

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 22.7.2019

1. CWP No. 6213 of 2016 (O&M)

Reet Mohinder Singh

.. Petitioner

VS

State of Punjab and others

.. Respondents

2. CWP-PIL No. 27011 of 2016 (O&M)

Panditrao Dharenavar

.. Petitioner

VS

The Principal Secretary to Government, Punjab
and others

.. Respondents

3. CWP-PIL No. 32 of 2018 (O&M)

Court on its own motion

.. Petitioner

VS

State of Punjab and others

.. Respondents

4. CWP-PIL No. 42 of 2018 (O&M)

Ram Kumar Garg

.. Petitioner

VS

Union Territory, Chandigarh and another

.. Respondents

5. CWP No. 11564 of 2018 (O&M)

Serving in Organisations for Legal Initiatives

.. Petitioner

VS

Union of India and others

.. Respondents

Coram: **Hon'ble Mr. Justice Rajiv Sharma**
 Hon'ble Mr. Justice Harinder Singh Sidhu

Present Mr. M. L. Sarin, Senior Advocate with
 Ms. Amaninder Preet, Advocate.
 Mr. J. S. Rana and Mr. Rahul K. Sharma, Advocates,
 for the petitioners.
 Mr. Satya Pal Jain, Additional Advocate General of India with
 Mr. Alok Kumar Jain, Senior Panel Counsel for Union of India,
 Mr. Arun Gosain, Senior Panel Counsel for Union of India.
 Mr. Suveer Sheokand, Additional Advocate General, Punjab.
 Mr. Deepak Balyan, Additional Advocate General, Haryana
 and Mr. Vivek Saini, Deputy Advocate General, Haryana.
 Ms. Harpreet Kaur, Advocate for
 Mr. Navkiran Singh, Advocate, for Intervenor.
 Mr. Namit Kumar, Advocate, for U. T. Chandigarh.

Rajiv Sharma, J.

1. This order will dispose of aforesaid five writ petitions as common questions of law and facts are involved therein.
2. This Court vide order dated 14.3.2019 had constituted a Committee headed by Shri M. L. Sarin, Senior Advocate/ Amicus Curiae together with Shri Akshay Bhan and Ms. Reeta Kohli, Senior Advocates and Shri Pankaj Jain, Senior Standing Counsel, U. T. Chandigarh, Shri Deepak Balyan, Additional Advocate General, Haryana and Shri Shireesh Gupta, Senior Deputy Advocate General, Punjab.
3. The Committee was ordered to make suggestions to this Court for formulating a policy to be implemented in the States of Punjab, Haryana and Union Territory, Chandigarh, for effective implementation of the provisions of law to control noise pollution and decide other allied issues.
4. The Committee had invited suggestions from the Committee Members and various stakeholders from various parts of the States of Punjab, Haryana and Union Territory, Chandigarh. The first meeting of the Committee was held on 24.4.2019. The second meeting was held on 12.5.2019. The Committee opined that there are adequate provisions of law

to control the menace of noise pollution but what is lacking is its effective implementation. The following suggestions were given for effective implementation of the provisions of law:-

- i) To make the prevention of noise pollution an integral part of the *Swachh Bharat Mission*.
- ii) Sensitize people, both the officials and the general public, about the hazardous effects of noise pollution and its ill-effects on human beings, birds and animals as well as nature.
- iii) Sensitize religious institutions, marriage palaces and other noise producing institutions about the adverse impact of noise pollution in the vicinity. In this respect highlighting the Hukamnama issued by Sri Akal Takhat Sahib on use of loudspeakers only within the precincts of a Gurdwara.
- iv) This process of sensitizing the public should be done through an aggressive campaign of 4-6 months through pamphlets, posters, newspapers, electronic media, advertisements, messages through mobile operators, etc., especially by taking the Health Department of the three governments on board.
- v) The press and the media should also be requested to highlight the adverse effects of noise pollution.
- vi) The authorities responsible for implementing the laws have to be warned that it is their duty to implement the laws. In this respect, the Chief Secretaries/ Advisor and the DGPs should be made responsible for implementation of the law and to ensure that the supporting authorities under the Rules perform their duties effectively.
- vii) As an aid to discharging their functions, the authorities should be equipped with modern noise monitoring devices.

