

नाशिक महानगरपालिका, नाशिक



नाशिक महानगरपालिका क्षेत्रात सार्वजनिक उत्सव काळात ध्वनी प्रदुषण व रस्त्यावर / पदपथावर/ पादचारी मार्गावर तात्परुत्या स्वरुपात मंडप व तत्सम रचना उभारण्यासंदर्भात बाबतच्या तक्रारी दाखल करण्याबाबत..

जाहिर निवेदन

या नोटीसद्वारे तमाम लोकांना कळविण्यात येते की, मा. उच्च न्यायालयात दाखल जनहित याचिका क्र. १७३/२०१० डॉ. महेश बेडेकर वि. महाराष्ट्र शासन व इतर या याचिकेत मा. उच्च न्यायालयाने दिलेल्या निर्देशानुसार, नाशिक महानगरपालिका क्षेत्रात सार्वजनिक उत्सव काळात ध्वनी प्रदुषण व रस्त्यावर / पदपथावर / पादचारी मार्गावर तात्परुत्या स्वरुपात मंडप व तत्सम रचना उभारण्यासंदर्भात तक्रारी दाखल करण्यासाठी नागरिकां करीता खालिलप्रमाणे तक्रार नोंदणी व निवारण यंत्रणा करण्यात आलेली आहे.

टोल फ्री नंबर - १८००२३३१९८२ (वेळ :- २४ तास)

ई-मेल - nmc@nmc.gov.in

तसेच वरिलप्रमाणे सर्व तक्रारीकरीता :- (फक्त कार्यालयीन वेळेत)

अ.क्र.	विभागाचे नांव	दुरध्वनी क्रमांक
१.	नाशिक पुर्व	०२५३ - २५०४२३३
२.	नाशिक पश्चिम	०२५३ - २५७०४९३
३.	पंचवटी	०२५३ - २५१३४९०
४.	नविन नाशिक (सिडको)	०२५३ - २३९२०१०
५.	सातपूर	०२५३ - २३५०३६७
६.	नाशिकरोड	०२५३ - २४६०२३४.

तसेच नाशिक महानगरपालिकेचे संकेतस्थळ www.nmc.gov.in वर देखिल वरिलप्रमाणे सर्व तक्रारी स्विकारण्यात येतील. तसेच व्हॉट्सअप नंबर ७७६८००२४२४ या क्रमांकावर देखिल तक्रारी नोंदवता येईल.

सदर माध्यमार्फत प्राप्त होणाऱ्या तक्रारी नाशिक महानगरपालिकेकडून स्वीकारून खालिल नमूद संबंधित सक्षम प्राधिकारी यांचेकडे पुढील कार्यवाहीसाठी अग्रेषित करण्यात येणार आहे.

अ.क्र.	तक्रारीचे स्वरुप	सक्षम अधिकारी
१.	ध्वनी प्रदुषण	स्थानिक पोलीस स्टेशन, नाशिक
२.	वाहतूक व्यवस्था	वाहतूक पोलीस शाखा, नाशिक शहर
३.	मंडपा संदर्भात	संबंधित विभागीय अधिकारी, महानगरपालिका, नाशिक.

तरी नागरीकांना आवाहन करण्यात येत आहे की, वरील नमूद केलेल्या मुद्यांबाबत काही तक्रारी असल्यास त्या वरील क्रमांकावर नोंदवू शकतात.

Sd/-

अतिरिक्त आयुक्त (शहर)

नाशिक महानगरपालिका, नाशिक.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**APPELLATE SIDE
PUBLIC INTEREST LITIGATION NO. 173 OF 2010**

Dr.Mahesh Vijay Bedekar. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

**WITH
WRIT PETITION NO.4109 OF 2015**

**ALONG WITH
ORIGINAL SIDE
PUBLIC INTEREST LITIGATION NO.85 OF 2007,
WRIT PETITION NO.89 OF 2004,
WRIT PETITION NO.357 OF 2003,
WRIT PETITION NO.1215 OF 2004,
WRIT PETITION NO.1503 OF 2005,
PUBLIC INTEREST LITIGATION NO.74 OF 2007,
PUBLIC INTEREST LITIGATION NO.83 OF 2010**

PIL/173/2010:

None for Petitioners

Mr. A.B. Vagyani, GP a/w Ms. Nisha Mehra, A.G.P. for R. Nos. 1(A) to 1(D)

Dr. Sadhana Mhahashabde for R. No.1 E

Mr. R.S. Apte, Sr. Counsel I/b Mr. N.R. Bubna for R. Nos. 2 & 16

Mr. D.A. Dube and Mr. Upendra Lokegaonkar for R. No.3

Mr. Pradeep J. Thorat for R.No.8

Mr. A.Y. Sakhare, Sr. Adv. A/w Mrs. Gharpure and Mr. Vinod Mahadik
and Ms. Pallavi Thakar for R. No.11

Mr. Pramod G. Kathane for Respondent No. 9 & 17

Mr. Abhijit M. Adagule for R.No.14

Mr. G.H. Keluskar for R. Nos. 21 & 23

Mr. Sandip V. Marne for Navi Mumbai Municipal Corporation

Mr. Sarang S. Aradhye a/w Mr. Milind S. Prabhune for Dhule & Panvel
Municipal Corporation.

Mr. A.S. Rao for K.D.M.C.

Mr. Abhijit Patil I/by Mr. Nikhil Chavan for R.No.26

WP/4109/2015:

None for Petitioners

Mr. A.B. Vagyani, GP a/w Ms. Nisha Mehra, A.G.P. for R. Nos.1 and 3 to 5

O.S.PIL/85/2007

Mr. Shanay Shah with Ms. Gauri Memon and Aanchal Aggarwal, i/b. Nankani & Associates for Petitioners in PIL/85/2007 & WP/2053/2003
Ms Uma Palsule-Desai, AGP for Respondent no. 1 State in PIL/85/2007, WP/357/2003, WP/2053/2003, WP/89/2004, WP/1215/2004, WP/1503/2005, PIL/74/2007
Mr. L.T.Satelkar, AGP for respondent State in PIL/83/2010
Mr. A.Y.Sakhare, Sr. Counsel a/w Ms. Pallavi Thakar a/w Ms. Shital Mane for respondent BMC in PIL/85/07
Mr.Upendra Lokegaonkar a/w Mr.N.R.Prajapati for respondent UOI in PIL/85/07
Mr. Musharaf Shaikh i/b Ms. Kiran Bagalia for respondent no. 4 in PIL/85/2007
Ms.Sadhna Mahashabde for Respondent No.2 in PIL/85/2007 & for Respondent no. 3 in PIL/74/2007
Mr. Rui Rodrigues for respondent no. 1 UOI in WP/2053/2003
Mr.D.P.Singh a/w. Mr. G.R.Sharma for Respondent Nos.3 & 4 in PIL/83/2010
a/w ASPIL/173/10 and other connected matters

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 7th August 2018.

