

Item No. 06

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video Conferencing)**

Original Application No. 158/2016 (EZ)

Subhas Datta

Applicant

Versus

State of West Bengal & Ors.

Respondent(s)

Date of hearing: 13.11.2019

**CORAM : HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s):	In person
For Respondent (s):	Mr. Bikas Kargupta, Adv for R-1
	Ms. Paushali Banerjee, Adv for R-2
	Mr. Bikas Kargupta, Adv for R-3
	Mr. Bikas Kargupta, Adv for R-4
	Mr. Dipanjan Ghosh, Adv for R-5
	Mr. Gora Chand Roy Choudhury, Adv for R-6
	Mr. Swarbhanu Bhattacharya, Adv for R-7
	Mr. Surendra Kumar, Adv for R-9
	Mr. Surendra Kumar, Adv for R-10
	Ms. Amrita Pandey, Adv for R-11
	Ms. Aishwarya Rajyashree, Adv for R-12 & 13
	Mr. Surendra Kumar, Adv for R-14
	Mr.S. Majumdar & Mr. S. Deb, Adv for R-20
	Mrs. Sristi Barman Roy & Mr. Sayantan Chatterjee, Adv for R-33 & 34
	Mr. Arnab Roy, Adv for R-35
	Mr. Saubhagya Ketan Nayak, Adv for R-36 & 37
	Ms. Papiya Banerjee Bihani, Adv for R-38

Mr. Surendra Kumar, Adv for R-42 to 44
Mr. Shuvodeep Roy and Mr. Vinayak
Gupta, Advs for State of Assam

ORDER

1. The application involves the question of Noise Pollution initially in relation to the cities of Kolkata and Howrah in West Bengal. However, considering the ramification, the orders passed in the case were made applicable to all the States in the Eastern Zone Region.
2. By order dated 10.11.2016, the Principal Secretary, Department of Environment, Government of West Bengal, The Director General of Police, West Bengal, the Commissioner of Police, Kolkata and the West Bengal Pollution Control Board were directed to submit a report on the implementation of the Department of Environment, Government of West Bengal's Notification no. EN/3346T-IV-6/001/2007(PT.II) dated, 29th December, 2009, Notification no. EN/363/T-IV-6/-001/2007(PT.II) dated, 3rd February and West Bengal Pollution Control Board's Order no. 1853-4K-5/2004 dated 27th August, 2004 regarding monitoring of ambient noise standards in Kolkata and its surroundings. The affidavits filed by the authorities indicated steps being taken to enforce various Government Notifications and orders for regulation of sound and its sources by issuing various directions. However, it was noticed that apart from taking token steps to enforce the

regulations, nothing tangible had been taken at the ground for eradication of the causes of sound pollution.

3. By order dated 02.03.2017, the Department of Environment was directed to identify the manufacturers of audio systems and take up measures to regulate production of devices like pressure/air horns used in trucks, buses, motor bikes, loud speakers and audio systems, etc., and to explore the possibility of regulating manufacture of such devices in aid of the State Government's effort towards curbing sound pollution. Matter relating to use of black generators, i.e, generators which did not conform to the regulatory norms, was also taken up for consideration and directions issued for identifying the sources from which such generators were being procured and sold in the market. The Director General of Police, Commissioner of Police, Kolkata and the State Pollution Control Board, were directed to take immediate steps towards this end with a further mandate to institute appropriate legal action against those found in manufacturing and selling such generators. It had been clearly spelt out in the order that use of sound limiters in the sound systems both in private and public functions should be made mandatory in the cities of Kolkata and Howrah and surrounding townships in the first instance. It had been also suggested that the State should make sound limiters available in the market at reasonable prices by itself dispensing such devices initially

considering the anticipated hesitation of commercial establishments to venture into this market.

4. The affidavit filed later by the State Authorities was found to be wanting in compliance of the above directions. By order dated 18.04.2017, the State was further directed to monitor the ambient air quality standards in all notified silence zones within the cities of Kolkata, taking the vicinities of the hospitals at the first instance for the purpose.

5. By order dated 23.05.2017, we had *inter alia* brought to the notice of the State Respondents, State Pollution Control Board's Order no. 1853-4K-5/2004 dated 27.02.2004 by which fitting of sound limiters developed by Webel Mediatronics ltd., had been made necessary on microphones to avoid penal action under the Environmental (Protection) Acts, 1986 and Noise Pollution (Regulation & Control) Rules, 2000. It had also been noted that the State Respondent had not disclosed any action taken in furtherance of the said order of the State Pollution Control Board as well as the order of the Tribunal dated 02.03.2017. Direction was accordingly passed to the effect that fitting of sound limiters ought to be made mandatory in terms of the State Pollution Control Board's Order dated 27.08.2004 having regard to the fact that the order of the Board has a statutory character requiring strict compliance.