- viii) Each religious institution should be asked to nominate a responsible person to ensure the implementation of the law and in case of any breach, should be held accountable.
- ix) Places which produce noise regularly e.g. Religious institutions, marriage palaces, barred industrial units, etc. should have noise monitoring devices installed to prevent them going above the permissible limit.
- b) Setting up a common hotline for Punjab, Haryana and the U.T. Chandigarh.
 - i) After creating a common command for Chandigarh region i.e. including Chandigarh, Mohali and Panchkula, there should be a common helpline where complaints can be made which can further be sent to the concerned Authorities in their respective areas accessible on phone, WhatsApp or email. Single phone number or email ID should cater to whole of the territory and the same should be widely advertised and published on radios and in newspapers, electronic media, etc.
 - ii) That the Authorities must have in House Standard Operating Procedure clearly defining steps that are to be taken after a complaint is received specifying outer time limit within which those steps shall be completed, so that the complaint can be taken to its logical end.
 - iii) The identity of the complainant should be kept confidential.
 - iv) Record of the complaints made should be maintained by the responsible enforcing authority under the Rules.
- c) Registering of Complaints:
 - i) As the enforcement of the noise pollution laws have to be through the Chief Secretaries/ DGP, the supporting enforcing authorities would send weekly reports of the complaints received and the action taken.
 - ii) If a complaint is made, the guilty party should be let-off the first time with a warning.

- iii) For the second violation, action in accordance with the applicable rules should be taken.
 - iv) For a third successive violation not only the guilty party but the enforcing agency should be held guilty of Contempt of Court or would necessitate the registering of a First Information Report.
- d) Places requiring permission/ licence
- i) In places in which a licence/ prior permission is required for holding functions etc., an undertaking should be obtained from the applicant to comply with the rules governing levels of sound. In case of any breach, the licence/ permission would stand automatically revoked and the person would be liable to be proceeded against.
 - ii) The enforcing authorities could resort to video-recording of the noise pollution complaint which can easily be done with a good mobile phone, if equipment recording the level of noise is also photographed simultaneously.

OR

A mobile application can be developed (as was done by the Election Commission of India during the 2019 Lok Sabha Election) whereby a photograph/ video showing a violation can be sent to the enforcing authority and action needs to be taken within 60 minutes.

In addition each PCR van should be equipped with a Noise Monitoring Device or a Decibel Meter.

- e) Regarding Chandigarh
- i) Whenever community centers in Chandigarh are allowed to be used for marriages or other functions, a certain sum of money should be kept in deposit to ensure that there is no noise pollution. In case of breach, the money should be confiscated while in case of compliance it should be refunded.”

5. In the affidavit dated 1.12.2017 filed by Mrs. Amrit Singh,
Sub-Divisional Magistrate, Nakodar, District Jalandhar, on behalf of Deputy

Commissioner, Jalandhar, in CWP No. 6213 of 2016, it is stated that the Punjab Pollution Control Board, Jalandhar, vide its letter no. 5765 dated 4.10.2017, in response to a letter from the office of Deputy Commissioner, Jalandhar, has intimated that the Punjab Pollution Control Board has issued orders regarding ban on manufacturing/ sale/ purchase/fit/ use of multi-tone horns/ sounds producing devise fitted with motorcycles vide its letter no. 621 dated 6.9.2017, which was also published in all the leading newspapers on 8.9.2017.

6. In CWP No. 6213 of 2016, the petitioner has sought direction to the respondents therein to prevent noise pollution in his locality. He has given the details of religious institutions, which were using loudspeakers. The respondents have filed replies and have undertaken to comply with the provisions of the Noise Pollution (Regulation and Control) Rules, 2000. There is also reference in the reply to the directions given by National Green Tribunal, New Delhi, vide order dated 11.9.2013, to the State of Punjab to issue guidelines/ parameters relating to noise/ sound pollution. There is also reference to the notification dated 26.2.2014 issued by the Department of Science, Technology and Environment, STE Branch, Punjab. According to this notification, the ambient air quality standards in respect of noise within different zones as prescribed under Rule 3(1) of the Noise Pollution (Regulation & Control) Rules, 2000, are as under:-

<i>Category of Zone</i>	<i>Limits in db(A) leq</i>	
	Day Time	Night Time
Industrial Area	75	70
Commercial Area	65	55
Residential Area	55	45
Silence Zone	50	40

7. The day time means from 6.00 a.m. to 10.00 p.m. The night time means from 10.00 p.m. to 6.00 a.m. According to this notification, no loudspeaker is to be allowed to be operated except after obtaining prior written permission from the authority concerned. It was also prescribed that loudspeakers shall not be allowed to be operated during night time i.e. after 10.00 p.m. and before 6.00 a.m. The loudspeakers could not be used or let without sound limiter for the purpose of use in open air. The loudspeakers were not to be allowed for a period lasting 3 days prior to the examinations. Similar directions were issued in respect of management of marriage palaces/ DJ Parties/ owners of privately owned sound system or sound producing instruments.