ORAL ORDER : (Per A.S.Oka, J.)

These petitions were disposed of by the judgment and order dated 10th, 11th, 12th and 16th August 2016. After disposal of the matters, on more than 40 dates, this Court dealt with the issues of implementation of the directions issued under the said judgment. As per the

administrative order of the Hon'ble the Chief Justice, these petitions are specially assigned to a Bench presided over by one of us (A.S.Oka, J). The judgment deals with mainly two issues. One is issue in respect of temporary structures/ pandals erected on streets and footways for celebrating religious and other festivals. The second issue is regarding the failure to abide by and implement the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 (for short "the Noise Pollution Rules"). In paragraph-93 of the said judgment, the findings recoded by this Court have been summarized. This Court has held that any breach of Noise Pollution Rules amounts to infringement of fundamental rights guaranteed under Article 21 of the Constitution of India. This Court has also held that the right to have streets and footways in a reasonable condition is an essential part of Article 21 of the Constitution and, therefore, it was held that temporary structures/pandals cannot be allowed to be erected in such a manner that the same will obstruct free flow of vehicular traffic and the movement of pedestrians. In clause (xvii) of paragraph-94 of the said judgment, the Court has specifically held that the directions issued shall be equally applicable to the festivals/ceremonies of all religions and has held that the directions will also apply to the places of worship of all religions.

2. Perusal of the orders passed from time to time dealing with compliance and affidavits filed on record show that as of today, there is no substantial compliance with most of the directions except substantial compliance made by some local authorities as regards setting up of Grievance Redress Mechanism. There are several directions which have

been rarely implemented. In very few cases, criminal law has been set in motion for committing violation of the Noise Pollution Rules. The affidavits reporting so called compliance will show that there is a complete failure on the part of the local authorities to take action of removal of illegal pandals/ temporary structures erected on the streets and footways for holding of religious and other functions. The pandals which are erected without permission have been tolerated by some of the municipal authorities in breach of the directions issued by this Court. The complaints regarding breach of the Noise Pollution Rules and illegal construction of pandals have not been effectively attended to. The directions issued to the revenue officers to report to the municipal corporations about the illegally erected pandals have not been complied with in its true letter and spirit. Time of about two years has expired since the final judgment was delivered. It may be noted here that special leave petition filed by the State Government against the said decision has been summarily rejected. Moreover, most of the directions which were issued in the final judgment were already issued under the interim orders of this Court.

3. Though from the affidavits on record, breaches committed by various authorities and the State Government are writ large on record, so far, this Court has not taken any drastic action under the Contempt of Court Act, 1971 against those who are responsible for the breaches. As stated earlier, there is a specific direction issued in terms of clause (xiv) of paragraph-94 of the judgment directing the District Collectors of all districts to constitute a team of the revenue officers not below the rank of

Tahasildars for each Municipal Corporation area with a further direction that the members of the team shall regularly visit the areas within the limits of the Municipal Corporations before the date of commencement of all the major religious festivals with a view to ascertain whether any temporary structures have been erected on the public streets/ footways without obtaining permission of the Municipal Corporation. Based on the reports which were expected to be submitted by the said teams, the municipal authorities were under an obligation to take action of removal of illegal pandals. In many of such cases, the teams constituted by the Collector have not done their duty. In some other cases, though the teams reported to the Municipal Corporations the details of illegal pandals, instead of taking action of removal, the structures were tolerated by the municipal authorities.

4. This Court has already directed the officers of the NEERI to remain present in the Court on 21st August 2018 for dealing with the compliance with the directions issued in respect of noise mapping. As far as other directions are concerned, this Court has dealt with the issue of compliance on number of occasions during last two years. This exercise was done only with a view to ensure that all the authorities comply with the directions issued by this Court. The judgment of this Court is in force for last about two years. We put the parties to notice that an action under the Contempt of Courts Act, 1971 will be initiated if it is found that there are instances of violation of directions and/or there is a failure to comply with directions in its true letter and spirit.

5. To test whether there is a compliance made by the authorities, we direct that these petitions shall be listed on 12th September 2018 at 11.00 a.m. under the caption of direction. We direct the State Government to report compliance with the directions contained in clause (xiv) of paragraph-94 of the judgment as regards at least 12 major districts in the State which will include Mumbai, Pune, Nashik, Thane, Aurangabad, Amaravati and Nagpur apart from other districts. The State Government shall ensure that compliance made up to 11th September 2018 by the teams constituted by the District Collectors is reported to the Urban Development Department or Revenue Department by the morning of 12th September 2018.

6. We may note here that any violation of directions issued regarding implementation of the Noise Pollution Rules by any authority will be dealt with by issuing a notice of contempt. We hope and trust that the authorities will bear in mind the specific directions issued by this Court that the directions issued are applicable to the places of worship of all religions and festivals of all religions and sects.

7. The learned AGP pointed out that as far as city of Mumbai is concerned, 110 areas have been declared as silence zone. She is, however, unable to produce details of the silence zones in other major cities. Even after the amendment of 2017 to the Noise Pollution Rules, the directions issued by this Court as regards silence zones will continue to apply to the silence zones declared by the State Government on the basis of the amendment of year 2017. At this stage, it is not necessary to go

into the wider question whether earlier silence zones continue to exist notwithstanding the amendment. A list of silence zones for Mumbai is incorporated in the notification dated 29th November 2017 which is placed on record.

8. We also make it clear that these petitions will be listed in the last week of September 2018 for consideration of compliance made by the State Government and the municipal authorities in relation to implementation of directions in respect of major festivals held till then.

9. For considering the issue of noise mapping, the petitions shall be listed on 21st August 2018 as directed in the earlier order. As mentioned earlier, the petitions will also appear on 12th September 2018 at 11.00 a.m. under the caption of direction. On 12th September 2018, the State Government shall file on record exhaustive list of silence zones declared throughout the State.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)

udk/ssp/pmw/katkam

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.173 OF 2010
WITH
CIVIL APPLICATION NO.124 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.173 OF 2010
WITH
CIVIL APPLICATION (ST) NO.18174 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.173 OF 2010

Dr.Mahesh Vijay BedekarPetitioner
V/s.
The State of Maharashtra and ors. ...Respondents
...