6. Various orders were passed thereafter as would appear from orders dated 04.07.2017, 09.08.2017, 03.10.2017 and 08.11.2017. However, even as on today there has been no compliance of the directions.

7. It is pertinent to note that the issue relating to maintenance of ambient air quality standards in respect of noise in the NCR of Delhi is under consideration of the Tribunal *in the Original Application No. 519/2016, Hardeep Singh Vs. SDMC & Ors* where directions have been passed from time to time. We may refer to order dated 27.09.2018 where the following observations have been made:

“ 7. As observed in *Re: Noise Pollution - Implementation of the Laws for restricting use of loud speakers and high volume producing sound systems*, (2005) 5 SCC 733, noise has both auditory and non-auditory effects, depending upon the intensity and the duration of the noise level. It affects sleep, hearing, communication, mental and physical health. It may even lead to the madness of people. However, noises, which are melodious, whether natural or man-made, cannot always be considered as factors leading to pollution. 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 complexity, variability and the interaction of noise with other environmental factors, the adverse health effects of noise do not lend themselves to a straightforward analysis. “Hearing Loss, Deafness, like poverty, stuns and deadens its victims.”-says Helen Keller. Hearing loss can be either temporary or permanent. Noise-induced temporary threshold shift (NITS) is a temporary loss of hearing acuity experienced after a relatively short exposure to excessive noise. Pre-exposure hearing is recovered fairly rapidly after cessation of the noise. Noise induced permanent threshold shift (NIPTS) is an irreversible loss of hearing that is caused by prolonged noise exposure. Both kinds of loss together with presbycusis cause permanent hearing impairment. NIPTS occurs typically at high frequencies, usually with a maximum loss at around 4,000 Hz. It is now accepted that the risk of hearing loss is negligible at noise exposure levels of less than 75 dB(A) Leq (8-

hr). Based on national judgments concerning acceptable risk, many countries have adopted industrial noise exposure limits of 85 dB(A) +5 dB(A) in their regulations and recommended practices. [N.B.- Hz. is abbreviation of Hertz which is the unit of frequency, equal to one cycle per second. Hertz (Hz) is the name, by international agreement, for the number of repetitions of similar pressure variations per second of time; this unit of frequency was previously called "cycles per second" (cps or c/s)].

8. The 2000 Rules were enacted with the following recital:

"Whereas the increasing ambient noise levels in public places from various sources, inter-alia, industrial activity, construction activity, generator sets, loudspeakers, public address systems, music systems, vehicular horns and other mechanical devices, have deleterious effects on human health and the psychological well being of the people; it is considered necessary to regulate and control noise producing and generating sources with the objective of maintaining the ambient air quality standard in respect of noise;"

9. Rules provide for categorizing the areas as industrial, commercial, residential as silence zones. The State Governments are required to take measures for abatement of noise. Areas within 100 meters around hospitals, educational institutions and Courts are silence zone. Loudspeakers or a public address systems cannot be used except after obtaining written permission. They cannot be used from 10:00 pm to 06:00 am.

10. In *Re: Noise Pollution*, supra, the Hon'ble Supreme Court directed that the noise level at public place should not exceed 10 dB(A) above the ambient noise standards or 75 dB(A) whichever is lower. No one can beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10 p.m. and 6 a.m.), except in public emergencies. No horn should be blown at night (between 10 p.m. to 6 a.m.). The States should make provision for seizure and confiscation of loudspeakers, amplifiers and such other equipments as are found to be creating noise beyond the permissible limits.

8. It may be relevant to note that the Noise Pollution (Regulation and Control) Rules, 2000 issued vide Ministry of Environment,

Forests and Climate Change notification dated 14th February, 2000 and as amended from time to time clearly provides that no loudspeaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall 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. The noise pollution shall not exceed 10dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower. No horn shall be used in silence zones. Sound emitting fire crackers shall not be burst in silence zone or during night time. Sound emitting construction equipments shall not be used or operated during night time in residential areas and silence zones.