8. The Punjab Pollution Board has also issued notices to the private respondents on 2.5.2016.

9. In CWP No. 11564 of 2018, the petitioner has sought enforcement of the provisions of the Punjab Instruments (Control of Noise) Act, 1956 and of the Noise Pollution (Regulation and Control) Rules, 2000.

10. In CWP No. 42 of 2018, the petitioner has sought direction to the Union Territory, Chandigarh, not to permit marriage functions in Phase-III of Rock Garden, Chandigarh. He has placed on record, copy of notification dated 19.1.2005, whereby Commercial Area, Residential Area as well as Silence Zone were carved out. The same are extracted below:-

2. Commercial Area

City Centre Sector-17, City Centre Sector 34-A & B, City Centre Sector 43-C & D, Commercial strips along V-2 roads (Madhya Marg, Dakshin Marg & Vikas Marg) and V-3 road (Himalaya Marg), Manimajra Motor Market, Motor Market Sector-43, 48, 52 & shopping area near Manimajra Bus Stand.

3 Residential Area

Residential areas of Chandigarh comprising of the following Sectors except areas falling under Educational Institutions, Hospitals and Leisure Valley.

Sectors 2 to 5, 6 (including Golf Course), 7 to 11, 15, 16, 18 to 33, 34-C and D, 35 to 42, 43-A and B, 44 to 47 and portions of Sectors 48 to 56 falling within the boundary of the Union Territory, Chandigarh, Manimajra Town (excluding motor market & shopping area near bus stand) and all the village abadis (laldora) of the Union Territory, Chandigarh. These areas include the sub-sector shopping areas along V-4 roads in various sectors.

4. Silence Zone

- a) Sector-1 (Capital Complex including Rajendra Park and Chandigarh Club), Sector-12, Sector-14 (Panjab University) the entire area around the Lake upto 100 meters from the high water mark, and the entire area North East of Uttar Marg including Rock Garden & Lake Club.
- b) An area comprising 100 meters around all Hospitals, Educational Institutions, Courts and religious places.

Note: Such institutions may be allowed sound amplification systems audible only within their premises.

11. In CWP No. 27011 of 2016, the petitioner has sought enforcement of judgment rendered by Hon'ble the Supreme Court in Re. Noise Pollution Implementation of the Laws for Restricting Use of Loudspeakers and High Volume Producing Sound System 2005 (5) SCC 733 regarding banning of sound amplifier, vulgar songs. The petitioner has also given the instance of one Kulwinder Kaur, aged 25, who was shot dead in celebratory firing on 3.12.2016 in a marriage party.

12. The Parliament had enacted the Act called “The Environment (Protection) Act, 1986” (hereinafter referred to as “the Act”). The Central Government is authorized by Publication in the official gazette to make Rules in respect of any of the matters referred in Section 3 of the Act. Section 3 of the Act empowers the Central Government to take measures to protect and improve environment. Section 6 of the Act empowers to frame the rules to regulate environmental pollution.

13. The States of Punjab, Haryana and Union Territory, Chandigarh, have not filed any affidavit to supplement the suggestions/ inputs made by the Committee constituted by this Court vide order dated 14.3.2019.

14. We have gone through the report submitted by the Committee. We agree with the suggestions/ inputs made by the Committee. Since the States of Punjab and Haryana and Union Territory, Chandigarh have not filed their response, we are not left with any option but to dispose of the writ petitions after accepting the suggestions/ inputs made by the Committee.

15. The Governments of Punjab, Haryana and Union Territory, Chandigarh have not taken sufficient measures to check the noise pollution either emanating from the factories or by way of indiscriminate use of loudspeakers/amplifiers even by religious bodies, may be by Temples, Mosques and Gurudwaras.

16. The Central Government has framed the Noise Pollution (Regulations and Control) Rules, 2000. According to Rule 3, the ambient air quality standards in respect of noise for different areas/zones shall be such as specified in the schedule annexed to these Rules. The State Governments

are required to categorize the areas into industrial, commercial, residential or silence areas/zones for the purpose of the implementation of noise standards for different areas. It is the prime responsibility of the State Government under Rule 3 (3) to take effective measures for abatement of noise including noise emanating from vehicular movements; blowing of horns, bursting of sound emitting fire crackers, use of loudspeakers or public address systems and sound producing instruments and to ensure that the existing noise levels do not exceed the ambient air quality standards specified under these Rules. According to Rule 4, the noise level in any area/zone shall not exceed 10dB(A) above the ambient noise standards specified in the schedule. The authority shall be responsible for the enforcement of noise pollution. The “authority” is defined under Rule 2(c).