Mr.S.M.Gorwadkar, Senior Advocate with Mr.Sujay M.Gangal for the
Petitioner and for Applicant in CA/124/2014.
Mr.A.B.Vagyani, Government Pleader with Mr.V.B.Thadhani, AGP for the
Respondents Nos.1-A to 1-D.
Dr.Sadhana Mahashabde for the Respondent No.1-E.
Mr.D.A.Dube for the Respondent No.3.
Shri Nitin V. Gangal with Gowaal Padavi appearing for Respondent
No.5.
Mr.N.R.Bubna for the Respondents Nos. 2 and 16.
Mr.Pramod Gukul Kathane for the Respondents Nos. 9 and 17.
Mr.A.Y.Sakhare, Senior Advocate with Ms.Trupiti Puranik for the
Respondent No.11.
Mr.Prashant Kamble i/b Mr.A.S.Rao for the Respondent No.13.
Mr.Abhijit M. Adagule for the Respondent No.14.
Mr.Vaibhav P. Patankar for the Respondent No.19.
Mr.Rhishikesh M. Pethe for the Respondent No.22.
Mr.Nikhil Chavan for the Respondent No.26.
Ms.Swati Sagvekar for the Respondent No.27.
Ms.Kalyani Tulankar for the Applicant in CAST/18174/16.

WITH
PUBLIC INTEREST LITIGATION NO. 161 OF 2015

Ms. Taramati Sadanand Pathak ...Petitioner
V/s.
Commissioner of Police, Pune ...Respondent

...

Ms.Sucheta Dattatray Ghaisas for the Petitioner.
Mr.A.B.Vagyani, Government Pleader with Mr. V.B. Thadhani, AGP for
the Respondent - State.

WITH
CRIMINAL APPELLATE JURISDICTION
CRI. PUBLIC INTEREST LITIGATION NO.20 OF 2015

Santosh Shrikrishna Pachalag .. Petitioner
V/s.
The State of Maharashtra & Ors. .. Respondents

ALONG WITH
INTERVENTION APPLICATION NOS.31/2015, 33/2015,
34/2015, 36/2015, 38/2015, 2/2016, 6/2016, 7/2016 , 8/2016,
34/2016, 36/2016

WITH
CRI. PUBLIC INTEREST LITIGATION NO.23 OF 2015

Shailendra Dixit s/o Prabhakar Dixit .. Petitioner
V/s.
The State of Maharashtra & Ors. .. Respondents

WITH
INTERVENTION APPLICATION NOS.30/2015, 32/2015,
33/2016, 35/2015, 37/2015, 39/2015, 1/2016, 3/2016,37/2016
9/2016, 10/2016

...

Mr.D.G. Dhanure a/w Mr.Dilip Shinde for Petitioner in CRPIL
No.20/2015.
Dr.F.R.Shaikh, APP for the State.
Mr.Shikur G. Kudle for Intervenor in Appln/14/2014.
Ms.Sana Yusuf Bangwala for Applicant in Appln No.38/2015, Appln
No.39/2015.
Mr.Amarnath Subhash Boddul for the Intervenor in Appln. No.23 of
2014.
Mr.Mohammed Ali Shamsud Haque, the intervenor in person in
Appln/24/2014).

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.74 OF 2007

WITH
NOTICE OF MOTION NO.118 OF 2010

Madhav Sakharam Rane and 2 Ors. ..Petitioners
V/s.
State of Maharashtra and 7 Ors. ..Respondents

....

Mr.Tejas Dande a/w. Ms.Vaibhavi S. Gole and Mr.Prasanna Dadpe i/b.
M/s. Dewen Dwarkadas & Partners for the Petitioner.
Ms.Uma Palsule Desai AGP for the Respondent nos. 1 to 5 for State.
Mr.A.Y.Sakhare, Sr.Advocate with Ms.Trupti Puranik for the Respondent
no.6 – BMC.
Mr. N.R.Prajapati for the Respondent no.7 – Union of India.

WITH
PUBLIC INTEREST LITIGATION NO.83 OF 2010

Society for Fast Justice and Anr. ...Petitioners
V/s.
The State of Maharashtra & Ors. ...Respondents

...

Mr. Bhagwanji Rayani, the Petitioner in person.
Mr.Bharat Mehta, AGP for the respondent Nos.1 & 6 to 9.
Ms.Rekha Panchal i/b Mr.Pawan S.Patil for the respondent No.2.
Mr. D. P. Singh a/w Mr. G. R. Sharma for the respondent No.3 & 4 - UOI.
Mr. C. M. Lokesh for the respondent No.5.

WITH
WRIT PETITION NO.2053 OF 2003

Dr. Yeshwant Trimbak Oke & Ors ... Petitioners.
V/s
Union of India & Ors. ... Respondents.

...

Mr.Darius Khambatta, Sr.Advocate a/w Mr.Rohan Cama and Mr.Shanay
Shah a/w. Mr.Ishwar Nankani and Ms.Gauri Memon i/b. M/s.Nankani &
Associates for the Petitioners.
Ms.Uma Palsule Desai, AGP for the State.

Mr.Rui Rodrigues a/w Mr.G.Hariharan for UOI.

WITH
PUBLIC INTEREST LITIGATION NO.85 OF 2007

Awaaz Foundation and Anr.Petitioners

V/s.

The State of MaharashtraRespondents
thru The Principal Secretary & 5 Ors.

Mr. Darius Khambatta, Senior Advocate a/w Mr.Rohan Cama and
Mr.Shanay Shah a/w. Mr.Ishwar Nankani and Ms.Gauri Memon i/b.
M/s.Nankani & Associates for the Petitioners.

Ms.Uma Palsule – Desai, AGP for the Respondent Nos. 1A to 1D – State.

Ms.Sadhana Mahashabde for the Respondent no.2.

Mr.Upendra Lokegaonkar i/b Mr.D.A.Dube for the Respondent nos. 3 to
5 – UOI.

Mr.B.S.Nayak and Ms.Kiran Bagalia i/b Ms.Chitra Phadke for the
Respondent No.4.

Mr.Kalpesh Patil i/b Mr.Nikhil Chavan for the Respondent No.6.

WITH

WRIT PETITION NO.1503 OF 2005

A. P. LewisPetitioner

V/s.

Union of India and Anr.Respondents

None for Petitioners.

Mr.Upendra Lokegaonkar i/b Mr.D.A.Dube for the Respondent no.1 –
Union of India.

Ms.Uma Palsule Desai, AGP for Respondent no.2 – State.

WITH

WRIT PETITION NO.357 OF 2003

H.S.D'LimaPetitioner

V/s.

State of Maharashtra & Ors.Respondents

Mr.Sagar Rane for the Petitioner.

Mrs.Uma Palsule – Desai, AGP for the Respondent nos.1 to 4 – State.

Mr.G.Hariharan i/b. Mr.Pankaj Kapoor for the Respondent no.5 – UOI.

CORAM : A.S.OKA & A.A. SAYED, JJ.