9. The Hon'ble Supreme Court in *Re: Noise Pollution*, Supra, it was held that peaceful living, without being disturbed by noise, was part of fundamental issue under Article 21. Noise was a health hazard. Reference was also made to the statutory provisions for control of noise in India and other countries as well as case laws on the point.

10. The Hon'ble Supreme Court also issued directions for controlling the menace of noise pollution by the crackers, loud speakers, vehicular noise and other general directions including direction for creating awareness.

11. One of the significant directions in terms of the order dated 27th September, 2011, which has been quoted in the said judgment is as follows:

“119. (1)xxxxxx

(2)xxxxxx

(3)xxxxxx

(4)The State Education Resource Centres in all the States and the Union Territories as well as the management/principals of schools in all the States and Union Territories shall take appropriate steps to educate students about the ill-effects of air and noise pollution and apprise them of Directions”

12. The Hon’ble Supreme Court noticed that the rules framed were not comprehensive, the authorities responsible for implementing were not fully identified and that there was lack of equipment for proper measurement of noise levels. Final directions issued included creation of awareness towards the hazardous effects of noise pollution by incorporating the subject in the school syllabus and also imparting training to Police and Civil Administration. Direction was also issued for taking coercive measures against those in violation including confiscation of equipments used by them.

13. Having regard to the facts of the present case and the obvious reluctance of the State and its instrumentalities to comply with the directions of the Tribunal, we deem it necessary to repeat the directions in the Judgment of the Hon’ble Supreme Court and to evolve a mechanism for compliance of the said directions.

14. Some of the directions are quoted herein below for ready reckoner:

“(ii) Loudspeakers

175. 1. *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 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.*

2. *No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10.00 p.m. and 6 a.m.) except in public emergencies.*

3. *The peripheral noise level of privately-owned sound system shall not exceed by more than 5 dB(A) than the ambient air-quality standard specified for the area in which it is used, at the boundary of the private place.*

(iii) Vehicular Noise

176. *No horn should be allowed to be used at night (between 10 p.m. and 6 a.m.) in residential area except in exceptional circumstances.*