Rule 5 being important is reproduced as under :-

“5. RESTRICTIONS ON THE USE OF LOUD SPEAKERS/PUBLIC ADDRESS SYSTEM AND SHOULD PRODUCING INSTRUMENTS.-

- (1) A loud speaker or a public address system shall not be used except after obtaining written permission from the authority.*
- (2) A loud speaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall not be used at night time except in closed premises for communication within, like auditoria, conference rooms, community halls, banquet halls or during a public emergency.*
- (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 and the like 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] [The concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption would be operative.]

- (4) *The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10dB (A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.*
- (5) *The peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5 dB(A) the ambient noise standards specified for the area in which it is used.]*

5A. RESTRICTIONS ON THE USE OF HORNS, SOUND EMITTING CONSTRUCTION EQUIPMENTS AND BURSTING OF FIRE CRACKERS.-

- (1) *No horn shall be used in silence zones or during night time in residential areas except during a public emergency.*
- (2) *Sound emitting fire crackers shall not be burst in silence zone or during night time.*
- (3) *Sound emitting construction equipments shall not be used or operated during night time in residential areas and silence zones.”*

17. According to plain reading of Rule 5, a loudspeaker or a public address system cannot be used except after obtaining written permission from the authority. The loudspeaker or any sound producing instrument or a musical instrument or a sound amplifier can not be used at night time except in closed premises for communication within, like auditoria, conference rooms, community halls, Banquet halls etc. The State Government may subject to such terms and conditions as are necessary to reduce the noise

pollution, permit use of loudspeakers or public address systems and like 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. The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used can not exceed 10dB(A) above the ambient noise standards.

18. The Governments of Punjab, Haryana and Union Territory, Chandigarh have not enforced the provisions of Rules 3, 4 and 5 effectively. The loudspeakers keep on blaring even beyond 12.00 midnight. The loudspeaker cannot be permitted to be used without the written permission from the authority even by the Temples, Mosques and Gurudwaras. It is only for limited period of festival and special occasions that for 15 days, the permission can be granted to use the loudspeakers and public address system between 10.00 p.m. to 12.00 midnight. The indiscriminate use of loudspeaker or amplifier or musical instrument causes annoyance, disturbance and discomfort. It disturbs the sleeping pattern of the patients. The study of the students is also adversely affected.

19. Their Lordships of Hon'ble the Supreme Court in Indian Council for Enviro-Legal Action and others vs Union of India and others 1996 (3) SCC 212, have held that the principle laid down by Hon'ble the Supreme Court in *Oleum Gas Leak* case regarding strict and absolute liability of such unit to compensate persons adversely affected are binding. The respondents were found to be responsible for such extensive damages. Their Lordships have held as under :-

“58. In Oleum Gas Leak Case, a Constitution Bench discussed this question at length and held thus:

We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost for carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profits, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not....We would therefore hold that where an

enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Ryland v. Fletcher [supra].

We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the entire, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

60. *The majority judgment delivered by M.N. Venkatachaliah, J. [on behalf of himself and two other learned Judges] has not expressed any opinion on this issue. We on our part find it difficult to say, with great respect to the learned Chief Justice, that the law declared in Oleum Gas Leak Case is obiter. It does not appear to be unnecessary for the purpose of that case. Having declared the law, the Constitution Bench directed the parties and other organisations to institute actions on the basis of the law so declared. Be that as it may, we are of the considered opinion that even if it is assumed [for the sake of argument] that this Court cannot award damages against the respondents in these proceedings that does not mean that the Court cannot direct the Central Government to determine and recover the cost of remedial measures from the respondents. Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to*

"take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment...". Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2(a), Sections 3 and 5 clothe the central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted.

We find that similar directions have been made in a recent decision of this Court in Indian Council for Enviro-Legal Action and Ors. [supra]. That was also a writ petition filed under Article 32 of the Constitution. Following is the direction: It appears that the Pollution Control Board had identified as many as 22 industries responsible for the pollution caused by discharge of their effluents into Nakkavagu. They were responsible to compensate to farmers. It was the duty of the State Government to ensure that this amount was recovered from the industries and paid to the farmers.

It is, therefore, idle to contend that this Court cannot make appropriate directions for the purpose of ensuring remedial action. It is more a matter of form.

62. *The House of Lords, however, added a rider to the above statement, viz., that the user by the defendant should be*

a "non-natural" user to attract the rule. In other words, if the user by the defendant is a natural user of the land, he would not be liable for damages. Thus, the twin tests - apart from the proof of damage to the plaintiff by the act/negligence of the defendants – which must be satisfied to attract this rule as "forcibility" and "non-natural" user of the land.

