PETITIONER:
CHURCH OF GOD (FULL GOSPEL) IN INDIA

Vs.

RESPONDENT:
K.K.R. MAJESTIC COLONY WELFARE ASSOCIATION AND OTHERS

DATE OF JUDGMENT: 30/08/2000

BENCH:
M B Shah, J. & S.N. Phukan, J.

JUDGMENT:

Shah, J.

Leave granted.

L....I.....T.....T.....T.....T.....T.....T..J

The questions involved in this appeal are that in a country having multiple religions and numerous communities or sects, whether a particular community or sect of that community can claim right to add to noise pollution on the ground of religion? Whether beating of drums or reciting of prayers by use of microphones and loudspeakers so as to disturb the peace or tranquility of neighbourhood should be permitted? Undisputedly no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice-amplifiers or beating of drums. In our view, in a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during day-time or other persons carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighbourhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere. A student preparing for his examination is entitled to concentrate on his studies without their being any unnecessary disturbance by the neighbours. Similarly, old and infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution. Aged, sick, people afflicted with psychic disturbances as well as children up to 6 years of age are considered to be very sensible to noise. Their rights are also required to be honoured.

Under the Environment (Protection) Act, 1986, rules for noise pollution level are framed which prescribe permissible limits of noise in residential, commercial, industrial areas or silence zone. The question is whether the appellant can be permitted to violate the said provisions and add to the noise pollution? In our view, to claim such a right itself would be unjustifiable. In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialization, urbanization and modernization and is having many evil effects including danger to the health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness,

high blood pressure, depression, irritability, fatigue, gastro-intestinal problems, allergy, distraction, mental stress and annoyance etc. This also affects animals alike. The extent of damage depends upon the duration and the intensity of noise. Sometimes it leads to serious law and order problem. Further, in an organized society, rights are related with duties towards others including neighbours.

Keeping this background in mind, we would narrate the facts in brief for resolving the controversy involved in the present case. This appeal by special leave is filed against the judgment and order dated 19.4.1999 passed by the High Court of Judicature at Madras in Criminal O.P. No. 61 of 1998. The appellant is the Church of God (Full Gospel) (Church for short) located at K.K.R. Nagar, Madhavaram High Road, Chennai. It has a prayer hall for the Pentecostal Christians and is provided with musical instruments such as drum set, triple gango, guitar etc. Respondent No.1-KKR Majestic Colony Welfare Association (Welfare Association for short) made a complaint on 15.5.1996 to the Tamilnadu Pollution Control Board (hereinafter referred to as the Board) stating therein that prayers in the Church were recited by using loudspeakers, drums and other sound producing instruments which caused noise pollution thereby disturbing and causing nuisance to the normal day life of the residents of the said colony. Complaints were also made to the Superintendent of Police and the Inspector of Police--respondents Nos 5 and 6 respectively. The Joint Chief Environmental Engineer of the Boardrespondent No.4 herein on 23.5.1996 addressed a letter to respondent No.5, the Superintendent of Police, Chengai MGR District (East), Chennai, to take action on the complaint. On 12.6.1996, respondent No.4 again addressed a letter to respondent No.5 enclosing therewith the analysis report of the Ambient noise level survey conducted in the vicinity of the appellants church hall which disclosed that noise pollution was due to plying of vehicles on the Madhavaram High Road. Respondent No.1 gave representations to various officials in this regard. Thereafter respondent No.1Welfare Association filed Criminal O.P. No.61 of 1998 before the High Court of Madras for a direction to respondent Nos. 5 and 6 to take action on the basis of the letter issued by respondent No.4. In the High Court, it was contended by learned counsel for the Church that the petition was filed with an oblique motive in order to prevent a religious minority institution from pursuing its religious activities and the Court cannot issue any direction to prevent the Church from practicing its religious beliefs. It was also submitted that the noise pollution was due to plying of vehicles and not due to use of loudspeakers etc.