DATED : 10/11/12 and 16th AUGUST 2016

ORAL JUDGMENT: *(Per A.S.Oka, J.)*

OVERVIEW AND INTRODUCTION

1 These Petitions raise two issues of public importance. In PIL 173 of 2010, the issue is whether pandals/temporary booths can be allowed to be erected on streets and footways or foot-paths for celebrating the religious or other festivals. The contention of the Petitioner in PIL No.173 of 2010 is that such pandals/temporary booths cannot be allowed to be erected in such a manner that it will obstruct free flow of vehicular traffic on streets or it will obstruct free movement of pedestrians on footways or foot-paths. It is pointed out that in the cities in the State, such pandals and temporary booths are causing obstruction to vehicular traffic and movement of pedestrians. Such obstruction causes enormous inconvenience to the citizens apart from infringing their right to have roads and foot-paths in a reasonable condition. The second issue raised in PIL No.173 of 2010 and in other connected matters is about the failure of all the authorities of the State of Maharashtra to implement the Noise Pollution (Regulation and Control) Rules, 2000 (for short “the Noise Pollution Rules”).

2 At this stage, we may note that on the issue of erection of pandals/temporary booths for celebrating religious and other festivals, there are number of interim orders passed by this Court in PIL No.173 of 2010, which are operating in the field. In fact, while passing the interim order dated 13th March 2015 and the subsequent order dated 24th June, 2015, this Court has also laid down the law on the subject. As far as the violation of the Noise Pollution Rules is concerned, there are interim orders made from time to time in different Petitions by this Court for last more than 13 years. Unfortunately, the interim orders are being followed only in breach.

3 As far as the implementation of the Noise Pollution Rules is concerned, the entire machinery for implementation thereof ought to have been in place in terms of the interim orders passed by this Court from time to time. Notwithstanding detailed interim orders passed by this Court, still there are large scale of violations of the Noise Pollution Rules. The material placed on record will show that during the religious functions/festivals/ceremonies, the Noise Pollution Rules are being breached with impunity. We may note here that the interim directions issued by this Court as regards religious festivals are applicable to the festivals of all religions. No religion has ever permitted violation of law for celebrating religious festivals. In this group of

Petitions and in other matters, which came up before this Court, it is demonstrated that the Noise Pollution Rules are mostly violated when there are political rallies and religious festivals. Perhaps without bothering to read orders of this Court it is projected as if this Court has banned religious festivals. This Court has held that use of loud-speakers is not an essential part of any religion and therefore, the protection under Article 25 of the Constitution of India is not available. Even for erecting pandals/temporary booths for celebrating religious and other functions on streets or foot-path, this Court has held that the protection of Article 25 is not available. There is no fundamental right to celebrate religious festivals on streets.

4 As interim orders passed by this Court on both aspects were not implemented in its true letter and spirit, these Petitions were ordered to be fixed for final hearing.

5 We are a secular State under our Constitution. In a State like State of Maharashtra, which has given freedom fighters, thinkers and philosophers to the Nation, the interim orders which contemplated the implementation of the existing laws ought to have been implemented. After all, the State of Maharashtra is a land of the father of our Constitution. It is this State which has taught rational thinking to the

Nation. It is unfortunate that in a State like Maharashtra, the Court is required to spend its valuable time in issuing directions for implementation of the existing laws. The interim orders of this Court have been passed to uphold the Rule of Law. The number of orders passed in this Group of Petitions and the Affidavits on record will show that the State has not performed its duty as regards the implementation of the Noise Pollution Rules. Rather there is a complete neglect in this behalf. It is a matter of record that noise pollution adversely affects all the living beings. Notwithstanding the directions issued by the Apex Court, no steps have been taken by the State for developing the public awareness. In terms of the orders passed by this Court, the Executive has created a machinery which may be equipped to deal with the issue of violations, but perhaps the Executive is not supported on this aspect by the political bosses and that the reason why the Noise Pollution Rules have been observed only in breach.

FACTS OF THE CASE

6 Before we deal with the submissions made across the bar, a brief reference to the facts of each Petition will be necessary. Firstly, we deal with facts of PIL No.173 of 2010. The Petition as it was originally filed was essentially for complaining about the illegal booths/pandals erected on public streets and foot-paths for celebrating Ganesh Utsav, Navratri and other festivals. Reliance has been placed by the Petitioners

on the information obtained under the Right to Information Act, 2005. Attention of the Court is invited to various statutory provisions and especially the provisions of section 234 of the Maharashtra Municipal Corporation Act, 1949 (for short “the said Act of 1949”). By amending the Petition, certain prayers have been added. There is a prayer made in this Petition seeking a writ of mandamus directing the Respondents to strictly implement the provisions of the Noise Pollution Rules and guidelines issued by the Apex Court from time to time in its well known decisions. As regards pandals/booths of temporary nature, a writ of mandamus is sought restraining the Respondent-State and authorities of Municipal Corporation from allowing the erection of temporary structures of pandals and booths of any size on public roads and foot-paths. In this Petition, there are series of interim orders passed by this Court. There are voluminous Affidavits filed on record by the State reporting purported compliance with various directions issued by this Court from time to time. We propose to advert to those Affidavits in the subsequent part of the judgment. In this PIL, the PIL Petitioner filed Civil Application No.124 of 2014. The said Civil Application is essentially filed for inviting attention of the Court to the breaches committed of the Noise Pollution Rules while celebrating festivals in public places. Civil Application (St.) No.18174 of 2016 has been filed by an intervenor, wherein the attention of the Court is invited to the

role played by the Maharashtra Pollution Control Board (in short “the Pollution Control Board”) and certain directions have been sought against the Pollution Control Board.

7 PIL No.161 of 2015 has been filed by a resident of Pune, who initially appeared in person. As the Petition is filed by a party in person, it is not properly drafted. In substance, the grievance of the Petitioner is that during five years prior to filing of the Petition and even during the pendency of Petition, she has made large number of complaints to the Police as regards violation of Noise Pollution Rules. The contention is that she has incurred huge expenditure on filing the complaints, but none of the complaints have been attended to. Attention of the Court is invited to the fact that the failure to maintain Noise levels as provided in the Schedule to the Noise Pollution Rules causes serious health problems. At the time of hearing, the Petitioner was represented by an Advocate, who has made submissions and tendered written arguments.