65. On a consideration of the two lines of thought [one adopted by the English Courts and the other by the Australian High Court], we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country. We are convinced that the law stated by this Court in Oleum Gas Leak Case is by far the more appropriate one - apart from the fact that it is binding upon us. [We have disagreed with the view that the law stated in the said decision is obiter.] According to this rule, once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. In the words of the Constitution Bench, such an activity "can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not." The Constitution Bench has also assigned the reason for stating the law in the said terms. It is that the enterprise [carrying on the hazardous or inherently dangerous activity] alone has the resource to discover and guard against hazards or dangers - and not the person affected and the practical difficulty [on the part of the affected person] in establishing the absence of reasonable care or that the damage to him was foreseeable by the enterprise.

66. Once the law in Oleum Gas Leak Case is held to be the law applicable, it follows, in the light of our findings recorded hereinbefore, that Respondents Nos. 4 to 8 are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area [by affected area, we mean the area of about 350 ha. indicated in the sketch at Page 178 of NEERI Report] and also to defray the cost of the remedial measures required to restore the soil and the underground water sources. Sections 3 and 4 of Environment [Protection] Act confers upon the Central Government the power to give directions of the above nature and to the above effect. Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 4 which are couched in very wide and expansive language. Appropriate directions can be given by this Court to the Central Government to invoke and exercise those powers with such modulations as are called for in the facts and circumstances of this case.”

20. Their Lordships of Hon’ble the Supreme Court in Forum, Prevention of Envtn. & Sound Pollution vs. Union of India and another AIR 2005 SC 3136 have held that right to life includes freedom from noise pollution. Their Lordships have further held that polluter cannot take shelter under Article 19(1)(a) of the Constitution of India. Their Lordships have further held that freedom of speech and expression is not absolute right. Their Lordships have also laid down that awareness should be created in childhood against use of fire crackers. Their Lordships have also laid down that the noise level at the boundary of the public place where loudspeaker or public address system or any other noise source is being used shall not exceed 10dB(A) above the ambient noise standards for the area of 75 dB(A)

whichever is lower. No person is permitted to beat a drum or tom-tom or blow a trumpet or beat or sound any instruments or use any sound amplifier at night (between 10 p.m. and 6 a.m.) except in public emergencies. The peripheral noise level of privately owned sound system shall not exceed by more than 5dB(A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place. The horn cannot be blown/used at night between 10 p.m. to 06 a.m. in residential area except in exceptional circumstances.

“9. Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of person to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause 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 nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and the surrounding circumstances including the place and the time.

10. Those who make noise often take shelter behind Article 19(1)A pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute.

Nobody can 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 into 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 levels then the person speaking is violating the right of others to a peaceful, comfortable and pollution free life guaranteed by Article 21. Article 19 cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are Free Legal Aid Cell Shri Suman Chand Aggarwal alias Bhagatji v. Govt. of NCT of Delhi and Ors. MANU/DE/0654/2001.; AIR 2001 Delhi 455 (D.B.) and P.A. Jacob v. Superintendent of Police, Kottayam MANU/KE/0001/1993.; AIR 1993 Ker 1. We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in entire agreement therewith.”

21. Their Lordships of Hon'ble the Supreme Court in Anirudh Kumar vs Municipal Corporation of Delhi and others 2015(7) SCC 779 have held that noise generated up to unpleasant or obnoxious levels violates the right of the people to a peaceful, comfortable and pollution free life guaranteed by Article 21 of the Constitution of India. Their Lordships have held as under:-

42. *On examining the regularisation certificate issued by MCD, it is clear that the regularisation certificate is for running of a pathological lab whereas the conditions mentioned therein are directed towards running of a nursing home. Therefore, there is a lot of inconsistency within the regularisation certificate itself and due to the same, the regularisation certificate cannot be accepted by us as it is impermissible not only in law but also because the same was granted without seeking permission from the High Court during the pendency of the earlier Writ Petition No. 8808 of 2004 filed by the appellant.*

43. *In view of the aforesaid reasons, we have to hold that the grant of the regularisation certificate with the alleged retrospective effect to run the nursing home in favour of the respondent owners w.e.f. 11-7-2006 cannot be accepted by us and the same is liable to be quashed.*

44. *With regard to the environmental impact due to the running of the pathological lab in the building concerned, we first examine Clause 15.5 of the MPD 2021, which clearly states that any trade or activity involving any kind of obnoxious, hazardous, inflammable activities, non-compatible activities and polluting substance or process shall not be permitted. It is worthwhile to extract the definition of “process” which in the absence of a definition under the Environment Protection Laws, we are required to borrow it from Oxford Dictionary:*

“A systematic series of mechanised or chemical operation that are performed in order to produce something.”