The learned Judge referred to the decision of the High Court in Appa Rao, M.S. v. Government of Tamil Nadu & Another (1995-1 L.W. (Vol.115) 319) where certain guidelines have been laid down for controlling the noise pollution. In Appa Raos case, the Division Bench of the Madras High Court after considering the contentions raised by the parties and decisions cited therein and also to the provisions of Section 41 and 71(a) of the Madras City Police Act, 1888 and Section 10 of the Madras Town Nuisance Act, 1989 has issued directions to the Government for controlling the noise pollution and for the use of amplifiers and loudspeakers. In the said case, the Court has observed that the grievances of the petitioners, who have complained with

regard to the noise pollution were fully justified and the authorities concerned were turning or made to turn by the higher powers a Nelsons eye to the violation of rules and regulations in these matters. The Court also considered copy of an article which appeared in the August, 1982 Issue of Science Today and a copy of the ICMR Bulletin of July, 1979 containing a Study on Noise Pollution in South India wherein it is pointed out that noise pollution will lead to serious nervous disorders, emotional tension leading to high blood-pressure, cardiovascular diseases, increase in cholesterol level resulting in heart attacks and strokes and even damage to foetus.

The learned Single Judge also referred to other decisions and directed respondent Nos.5 and 6 to follow the guidelines issued in Appa Raos case (Supra) and to take necessary steps to bring down the noise level to the permitted extent by taking action against the vehicles which make noise and also by making the Church to keep their speakers at a lower level. He further held that the Survey report submitted by the Board would go to show that the Church was not the sole contributor of the noise and it appeared that the interference of noise was also due to plying of vehicles. The learned Judge pointed out that there was nothing of malice and malicious wish to cause any hindrance to the free practice of religious faith of the Church and if the noise created by the Church exceeds the permissible decibels then it has to be abated. Aggrieved by the said order, this appeal is filed by the Church.

Mr. G. Krishnan, learned senior counsel appearing on behalf of appellant contended that the High Court has failed to note that the two survey reports of the Pollution Control Board clearly attributed the noise pollution in the area in question to the vehicular traffic and not to any of the activities of the appellant-Church and, therefore, direction issued in respect of controlling the noise ought not to have been extended in respect of the appellant-Church; that the High Court has overlooked that the right to profess and practice Christianity is protected under Articles 25 and 26 of the Constitution of India which cannot be dislodged by directing the authorities to have a check on the appellant-Church; and that the judgment relied upon by the High Court in Appa Raos case (Supra) did not empower the authorities to interfere with the religious practices of any community.

The learned counsel appearing on behalf of the respondents contended that the appellant-Church has deliberately tried to give religious colour to this cause of action as respondent no.1 - Welfare Association is consisting of members belonging to all religions as found by the High Court. It is contended that even if the contention of the appellant-Churchthat the noise created by it is within the prescribed limitis taken as it is, the order passed by the High Court will not in any way prejudice the right of religious practice of appellant because the order of the High Court is only with regard to reducing the noise pollution in that area. It is further contended that the High Court can pass orders to protect and preserve a very fundamental right of citizen under Article 19(1)(a) of the Constitution of India. He relied upon the judgment of Calcutta High Court in Om Birangana Religious Society v.

The State and others [CWN 1995-96 (Vol.100) 617] wherein the Court dealt with a similar matter. The questions posed by the Court for consideration werewhether the public are captive audience or listener when permission is given for using loud-speakers in public and the person who is otherwise unwilling to bear the sound and/or the music or the communication made by the loud-speakers, but he is compelled to tolerate all these things against his will and health? Does it concern simply a law and order situation? Does it not generate sound pollution? Does it not affect the other known rights of a citizen? Even if a citizen is ill and even if such a sound may create adverse effect on his physical and mental condition, yet he is made a captive audience to listen. The High Court held that:

It cannot be said that the religious teachers or the spiritual leaders who had laid down these tenets, had any way desired the use of microphones as a means of performance of religion. Undoubtedly, one can practice, profess and propagate religion, as guaranteed under Article 25(1) of the Constitution but that is not an absolute right. The provision of Article 25 is subject to the provisions of Article 19(1)(a) of the Constitution. On true and proper construction of the provision of Article 25(1), read with Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear any thing which he does not like or which he does not require.

Thereafter, the High Court laid down certain guidelines for the Pollution Control Board for grant of permission to use loudspeakers and to maintain noise level in West Bengal.