8 The next matter is Criminal PIL No.20 of 2015. There are large number of Applications for intervention in this PIL. This PIL is filed by the Petitioner who is a resident of Navi Mumbai. We must note here that the Petition as it originally stood was filed essentially for making a grievance about the use of loud-speakers installed on certain mosques

in Navi Mumbai. Later on, there were amendments carried out to the Petition in which apart from claiming certain reliefs regarding silence zones as contemplated in the Rules, again a relief is claim in relation to use of loud-speaker in mosques. We must note here that during the hearing of the PIL, we expressed a view that a PIL cannot be filed for targeting a particular religion or sect. During the course of the submissions, the learned Counsel appearing for the Petitioner stated that he is not confining his Petition to the violations of the Noise Pollution Rules committed by only one particular religion or group and that the prayers made in this PIL are again essentially for implementation of the Noise Pollution Rules. As stated earlier, reliefs have been claimed for enforcing Rules regarding silence zone. There are number of Applications for intervention in this PIL. The large number of intervention applications have been filed perhaps because the prayer made in the PIL was restricted to use of loud-speakers installed on places of one particular religion.

9 Criminal PIL No.23 of 2015 is filed by the Petitioner who is a resident of Pune. The prayer in this PIL is for directing the Respondents to initiate penal action under section 15 of the Environment (Protection) Act, 1986 (for short “the Environment Protection Act”). The grievance made in this Petition is that though the violation of the

Noise Pollution Rules has penal consequences provided under the Environment Protection Act, at no stage, those penal provisions have been enforced, as a result of which offenders have remained scot-free. Even in this PIL, there are four Applications for intervention filed by different citizens and organizations.

10 PIL No.74 of 2007 is filed by the Petitioners who are residents of Mumbai. In this PIL, again the main grievance is about the complete failure of various authorities to implement the provisions of the Noise Pollution Rules. Certain material has been placed on record in this PIL for the purpose of bringing on record the adverse effects of the Noise Pollution on health of human beings. Heavy reliance is placed on the Report submitted by the Committee headed by Hon'ble Smt Justice Sujata Manohar (a former Judge of the Apex Court) appointed under the orders of this Court passed in Writ Petition No.1789 of 1985. The said Report brings on record the adverse effects of noise pollution on various aspects of human health. There is a Notice of Motion taken out being Notice of Motion No.118 of 2010 by the Petitioners seeking various reliefs including the relief of implementation of the Noise Pollution Rules. The issue of noise created by railways has been also raised by way of this Notice of Motion. Various directions are sought against the General Manager of Central Railway for taking various steps

for avoiding nuisance of the noise caused by the whistling of Railway Engines between Cotton Green Railway Station and Sewree Railway Station on its Harbour line. A prayer is also made for the implementation of the provisions regarding silence zone in the Noise Pollution Rules.

11 PIL No.83 of 2010 is filed by the Petitioners appearing in person. On the request made by the second Petitioner appearing in person, this PIL was separated from the group and was listed separately. After the said Petitioner was heard, the PIL was again included in the group, as we found that almost all prayers made therein are covered by other Petitions in the group. In addition to the prayers made for implementation of the Noise Pollution Rules, certain other reliefs are sought against the Respondents for stipulating norms for manufacturing firecrackers. By way of illustration, various instances of noise pollution created by bursting of firecrackers are pointed out by the Petitioners. The illustrations are of the places in the locality where the second Petitioner is residing.

12 PIL No.2053 of 2003 is filed by the Petitioners, out of which three are residents of Mumbai and the fourth Petitioner is the Bombay Environmental Action Group, which has filed number of PILs in this Court dealing with the diverse issues of environment. We must note

here that some of the important interim orders for the purpose of enforcing the Noise Pollution Rules have been made in this PIL way back in the year 2003. In the first prayer, a challenge is to the Constitutional validity of the Noise Pollution (Regulation and Control) (Amendment) Rules 2002 by which Sub-Rule (3) of Rule 5 was incorporated in the Noise Pollution Rules on the ground that the same is ultra vires the provisions of Articles 14 and 21 of the Constitution of India as well as the provisions of the Environment Protection Act. Sub-Rule 3 was incorporated in Rule 5, which permitted the State Government to permit use of loud-speakers or public address systems during night hours (between 10 p.m. to 12 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding 15 days in all during a calender year. There is also a challenge to the Notification issued dated 7 April 2003 by the State Government in exercise of powers under Sub-Rule (3) of Rule 5, by which the said 15 days were notified. It appears that the first Petitioner had filed earlier Writ Petition No.1789 of 1985 raising the same issues. As per the order passed by this Court, a Committee was appointed which submitted a report on which a strong reliance is placed in other PIL to which we have already made a reference. The third prayer in this PIL is for implementation of the Noise Pollution Rules and for directing the preparation of a plan/map of Greater Mumbai designating thereon each

and every silence zone as required by the Noise Pollution Rules. There is a Notice of Motion No.279 of 2010 filed by the Petitioners in the said Petition, which has worked out with the passage of time.

13 Public Interest Litigation No.85 of 2007 has been filed by the Organization known Awaz Foundation, which is registered as a Public Charitable Trust under the Bombay Public Trust Act, 1950. In this group of Petitions, as far as the noise pollution is concerned, this is the most exhaustive Petition filed. The reliefs claimed in this PIL are not confined only to the implementation of the Noise Pollution Rules, but the reliefs are also sought against all kinds of noise pollution. For example, there are prayers made in this Petition complaining about noise pollution created by the use of motor vehicles. There is a direction sought against the first Respondent to lay down parameters in terms of decibel level for the horns to be fitted in vehicles and to impose a heavy penalty for the contravention thereof. There are prayers made for taking action against the persons who are beating drums, playing instruments or bursting firecrackers in silence zones. There is a prayer sought directing the Respondent No.1 to strictly impose the fines and penalties required to be levied upon owners of the vehicles who do not comply with the Noise Pollution Rules and the Motor Vehicles Act, 1988 and the Rules made thereunder. There are large number of Affidavits filed on record

apart from other material placed on record. Extensive submissions have been made in this PIL by the learned Senior Counsel appearing for the Petitioners. We are adverting to the said submissions in the subsequent part of our judgment.

14 Writ Petition No.1503 of 2005 is filed by the Petitioner, who is a citizen of Mumbai, who did not appear at the time of final hearing. After having perused the prayers made in this Petition, we find that the challenge is to the Sub-Rule (3) of Rule 5 of the Noise Pollution Rules, which was incorporated by way of amendment and to the Notification issued on 7 April 2003 issued by the State Government in exercise of powers under Sub-Rule (3) of Rule 5.

15 Writ Petition No.357 of 2003 has been preferred by the Petitioner, who is the Co-ordinator-Noise & Encroachment of Citispace (Citizens Forum for Protection of Public Spaces). The first substantive prayer in this Petition is for directing the Commissioner of Police, Mumbai to place before the Court a report containing details of the complaints received making grievance as regards the breach of the Noise Pollution Rules. The second prayer is for implementation of the Noise Pollution Rules. There are Affidavits on record of various police officers dealing with the challenges in the Petition.