45. *It is also necessary to extract the definition of “hazardous substance” under Section 2(e) of the Environment (Protection) Act, 1986 which word occurred in Clause 15.5 of the MPD 2021.*

“2. (e) ‘hazardous substance’ means any substance or preparation which, by reason of its chemical or physicochemical properties or handling, is liable to cause

harm to human beings, other living creatures, plants, microorganism, property or the environment;”

46. *As per the report of DPCC, it is clear that chemical substances emitted from the pathological lab will be obnoxious, non-compatible, polluting and therefore, the same are not permissible under Clause 15.5 of the MPD 2021. Further, when the respondent owners started the Diagnostic Centre, they employed about more than 50 people and installed 25 air conditioners, two diesel generator sets of 25 kVA and 40 kVA each in the setback area, along with kerosene tanks, gas cylinders and electric panels. Around 300 patients visit the Centre per day and more than 100 cars are parked in the vicinity. All these factors lead to air pollution which is in contravention of the Air (Prevention and Control of Pollution) Act, 1981. At present, 80 employees are working and around 300 patients visit the pathological lab every day and vehicles are parked in and around the surrounding area which is also creating a parking problem to the residents of the area. The nuisance created by all these factors not only leads to air pollution but also noise pollution to a great extent.*

47. *In this regard, it is necessary for us to examine the decision of this Court in Noise Pollution (5), In re14 at paras 11, 103 and 104 wherein it was held that noise generated up to unpleasant or obnoxious levels violates the rights of the people to a peaceful, comfortable and pollution-free life guaranteed by Article 21 of the Constitution of India. The said paragraphs are quoted hereunder: (SCC pp. 746 & 762)*

“11. Those who make noise often take shelter behind Article 19(1)(a) pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can 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 into 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 levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. ...

** * **

Air (Prevention and Control of Pollution) Act, 1981

103. Noise was included in the definition of air pollutant in Air (Prevention and Control of Pollution) Act in 1987. Thus, the provisions of [the Air Act] became applicable in respect of noise pollution, also.

Environment (Protection) Act, 1986

104. Although there is no specific provision to deal with noise pollution, the Act confers powers on the Government of India to take measures to deal with various types of pollution including noise pollution.” Further, it was held in this case that noise was included in the definition of “air pollutant” in the Air (Prevention and Control of Pollution) Act, 1981 and therefore, the provisions of the said Act became applicable in respect of the noise pollution also. It was also held that although there is no specific provision to deal with noise pollution, the Environment (Protection) Act, 1986 confers powers on the Government of India to take measures to deal with various types of pollution including noise pollution.

48. Further, on examining the evidence on record, particularly the photographs depicting the area in and around the building, it is clear that large diesel generator sets have been erected by the respondent owners in the setback area

which is an illegal structure in the residential premises and is in contravention of the building bye-laws and zonal regulations of MCD.

49*. *The running of this large pathological lab has led to emission of hazardous substances and in that process human beings, plants, micro organisms, and other living creatures are being exposed to harmful physicochemical properties. Not only this, they also create pollution which contaminates water on account of the discharge of chemical properties used in the process of running the pathological lab, causing nuisance and harm to public health and safety of the residents of the area. This fact is certified by DPCC in its report dated 4-8-2008. The usage of such generator sets has led to the damage of the building and cracks have been found in the building structure. The explanation sought to be given by the respondent owners is that the aforesaid generator sets were installed in the setback area as the appellant has not permitted to install the same on the terrace of the building. The objection of the appellant installing the same in the terrace is that he has purchased the said area and the appellant is living on the second floor and therefore, if the generator sets are installed on the terrace, it would be completely impossible for him to live on the second floor of the premises due to the sound and air pollution caused by the generator sets. It would not only affect the appellant and his family but also the other neighbouring residents of the locality.*

50. *It is an undisputed fact that consent was not obtained by the respondent owners from DPCC under Section 25 of the Water (Prevention and Control of Pollution) Act which states that no person shall, without the previous consent of DPCC, establish or take any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto which is likely to discharge sewage or trade effluent into a stream or well or sewer or land. It is mandatory under the said provision to first obtain*

consent from DPCC and admittedly such consent has neither been obtained by the respondent owners nor granted by Respondent 5, DPCC, nor has the same been placed before the learned Single Judge or the Division Bench or this Court. The running of the pathological lab for which the generator sets and other heavy equipments have been installed not only create sound pollution and air pollution but also the same is in contravention of the Water, Air and the Environment Protection Acts referred to supra. Therefore, in view of the relevant provisions of law referred to supra, the facts of the case and the evidence on record, we have to hold that the running of the pathological lab by the respondent owners in the building concerned is in violation of law.

