except the police authorities blaming the GSPCB and the GSPCB blaming the police. From the manner in which permission was hurriedly granted to R-10, we get the impression that even this show of lack of coordination or the blame game was only to facilitate R-10 to break the Noise Pollution Rules with impunity and to the detriment of the law-abiding citizens in the area.

45. From the material placed before us, we find that R-10 often makes applications for permissions in different names. The authorities must, therefore, identify the applicant. If the applicant is a Company, only authorised representatives of the Company backed by the resolution of the Company can be permitted to apply on behalf of the Company. The authorities must obtain all details of the applicant Company and only thereafter process the applications. This is necessary because otherwise, a host of hyper-technical defences are raised to avoid liability after committing serious breaches.

46. The permission hurriedly granted to R-10 provides that the ambient air quality shall not exceed 55dB(A) during the period of the use of the loudspeakers/Public Address System in the residential area. The peripheral noise level of the loudspeakers/Box Type Speakers/Public Address System shall not exceed by more than 55dB(A) than the ambient air quality standard or as specified for the area in which it is used at the boundary of the private place. The permission specified that the music should be stopped at 10.00 p.m. and there should be no violation of the EPA, 1986 and the Noise Pollution Rules, and the event should not be a source of public nuisance.

47. Mr Sardesai raised arguments, including arguments that the venue was not a public place or that there was no proper monitoring in the residential area or at the venue. The material on record completely belies such contentions. Mr Sardesai also referred to the Noise Pollution Rules or the standards prescribed to contend that standards

more stringent than those prescribed in the Rules were imposed by the permissions granted to R-10. Assuming this is so, still, R-10 still had no right or authority to breach those standards. Besides, even if we go by the Noise Pollution Rules or the standards prescribed therein, the monitoring data shows that even those standards or noise levels were breached by R-10 between 28th and 30th December 2022. The inspection reports produced are quite detailed and quite clear. Based upon the same, it is more than apparent that the terms and conditions of the permission and the Noise Pollution Rules were breached with impunity by R-10.

48. Mr Sardesai referred to the provisions of Section 11(2) of the EPA 1986 to contend that the samples in this case were not taken in accordance with the provisions of this Section. The samples in this case were taken based on the sophisticated monitoring systems that were installed. The samples were taken at the venue in the presence of the representative of R-10. The reports have been produced on record. The reports inspire full confidence. The reports are based on readings recorded by sophisticated scientific instruments. Based upon some vague and hyper-technical pleas there is no question of discrediting the reports which establish breach. All this is assuming that the provisions of Section 11 of the EPA, 1986 apply to the situation at hand.

49. Mr Sardesai submitted that the reports pertaining to 27.12.2022 (one day prior to the event) show that the noise levels were 63.8dB(A). Based on this, Mr Sardesai submitted that the noise levels,

even before the event, were extremely high or even exceeded the permissible limits. Based on this, Mr Sardesai contended that no conclusion could have been drawn about R-10 being responsible for noise levels exceeding the permissible limits during the festivals. Again, this contention cannot be accepted.

50. The Noise Pollution Rules speak about the ambient air quality in the area. Therefore, it would not be correct to interpret the reports in the manner suggested by Mr Sardesai. Obviously, in any given area, there is bound to be some noise. Therefore, when permissions are granted, allowance is made for this exceeding noise while framing the rules or prescribing the standards. Therefore, if the sound generating instruments for the event, together with the exceeding noise levels in the area, are to exceed the standards prescribed or the Noise Pollution Rules, there can be no defence that the exceeding noise levels must be deducted or must be discounted. In fact, all these factors are required to be considered by the authorities before granting permission. In the present case, R-10 applied for permission only a day prior to the event. Such an application, surprisingly, was entertained by the authorities, and permission was granted without adverting to several relevant considerations. In any case, based upon the interpretation suggested, it cannot be said that R-10 did not breach the terms and conditions subject to which they were permitted or the Noise Pollution Rules.

51. Mr Sardesai also tried to suggest that since the GSPCB has already launched prosecution against R-10 its directors, the show cause

notice for forfeiture of the security deposit should not be disposed of until the outcome of the criminal prosecution. Again, this contention cannot be accepted because the standard of proof in criminal prosecution and for deciding civil liabilities is entirely different. For imposing civil liabilities, the standard of proof is that of a preponderance of probability and not proof beyond a reasonable doubt. Accordingly, even this contention cannot be accepted.

52. For all the above reasons, this petition is allowed and the Rule is disposed of by making the following order:

(a) It is declared that the permission dated 28.12.2022 issued to R-10 for holding the Sunburn music festival from 28th to 30th December 2022 was illegally issued and consequently, the said permission was illegal and liable to be quashed and set aside;

(b) As suggested by the Chief Secretary, State of Goa, in his report filed in this matter, the State Government must immediately constitute a Joint Special Cell comprising high-ranking officials from the police, the GSPCB, and the SDM/Collector. It shall be the responsibility of this Joint Special Cell to ensure that the permissions are granted for such mega events in accordance with the notified Action Plan, and further, the organisers of such mega events should scrupulously comply with the terms and conditions by which

such permissions are granted and the provisions of the Noise Pollution Rules.

(c) The show cause notice issued to R-10 concerning the security deposit amount must be disposed of within two months from today.

(d) The State Government must consider whether applications of parties that hold events or functions by breaching the terms and conditions subject to which such permissions are granted, or the Noise Pollution Rules must be considered in future;

(e) If R-10 or any Organizers propose to hold the Sunburn music festival in 2023, high-ranking police officials, Officers from GSPCB and the Collector/Deputy Collector must remain present at the venue to monitor compliances. The police officials and the GSPCB officials must coordinate with each other so that there is no recurrence of what happened between the 28th to 30th of December 2022. If the authorities find noise pollution levels are being exceeded or breached, they should immediately halt the event and seize the sound-generating equipment. In addition, the authorities must take all measures to ensure that the noise pollution levels are not breached at any such events.

(g) The State Government is directed to comply with the directions issued by the Hon'ble Supreme Court in paragraph 177 of **Noise Pollution (V), in re** (supra), which reads as follows:

“177. 1. There is a need for creating general awareness towards the hazardous effects of noise pollution. Suitable chapters may be added in the textbooks which teach civic sense to the children and youth at the initial/early-level of education. Special talks and lectures be organised in the schools to highlight the menace of noise pollution and the role of the children and younger generation in preventing it. Police and civil administration should be trained to understand the various methods to curb the problem and also the laws on the subject.

2. The State must play an active role in this process. Residents Welfare Associations, Service Clubs and societies engaged in preventing noise pollution as a part of their projects need to be encouraged and actively involved by the local administration.

3. Special public awareness campaigns in anticipation of festivals, events and ceremonial occasions whereat firecrackers are likely to be used, need to be carried out.

The abovesaid guidelines are issued in exercise of power conferred on this Court under Articles 141 and 142 of the Constitution of India. These would remain in force until modified by this Court or superseded by an appropriate legislation.”

(h) The interim directions issued in this petition on 30.12.2022 (**Valmiki Sa Menezes, J**) are made absolute to

the extent that the context permits and this final order does not vary the same. These interim directions now made absolute, shall apply to any future events that R-10 may hold or to the Sunburn music festival if held by some other party.

(i) The Respondent No.10 shall pay costs of Rs.25,000/- (Rupees Twenty-Five Thousand only) to the Petitioner within four weeks from today.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K
HALDANKAR

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NITI K HALDANKAR
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