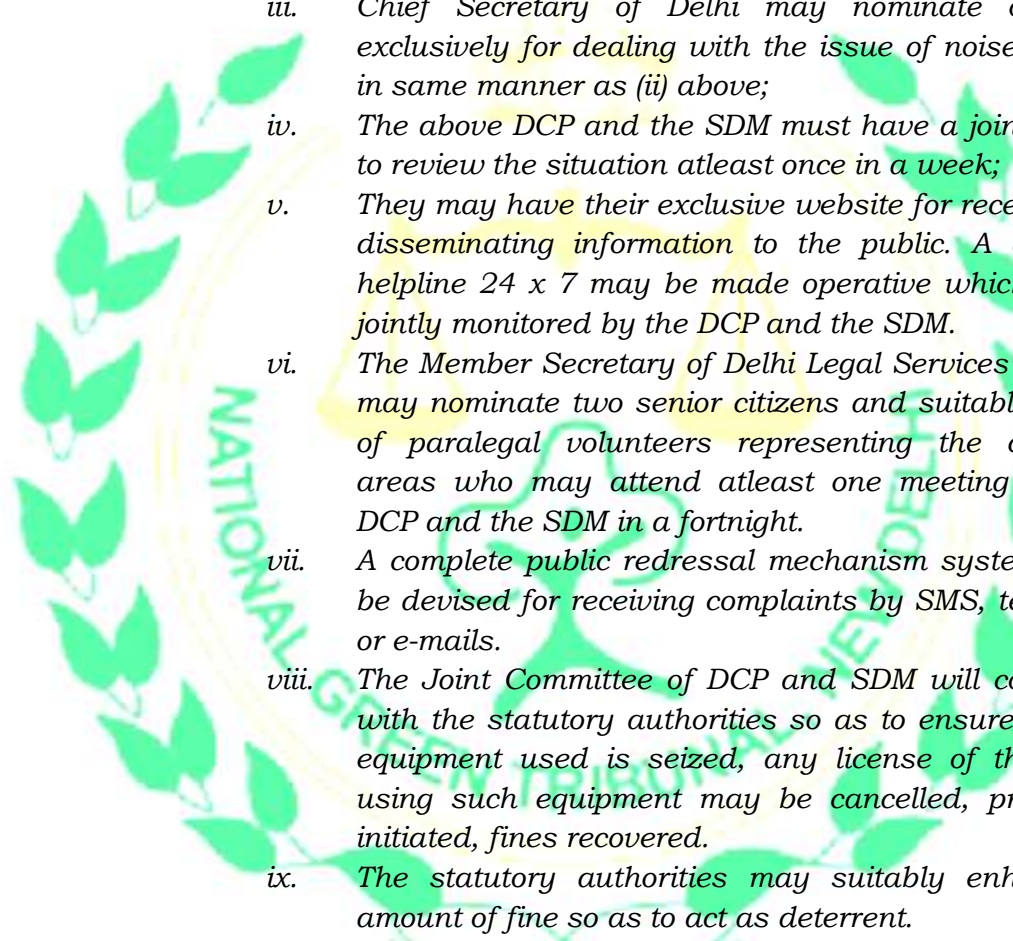
(iv) Awareness

177. 1. *xxxxxx*

2. *The State must play an active role in this process. Resident 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.”*

15. After having surveyed the various legal provisions and the decisions of the Hon’ble Supreme Court as well as of the High Court of Delhi, the Tribunal passed the following directions :

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- “ i. The Chief Secretary, Delhi, Commissioner of Police, Delhi and Delhi Pollution Control Committee will be responsible for enforcement of directions of the Hon’ble Supreme Court referred to above as well as to comply with the Statutory Rules and Regulations and instructions on the subject. They have to take effective steps in the matter;*
 - ii. The Commissioner of Police may nominate a DCP exclusively for dealing with the issue of noise pollution. Other police authorities of Delhi must co-operate and report to the DCP (Noise Pollution) with regard to the issue of noise pollution;*
 - iii. Chief Secretary of Delhi may nominate one SDM exclusively for dealing with the issue of noise pollution in same manner as (ii) above;*
 - iv. The above DCP and the SDM must have a joint meeting to review the situation atleast once in a week;*
 - v. They may have their exclusive website for receiving and disseminating information to the public. A dedicated helpline 24 x 7 may be made operative which may be jointly monitored by the DCP and the SDM.*
 - vi. The Member Secretary of Delhi Legal Services Authority may nominate two senior citizens and suitable number of paralegal volunteers representing the concerned areas who may attend atleast one meeting with the DCP and the SDM in a fortnight.*
 - vii. A complete public redressal mechanism system should be devised for receiving complaints by SMS, telephones or e-mails.*
 - viii. The Joint Committee of DCP and SDM will co-ordinate with the statutory authorities so as to ensure that any equipment used is seized, any license of the person using such equipment may be cancelled, prosecution initiated, fines recovered.*
 - ix. The statutory authorities may suitably enhance the amount of fine so as to act as deterrent.*
 - x. The amount of fine collected may be credited to a separate fund and utilised in the process of creating awareness, including by way of awareness programmes in educational institutions by instituting prizes and awards for the participants.”*

16. The situation in the State of West Bengal are no different from that prevailing in the NCR Delhi. As observed in Original Application No. 519/2016 (supra), the rules are followed more in

the breach than in compliance. Since the inception of this case, the Government of West Bengal and the West Bengal State Pollution Control Board have simply been giving lip service and affidavits filed only as means of getting over the necessity to comply with the directions on the dates fixed. The State Government and the State Pollution Control Board have miserably failed to exercise their statutory duties. As a consequence public health and environment have been the casualty. The State and its instrumentalities appear to be grossly insensitive to the fact that they are the custodian and/or trustee of the environment vested with the pious responsibility of ensuring inter-generational equity. The efforts made by the State will have no effect if not matched with tangible actions.

17. It may be observed that violation of pollution norms is a criminal offence under Section 15 of the Environment (Protection) Act, 1986, apart from Sections 268/290/291 IPC and it is mandatory for Kolkata and Howrah of Police to enforce the law. Noise free environment is a part of fundamental right to life for the citizens.

18. The consequence of uncontrolled noise on the health and welfare of citizens in violation of their fundamental rights has been set out succinctly in the judgment of the Hon'ble Supreme Court in *Re: Ramlila Maidan Incident*¹:

¹ (2012) 5 SSC 1

“.....(301). Deprivation of sleep has tumultuous adverse effects. It causes a stir and disturbs the quiet and peace of an individual’s physical state. A natural process which is inherent in human being if disturbed obviously affects basic life. It is for this reason that if a person is deprived of sleep, the effect thereof, is treated to be torturous. To take away the right of natural rest is also therefore violation of a human right. It becomes a violation of a fundamental right when it is disturbed intentionally, unlawfully and for no justification.