51. *In this aspect of the matter, we refer to the legal principles laid down by this Court in M.C. Mehta v. Union of India¹⁵, the relevant paragraph from the said case is extracted hereunder: (SCC pp. 423-24, para 56)*

“56. On 18-5-1995, Justice R.C. Lahoti (as the former Chief Justice of India then was) in ANZ Grindlays Bank v. MCD¹⁶ echoed similar words and referred to decision of this Court, observing that the word ‘environment’ is of broad spectrum which brings within its ambit hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. There is constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment. Dealing with the municipal laws providing for power of demolition, it was observed that while interpreting municipal legislation framed in public interest, a strict constitutional approach must be adopted. A perusal of the master plan shows that the public purpose behind it is based on historic facts guided by expert opinion.”

52. Even though the High Court issued notice in the writ petition to examine the case insofar as Clauses 3 and 7 of the regularisation certificate are concerned, the learned Senior Counsel appearing on behalf of the respondent owners contended that the High Court has examined this aspect and did not find any contravention of the aforesaid conditions or any illegality committed by the respondent owners, therefore, this Court is required to examine only with regard to the aforesaid clauses. This contention cannot be accepted by this Court particularly in view of the fact that there is blatant violation of the provisions of the building bye-laws of MCD in using the building for the purpose other than the purpose for which it is constructed and further running the pathological lab or the nursing home is impermissible in the building concerned under the Master Plan 2001 or MPD 2021 and also under the provisions of the Water (Prevention and Control of Pollution) Act, 1974.

53. The running of the pathological lab by the respondent owners creates air and sound pollution rampantly on account of which the public residents' health and peace is adversely affected. Therefore, public interest is affected and there is violation of rule of law. Hence, we have examined this appeal on all aspects of the matter and on merits. This position of law is well settled in a catena of decisions of this Court."

22. The glorification of violence has given rise to culture of gangsters in the States of Punjab, Haryana and Union Territory, Chandigarh.

23. The Court can also take judicial notice of the fact that glorification of the liquor, wine, drugs and violence in the songs in the States of Punjab, Haryana and Union Territory, Chandigarh, has increased in recent times. These songs affect the children of impressionable age. The children below the age of 12 years are not to be permitted to enter cinema halls/ multiplexes, where "A" certificate films are screened. Semi-nude film

posters are vulgar and display nudity. There is indecent representation of women, which is derogatory to women.

24. As far as the frequent deaths and injuries caused by the persons using fire arms in marriage/ religious processions/ social gatherings/public/ political rallies, this tendency is required to be curbed. Section 3 of the Arms Act, 1959 (hereinafter referred to as the Act, 1959) provides that no person shall acquire, have in his possession, or carry any fire-arms or ammunition unless he holds in that behalf a licence issued in accordance with the provisions of the Act and the rules framed thereunder. Section 9 of the Act of 1959 provides prohibition of acquisition or possession by, or of sale or transfer to young persons and certain other persons of fire-arms, etc. Section 13 provides for grant of licences. Section 14 provides for refusal of licences. Section 15 provides for duration and renewal of licence. Section 16 provides for fees etc., for licence.

25. The Central Government has also framed rules called the Arms Rules, 1962 (hereinafter referred to as the Rules). Rule 3 provides for classification of arms and ammunition. Rule 14 provides for licence for protection of crops and cattle. Rule 15 provides for licence for target practice. Rule 16 provides for age limit for training and target practice. Rule 23 provides for licensing authorities are required to furnish information to the District Magistrate. Rule 51 provides for the procedure of submitting the application for licence. Rule 52 provides for form of licence. Rule 54 provides for renewal of licence. Form III deals with licence for the acquisition, possession and carrying of arms or ammunition for sport/protection/display. Item No.5 of the form of renewal of the licence reads as under:-

“5. The licensee or any retainer action under this licence shall not carry any arms covered thereby otherwise than in good faith for the purpose of sport/ protection/display and, save where he is specially authorized in this behalf by the District Magistrate concerned, he shall not take any such arms to a fair, religious procession or other public assemblage [or within the campus or precincts of any educational institution.]”

26. It is thus, evident that the fire-arms can be permitted to be carried for the purpose of sport/self protection/protection of crops and cattle/display. The fire-arms are not permitted to be carried in a fair, religious procession or other public assemblage or within the campus or precincts of any educational institution.