In our view, the contentions raised by the learned counsel for the appellant deserves to be rejected because the direction given by the learned Judge to the authorities is only to follow the guidelines laid down in Appa Raos case decided by the Division Bench of the same High Court on the basis of the Madras City Police Act, 1888 and the Madras Towns Nuisance Act, 1889. It is also in conformity with the Noise Pollution (Regulation and Control) Rules, 2000 framed by the Central Government under the provisions of the Environment (Protection) Act, 1986 read with rule 5 of the Environment (Protection) Rules, 1986. Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000 provides for ambient air quality standards in respect of noise for different areas/zones as specified in the Schedule annexed to the rule which is as under:-

Ambient Air Quality Standards in respec t of Noise

Area Code	Category of Area/ Zone	Limits in dB(A) Leq. Day Time@@	Night Time
(A)	Industrial Area	75	70
(B)	Commercial Area	65	55
(C)	Residential Area	55	45
(D)	Silence Zone	50	40

Note:-

(1) Day time shall mean from 6.00 am to 10.00 pm.

(2) Night time shall mean from 10.00 pm to 6.00 am.

(3) Silence zone is defined as an area comprising not less than 100 metres around hospitals, educational institutions and courts. The silence zones are zones which are declared as such by the competent authority. (4) Mixed categories of areas may be declared as one of the four above-mentioned categories by the competent authority.

Other relevant rules for controlling noise pollution are: -

4. Responsibility as to enforcement of noise pollution control measures.

(1) The noise levels in any area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule.

(2) The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.

5. Restrictions on the use of loudspeakers/public address system.

(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 shall not be used at night (between 10.00 p.m. to 6.00 a.m. except in closed premises for communication within, e.g. auditoria, conference rooms, community halls and banquet halls.

6. Consequences of any violation in silence zone/area.

Whoever, in any place covered under the silence zone/area commits any of the following offence, he shall be liable for penalty under the provisions of the Act:-

(i) whoever, plays any music or uses any sound amplifiers,

(ii) whoever, beats a drum or tom-tom or blows a horn either musical or pressure, or trumpet or beats or sounds any instrument, or

(iii) whoever, exhibits any mimetic, musical or other performances of a nature to attract crowds.

7. Complaints to be made to the authority.

(1) A person may, if the noise level exceeds the ambient noise standards by 10 dB(A) or more given in the corresponding columns against any area/zone, make a complaint to the authority.

(2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.

8. Power to prohibit etc. continuance of music sound or noise.

(1) If the authority is satisfied from the report of an officer incharge of a police station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating:-

(a) the incidence or continuance in or upon any premises of-

(i) any vocal or instrumental music,

(ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, public address systems, appliance or apparatus or contrivance which is capable of producing or re-producing sound, or

(b) the carrying or in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

(2) The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order:

Provided that before any such application is disposed of, the said authority shall afford to the applicant an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection.

Aforesaid rules are unambiguous, clear and speak for themselves. Considering the same, it cannot be said that the directions issued by the High Court are in any manner illegal or erroneous.

In the present case, the contention with regard to the rights under Article 25 or Article 26 of the Constitution which are subject to public order, morality and health are not required to be dealt with in detail mainly because as stated earlier no religion prescribes or preaches that prayers are required to be performed through voice amplifiers or by beating of drums. In any case, if there is such practice, it should not adversely affect the rights of others including that of being not disturbed in their activities. We would only refer to some observations made by the Constitution Bench of this Court qua rights under Articles 25 and 26 of the Constitution in Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj and Others v. The State of Gujarat & Others [(1975) 1 SCC 11]. After considering the various contentions, the Court observed that no rights in an organized society can be absolute. Enjoyment of ones rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the

imbalance between competing interests. The Court also observed that a particular fundamental right cannot exist in isolation in a water-tight compartment. One Fundamental Right of a person may have to co-exist in harmony with the exercise of another Fundamental Right by others also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. Further, it is to be stated that because of urbanization or industrialization the noise pollution may in some area of a city/town might be exceeding permissible limits prescribed under the rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and, therefore, rules prescribing reasonable restrictions including the rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisance Act, 1889 and also the Noise Pollution (Regulation and Control) Rules, 2000 are required to be enforced . We would mention that even though the Rules are unambiguous, there is lack of awareness among the citizens as well as the Implementation Authorities about the Rules or its duty to implement the same. Noise polluting activities which are rampant and yet for one reason or the other, the aforesaid Rules or the rules framed under various State Police Acts are not enforced. Hence, the High Court has rightly directed implementation of the same. In the result, the appeal is dismissed.