..... (318). Thus, it is evident that right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breath, to eat, to drink, to blink, etc.

.....(327). An individual is entitled to sleep as comfortably and as freely as e breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third-degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in espionage are subjected to treatments depriving them of normal sleep.”

19. In the matter of Farhd K. Wadia vs. Union of India & Ors.², the Hon’ble Supreme Court observed:

“24. This Court has also taken suo motu cognizance as regards noise pollution. It passed various orders from time to time in noise pollution (I), In re, Noise Pollution (II), In re, Noise Pollution (III), In re and Noise Pollution (IV), In re. A detailed judgment was rendered by a Division Bench of this Court in the said writ petition, which has since been reported in Noise Pollution (V), In re. Several guidelines had been issued therein by this Court in exercise of its jurisdiction under Articles 141 and 142 of the Constitution

² (2009) 2 SCC 442

of India. Therein, the decision of the Calcutta High Court in Om Birangana Religious Society v. State has been taken note of. As regards loudspeakers and amplifiers, it was directed:

“171. Loudspeakers and amplifiers or other equipment or gadgets which produce offending noise once detected as violating the law should 3 (2012) 5 SCC 1 4 (2009) 2 SCC 442 8 be liable to be seized and confiscated by making provision in the law in that behalf.”

20. In view of the above facts, the directions of the Hon’ble Supreme Court and the provisions of the Noise Pollution (Regulation and Control) Rules, 2000, we deem it necessary to also issue directions in line with the ones passed in Original Application No. 519/2016 as follows:

i. The Chief Secretary, Government of West Bengal, the Director General of Police, Government of West Bengal and The State Pollution Control Board shall be responsible for enforcement of the directions of the Hon’ble Supreme Court referred to above and the Tribunal and to comply with the Statutory Rules and Regulations and instructions on the subject. They shall take effective steps in the matter;

ii. The Director General of Police may nominate a Superintendent of Police/ Deputy Commissioner of Police for the Kolkata and Howrah exclusively for dealing with the issue of noise pollution. Other police authorities for Kolkata and Howrah must co-

operate and report to the SP/DCP (Noise Pollution) with regard to the issue of noise pollution;

iii. The Superintendent of Police/Deputy Commissioner of Police must have regular joint meetings with all the Police authorities within different jurisdictions to deal with issue of Noise Pollution. The situation shall be reviewed periodically by the Superintendent of Police/Deputy Commissioner of Police atleast once in a week;

iv. They shall develop exclusive website for receiving and disseminating information to the public. A dedicated helpline 24 x 7 may be made operative which may be jointly monitored by the Superintendent of Police/Deputy Commissioner of Police.

v. A complete public redressal mechanism system should be devised for receiving complaints by SMS, telephones or e-mails.

vi. The Superintendent of Police/Deputy Commissioner of Police shall co-ordinate with the statutory authorities to ensure seizure of equipments used, cancellation of license of the person using such

equipment, initiation of prosecution, recovery of fines etc.

vii. The statutory authorities may suitably enhance the amount of fine so as to act as deterrent.

viii. The amount of fine collected may be credited to a separate fund and utilised in the process of creating awareness, including by way of awareness programmes in educational institutions by instituting prizes and awards for the participants.

ix. The Committee shall ensure effective implementation of West Bengal State Pollution Control Board order no. 1853-4K-5/2004 dated 27th August, 2004.

x. The Committee shall also explore as to whether the manufacturers can be directed to produce audio systems fitted with noise control device.

This mechanism will be in addition to and not in substitution of the existing statutory mechanism under the rules.

21. A quarterly report of the action taken may be sent to this Tribunal. First of such report shall be sent by 10.01.2020 by e-mail at judicial-ngt@gov.in.

22. A copy of this order be sent to the Chief Secretary, Government of West Bengal, the Director General of Police, West Bengal, the Police Commissioners of Kolkata, Howrah, Bidhan Nagar and the Member Secretary, State Pollution Control Board by e-mail for compliance.

23. Needless to state that order of National Green Tribunal is binding as a decree of Court and non-compliance is actionable by way of punitive action including prosecution in terms of the National Green Tribunal Act, 2010.

24. To consider the report which may be received in pursuance of the above directions, the matter may be listed on 10th February, 2020.

S. P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

Saibal Dasgupta, EM

13th November, 2019
Original Application No. 158/2016 (EZ)
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