27. The licence for fire-arms is issued only for limited purposes. No person has a fundamental right to hold fire-arms. The State has absolute right to regulate acquisition and use of arms by laying down the norms.

28. Accordingly, the writ petitions are disposed of with the following mandatory directions:-

- i) The States of Punjab, Haryana and Union Territory, Chandigarh are directed to ensure that no loudspeaker or public address system shall be used by any person including religious bodies in Temples, Mosques and Gurudwaras without written permission of the authority even during day time, that too, by getting an undertaking that the noise level shall not exceed more than 10dB(A) peripheral noise level.
- ii) The States of Punjab, Haryana and Union Territory, Chandigarh are directed to ensure that the loudspeaker, public address system, musical instrument and sound amplifier are not played during night time except in auditoria, conference rooms, community halls, banquet halls as per norms laid down under the Noise Pollution

(Regulation and Control) Rules, 2000.

- iii) The States of Punjab, Haryana and Union Territory, Chandigarh are directed to ensure that loud speakers or public address systems are not used between 10.00 p.m. to 6.00 a.m., except between 10.00 p.m. to 12.00 midnight during any cultural or religious festive occasion of a limited duration not exceeding 15 days in all during a calendar year, that too, the noise level shall not exceed 10dB(A) above the ambient noise standards for the area. The peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5dB (A). The authority concerned shall keep on visiting and monitoring at the public places, private places, auditoriums, conference rooms, community halls, banquet halls, temples, mosques and Gurudwaras to ensure due compliance of the Rules.
- iv) We direct all the Senior Superintendents of Police/ Superintendents of Police in the States of Punjab, Haryana and Union Territory, Chandigarh to ensure that no horn shall be blown in silence zone or during the night time between 10.00 p.m. to 06.00 a.m. in residential areas except during public emergency. No sound emitting construction equipments shall be used or operated during the night time between 10.00 p.m. to 06.00 a.m. in residential areas or silence zone. m. The pressure horns are banned throughout the States of Punjab, Haryana and Union Territory, Chandigarh. The violators of the Rules be penalized under the Rule 6 of the Noise Pollution (Regulation and Control) Rules, 2000.
- v) All the Senior Superintendents of Police/ Superintendents of Police and Deputy Superintendent of Police in the States of Punjab, Haryana and Union Territory, Chandigarh are directed to ensure that motorcycles throughout the States of Punjab, Haryana

and Union Territory, Chandigarh are duly fitted with silencers to avoid noise pollution and menace.

- vi) No person, throughout the States of Punjab, Haryana and Union Territory, Chandigarh, shall carry any fire-arm to a fair, religious procession/ marriage procession or other public assemblage or within the campus or precincts of any educational institution.
- vii) The Licensing Authorities are also directed to ensure that no licence is issued to any person, who has not completed the age of 21 years.
- viii) No licence shall be issued to a person who has been sentenced on conviction of any offence involving violence or moral turpitude to imprisonment for [any term] at any time during a period of five years.
- ix) No licence shall be issued to a person who has been ordered to execute under Chapter VIII of the [code of Criminal Procedure, 1973 (2 of 1974)], a bond for keeping the peace or for good behaviour, during the term of the bond.
- x) The Director General of Police in the States of Punjab, Haryana and Union Territory, Chandigarh, are directed to ensure that no songs are played glorifying the liquor, wine, drugs and violence in any song even in live shows.
- xi) The States of Punjab, Haryana and Union Territory, Chandigarh are also directed that no child below the age of 12 years is permitted to enter cinema halls/ multiplexes, where "A" certificate films are screened.
- xii) The District Administration is directed to ensure that nude posters, semi-nude posters, obscene posters should not be fixed/ displayed in any district near the educational institutions in the States of Punjab, Haryana and Union Territory, Chandigarh.
- xiii) The Deputy Commissioners in the States of Punjab, Haryana and Union Territory, Chandigarh, are directed to ensure that no loudspeakers are permitted 15 days before

the annual examinations and during the course of examinations.

xiv) The recommendations made by the Committee constituted by this Court are ordered to be implemented in letter and spirit for proper enforcement of law.

xv) The District Magistrates/ Senior Superintendents of Police/ Superintendents of Police of each district shall be personally responsible to ensure due compliance of the directions issued hereinabove.

29. We place on record our appreciation for the valuable assistance rendered by the Committee.

30. A copy of this order be sent to the Chief Secretaries of the States of Punjab, Haryana and Home Secretary, Union Territory, Chandigarh, for compliance.

(Rajiv Sharma)
Judge

22.7.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No