SUBMISSIONS

16 Detailed submissions have been made in PIL 173 of 2010 on the issue of pandals/temporary booths. There are submissions made on various steps required to be taken for the implementation of the Noise Pollution Rules. Even in other petitions, there are detailed submissions made as regards the failure of the Authorities to implement the Noise Pollution Rules and the failure of the Maharashtra Pollution Control Board to take necessary action in terms of the statute. Various submissions have been made on the interpretation of silence zone and some other provisions of the Rules. We are going to deal with the said submissions while we decide the specific issues raised. As we are dealing with those submissions while recording reasons, we are not reproducing the same.

ISSUE OF CONSTRUCTION OF PANDALS AND/ OR TEMPORARY BOOTHS

17 The first question which will have to be dealt with in this group of PILs and especially PIL 173 of 2010 is about the construction of the pandals/temporary booths on streets and foot-paths for religious and other festivals. There is also a serious grievance made about the manner in which the permissions are granted by the Municipal Authorities for erection of pandals or temporary booths for holding religious and other

festivals. One of the main issues to be answered on this aspect is whether any citizen or organization of citizens can claim a right to construct a pandal/temporary booth on street/foot-path for the purposes of celebrating religious and other festivals/functions. It will be necessary to examine the provisions of Municipal Laws. Firstly, we deal with the provisions of Mumbai Municipal Corporation Act, 1888 (for short “the said Act of 1888”). The said Act of 1888 governs duties and responsibilities of the Mumbai Municipal Corporation which has jurisdiction over the Mumbai as well as the Mumbai Suburban Districts. The provision which is material for our consideration is section 317 which reads thus:

“Temporary Erections on Streets during Festivals.

317. With the concurrence of the Police Commissioner, the Commissioner may grant a written permission for the temporary erection of a booth and any other such structure on any street occasions of ceremonies and festivals.”

18 For interpreting section 317, it will be necessary to consider the definition of “street” under the said Act of 1888. A street is defined under clause (w) of section 3 which reads thus:

“(w) “street” includes any highway and any causeway, bridge, viaduct, arch road, lane, footway, square, court, alley or passage, whether a thoroughfare or not over which the public have a right of passage or access or have passed and has access uninterruptedly for a period of twenty years: and, when there is a footway as well as carriageway in any street, the said term includes, both;”

19 Thus, the definition of street is very wide which includes highways, causeways, bridges, footways (popularly known as foot-paths), over which the public have right of access or passage. The definition of street is applicable even in a case where public have passed and had access uninterruptedly for 20 years through the highways, causeways, bridges etc. When carriageway as well as footway are a part of street, even a footway becomes a street. Thus, it is pertinent to note that though road, square, footway, alley or passage may not be a thoroughfare, if the members of the public have right to access or if the members of the public have passed and had access uninterruptedly for 20 years over it, the said road, square, etc fall within the definition of “street”. Thus, the definition of street is much wider than the conventional meaning of a street. Emphasis in the definition of street appears to be on members of the public having a right of passage or access or actual uninterrupted use thereof for 20 years or more. When there is a footway and carriageway in any street, both are covered by the definition of a street. Hence, when there is a road for use of vehicles with abutting foot-path, even the foot-path is covered by the definition of “street”.

20 It is necessary to examine the provisions of the the said Act of 1949. The said Act is applicable to various Municipal Corporations in

the State (except the Mumbai Municipal Corporation). In the said Act of 1949, there is a provision which pari materia with the provision of Section 317 of the said Act of 1888 which is section 234 which reads thus:

“Temporary Erections on Streets during Festivals.

234. With the concurrence, in any area for which a Commissioner of Police has been appointed, of the Commissioner of Police or any officer nominated by him and elsewhere, of the District Magistrate or any officer nominated by him, the Commissioner may grant a written permission for the temporary erection of a booth and any other such structure on any street on occasions of ceremonies and festivals.”

Sub-section 63 of section 2 of the said Act of 1949 defines street which reads thus:

“(63) “street” includes any highway, and any causeway, bridge, viaduct, arch, road, lane, footway, sub-way, court, alley or riding path or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years, and when there is a footway as well as a carriage way in any street, the said term, includes both ;”

21 Thus, the definition of street is more or less identical in both the enactments. There are other provisions which are relevant in both the enactments dealing with the mandatory duties and obligations of the Municipal Corporations. In the said Act of 1888, relevant provision is section 61. Section 61 lays down obligatory duties of the Municipal Corporation. Clause (m) of section 61 is the obligation of the Municipal Corporation of construction, maintenance, alteration and improvement of public streets, bridges, culverts etc. Clauses (m),(n) and (o) read thus:

“61. It shall be incumbent on the corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for each of the following matters, namely:—

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (ff)
- (g)
- (h)
- (j)
- (k)
- (l)
- (m) **the construction, maintenance, alteration and improvement of public streets, bridges, culverts, causeways and the like;**
- (n) the lighting, watering and cleansing of public streets;
- (o) **the removal of obstructions and projections in or upon streets, bridges and other public places;**
- (p)

(emphasis added)

22 Therefore, the mandatory duty of the Mumbai Municipal Corporation is not confined to construction, maintenance, alteration and improvement of public streets. There is an additional obligation to take measures for removing obstructions on the street. Therefore, the duty of the Municipal Corporation does not end by constructing and maintaining as well as by improving the public streets. The municipal Corporation is under an obligation to ensure that there is a safe and orderly passage of vehicular traffic on the street. This duty will have to be read into clause (o) as a part of duty of removing obstructions on the streets. Consistent with these obligations, there are corresponding

provisions under the said Act of 1888. One such provision is in the form of section 322. Section 322 and other connected provisions read thus :

“Streets not to be opened or broken up and building materials not to be deposited thereon without permission.

322. (1) No person other than the Commissioner or a municipal officer or servant shall, without the written permission of the Commissioner or without other lawful authority.—
- (a) open, break up, displace, take up or make any alteration in, or cause any injury to, the soil or pavement, or any wall, fence, post, chain or other material or thing forming part of any street; or
 - (b) deposit any building materials in any street;
 - (c) set up in any street any scaffold or any temporary erection for the purpose of any work whatever, or any posts, bars, rails, boards or other things by way of enclosure, for the purpose of making mortar or depositing bricks lime, rubbish or other materials.
- (2) Any permission granted under clause (b) or clause (c) shall be terminable at the discretion of the Commissioner, on his giving not less than twenty-four hours written notice of the termination thereof to the person to whom such permission was granted. (3) Except in cases in which permission has been applied for under clause (b) of sub-section (1) for the deposit of building-materials in any street and no reply has been sent to the applicant within seven days from the date of the application the Commissioner may without notice, cause to be removed any building materials, or any scaffold, or any temporary erection, or any posts, bars, rails, boards or other things by way of enclosure, which have been deposited or set up in any street without the permission or authority specified in sub-section (1), or which; have been deposited or set up with such permission or authority, have not been removed within the period specified in the notice issued under sub-section (2).

Precautions for public safety to be taken by persons to whom permission is granted under section 322.

323. Every person to whom any permission is granted under section 322 shall, at his own expense, cause the place where the soil or pavement has been opened or broken up or where he has deposited building materials or set up any scaffold, erection or other thing, to be properly fenced and guarded, and in all cases in which the same is necessary to prevent accidents, shall cause

such place to be well lighted during the night.

Persons to whom permission is granted under section 322 must reinstate streets, etc.

324. (1) Every person to whom permission is granted under section 322 to open or break up the soil or pavement of any street, or who, under other lawful authority, whom per-opens or breaks up the soil or pavement of any street, shall with all convenient speed complete the work for which the same shall be opened or broken up, and fill in the ground and reinstate and make good the street or pavement so opened or broken up without delay, to the satisfaction of the Commissioner.
- (2) If the said person shall fail to reinstate and make good the street or pavement as aforesaid, the Commissioner may restore such street or pavement, and the expenses incurred by the Commissioner in so doing shall be paid by the said person.

The section 322 provides that any person other than the Commissioner or a Municipal Officer shall without written permission of the Commissioner is not entitled to open, break up, displace, take up or make any alteration in any part of the street. Hence, digging on streets for erecting pandals and temporary booth is impermissible unless there is an express permission granted by the Municipal Commissioner. Section 324 imposes obligation on the person to whom the permission is granted under section 322 to reinstate the street.

23 Now, coming to the provisions of the said Act of 1949, we find that similar obligations have been provided under section 63 thereof. Clause 18 of section 63 imposes mandatory obligation upon the Municipal Corporations to construct, maintain and improve the public

streets. Clause 19 of section 63 imposes the obligation of removing obstructions and the projections on streets. Sections 239 to 241 of the said Act of 1949 are similar to the Sections 322 to 324 of the said Act of 1888.

24 As the footways/ foot-paths are part of a street as defined in both the enactments, aforesaid statutory obligations are also in respect of the footways or foot-paths.

25 It will be necessary to advert to the decision of the Apex Court in the case of *Sodan Singh and others vs. New Delhi Municipal Committee and others*¹ and in particular what is held in paragraph 14 thereof which reads thus:

“14. The primary object of building roads is undoubtedly to facilitate people to travel from one point to another. Quoting several authorities Byron K. Elliott and William F. Elliott in their treatise on the *Law of Roads and Streets* have defined a street as a road or public way in a city, town or village. A way over land set apart for public travel in a town or city is a street, no matter by what name it may be called. If a way is free to all people it is a highway. P. Duraiswami Aiyangar in his book dealing with the *Law of Municipal Corporations in British India* (1914 Edn.) has observed that the primary and paramount use of the street is public travel for man, beast and carriage for goods. On behalf of the respondents reliance has been placed on the oft-repeated adage that public have a right of passing and re-passing through a street but have no right “to be on it”, which Shri Aiyangar also has mentioned at p. 542 of his book. *Halsbury*, relied upon by both sides, has stated (Vol. 21 para 107) **that the right of the public is a right to pass along a highway**

¹ (1989) 4 SCC 155

for the purpose of legitimate travel, not to be on it, except so far as the public's presence is attributable to a reasonable and proper user of the highway as such. These statements certainly do not mean that a traveller has to be in perpetual motion when he is in a public street. It may be essential for him to stop some time for various reasons — he may have to alight from a vehicle or pick up a friend, collect certain articles or unload goods or have to take some rest after a long and strenuous journey. What is required of him is that he should not create an unreasonable obstruction which may inconvenience other persons having similar right to pass; he should not make excessive use of the road to the prejudice of the others. Liberty of an individual comes to an end where the liberty of another commences. Subject to this, a member of the public is entitled to legitimate user of the road other than actually passing or re-passing through it.

(emphasis added)

The Apex Court has observed that primary object of building roads is to facilitate people to travel from one point to another. In this context, the Apex Court has observed that no one can create any unreasonable obstruction on the road which may cause inconvenience to other person having a similar right to pass. No one has a right to excessive use of the road so as to cause prejudice to the right of the others of using the road as a thoroughfare.

26 There is one relevant decision of this Court dated 20th May 2015 in *Suo Motu PIL No.71 of 2013 (High Court on its own motion vs. State of Maharashtra and others)*². In the said decision, this Court has considered the mandatory obligations of the Municipal Corporations and other Planning Authorities as regards construction and

² 2015 SCC OnLine Bom 3379

maintenance of the road. The issue involved in the said PIL was concerning potholes on the road. In the said decision, this Court relied upon its earlier decision dated 31st August 2006 in PIL SUO MOTU WP No.8 of 2005 and PIL No.3 of 2005. Paragraph 5 of the said Judgment and Order dated 20th May 2015 reads thus:

“5. Before we deal with the obligations of various statutory authorities and the State Government, it is necessary to make a reference to what is held by this Court under the Judgment and Order dated 31st August, 2006 in PIL Suo Moto Writ Petition No. 8 of 2005 and PIL WP No. 3 of 2005. A Division Bench of this Court presided over by His Lordship Justice R.M Lodha (as he then was) laid down that the existence of roads in a reasonable condition is included in the right to life conferred on a citizen under Article 21 of the Constitution of India. It will be necessary to note the principles laid down by this Court in paragraph 9 of the said order which reads thus:-

“9. It is the obligation of the Civic Authorities and the other agencies of the State to secure to the public the means of communication in good and proper condition. There cannot be any justification for the bad roads in the financial capital of the country. The people of Mumbai contribute hugely to the revenue of the Centre, the State and the Civic Body. Are they not entitled to the good civic amenities including roads in good condition? How long the citizenry would continue to suffer bad roads? **In the context of the constitutional provisions, the existence of roads in reasonable conditions is embraced in the citizens' right to life. Every person is entitled to 'life' as enjoined under Article 21 of the Constitution of India.** The directive principles have been read into Article 21 to make life more meaningful and not mere its existence. Good roads are the necessity to the life. **There has to be roads for communication in reasonable condition in view of the constitutional imperatives. This is well settled. It needs no emphasis.** It is thus imperative for the MCGM to make available proper roads to the people in the city of Mumbai through out the year. **The Corporation has to discharge its constitutional and legal obligations unfailingly. What**

we have said above is applicable equally to all the other authorities like Mumbai Metropolitan Region Development Authority, Mumbai Port Trust, Maharashtra State Road Development Corporation, the Public Works Department and the Thane Municipal Corporation. It is their duty, responsibility and obligation to provide proper roads within their jurisdiction to the commuters through out the year. By serious consequences by infringing the valuable rights of the people. Lest it must be forgotten, bad road mean physical damage, huge economic loss and more accidents.”

(emphasis added)

27 Thereafter, in paragraph 9, this Court in Judgment and Order dated 20th May 2015 held thus:

“9. **As pointed out earlier, by the judgment and order dated 31st August, 2006 this Court has already held that the right to have roads in reasonable condition is a part of the fundamental right guaranteed under Article 21 of the Constitution of India.** Thus, the Division Bench has placed the right of citizens to have pothole free roads in reasonable condition on the highest pedestal of fundamental rights under Article 21 of the Constitution of India. Existence of such fundamental right creates corresponding obligation in all the authorities which are “State” within the meaning of Article 12 of the Constitution of India. For the infringement of the fundamental right guaranteed under Article 21 of the Constitution of India, a citizen can demand compensation apart from seeking the enforcement of the right. Moreover, a citizen has a right to make grievances regarding the violation of such right and get the grievances redressed.”

Thus, the right to have roads in a reasonable condition is a part of fundamental right guaranteed under Article 21 of the Constitution of India. The basic object of constructing roads is to allow the passage of vehicles. The basic object of making foot-paths/footways which are a part of street is to allow the citizens to walk and travel from one place

to another. If obstructions are created on the streets or foot-paths in such a manner that it prevent the citizens from beneficially or reasonably enjoying their right of passage through the streets and foot-paths, surely it will amount to infringement of the fundamental right under Article 21 of the Constitution of India to have streets in a reasonable condition. The fundamental right to have the streets in a reasonable condition will naturally encompass in it right to have the same free of any obstruction which prevents its beneficial or reasonable user. The Apex Court has expanded the scope of Article 21 of the Constitution of India. The Apex Court has held that the right to live dignified life is also a part of Article 21 of the Constitution of India. Right to live a meaningful life is also a part of Article 21 of Constitution of India. In the case of *Sudhir Madan v. MCD*³, the Apex Court in paragraph 6 observed thus:

“6. The scheme need not be populist in its appeal, but must be practical and consistent with **the rights of citizens, who have a fundamental right to use the roads, parks and other public conveniences provided by the State.**”
(emphasis added)

28 It is in this context, that the powers conferred under the aforesaid statutes namely the power under Section 234 of the said Act of 1949 and Section 317 of the said Act of 1888 will have to be considered. On plain reading of the sections it is apparent that the sections are only enabling sections which enable the Commissioners of the Municipal

3 (2009) 17 SCC 332

Corporations to grant written permission for temporary erection of booth or other structure on any street on the occasion of ceremony and festivals. This power can be exercised by the Municipal Commissioners only with the concurrence of the Commissioner of Police or any Officer nominated by him. In the areas where Commissioner of Police is not appointed, the power will have to be exercised the concurrence of the District Magistrate or any Officer nominated by him. The use of the word may in both the sections shows that the power is discretionary. The power under the said sections cannot be exercised so as to defeat the fundamental right of the citizens under Article 21 of the Constitution of India of having the roads and foot-paths free of obstruction and in a reasonable condition. Moreover, the power cannot be exercised so as to completely defeat the statutory obligations of the Municipal Corporations under both the enactments.

29 Considering the object for which the streets are constructed, as expressly provided, the powers under both the sections can be exercised only with the concurrence of the Commissioner of the Police or the District Magistrate, as the case may be. Concurrence is certainly more than mere consultation. Concurrence means consent. It is obvious that the exercise of powers under both the sections without concurrence will be bad in law. It is obvious that power under both the sections cannot be exercised by permitting the erection of structures in such a manner

that it will obstruct free movement and free flow of vehicular traffic on the streets or free movement of the pedestrians on the footways or footpaths. Perhaps, for this reason, a provision is made to ensure that the power is not exercised without concurrence of an Officer of appropriate higher level. The aspect of obstruction to the free flow of traffic of vehicles and to the movement of pedestrians can be considered in a better manner by the Police Officers and therefore, there are provisions regarding obtaining their concurrence.

30 It is in the light of this legal position, in paragraph 8 of the Judgment and Order dated 13th March 2015, while dealing with the provision of Section 234 of the said Act of 1949, this Court has held thus:

“8. The Section 234 does not confer absolute power. The power conferred on the Commissioner is discretionary. The power cannot be exercised without the concurrence of the Commissioner of Police or the Superintendent of Police, as the case may be. The exercise of power without their concurrence will be bad in law. **It is obvious that a permission under the provision cannot be granted if the temporary erection of booths or similar structures is likely to affect free movement of vehicular traffic. Permission to erect booths on the footpaths or footway cannot be granted if the same is likely to obstruct free movement of the pedestrians. It is obvious that the discretion cannot be exercised by granting permissions to erect booths or like structures on a very busy public streets having a large vehicular traffic. It cannot be exercised in relation to footpaths in localities having a large population and in respect of footpaths in the localities which are very crowded. The power cannot be used in relation to public streets including footpaths or footways near Railway**

stations/public bus stands/major auto rickshaw or taxi stands. It follows that such permissions cannot be granted if the grant of such permissions is likely to result into a major traffic congestion or is likely to cause obstruction to large number of pedestrians in the use of footway. Such permissions cannot be granted on streets or footways in the vicinity of major hospitals and educational institutions. These cases are set out only by way of illustrations. This is not the exhaustive list of footpaths and streets in relation to which the discretionary power should not be exercised. While exercising the discretion under the said section, the Commissioner of the Municipal Corporations shall consider all such relevant factors.”

(emphasis added)

31 In order dated 24th June 2015, this Court has referred to the aforesaid decision in SUO MOTU PIL No.71 of 2013 and directed that while considering the applications for grant of permissions under sections 234 and 317, various aspects noted in paragraph 8 which are quoted above will have to be considered.

32 It follows that on congested roads, no permission can be granted under both the sections to erect temporary pandals or booths. In such areas where there is lot of traffic congestion or large movement of pedestrians, permissions cannot be granted to construct pandals on footways and foot-paths. This Court by way of illustration in the aforesaid paragraph No.8 observed that near Railway stations, major bus stands, Auto-rikshaw stands, Taxi stands in all the cities there is always a lot of traffic and therefore, in such areas, normally permissions cannot be granted. Similarly, by way of illustration, we may state that

permissions cannot be granted in relation to streets or foot-paths in the vicinity of major hospitals and educational institutions.

33 In terms of the interim order passed by this Court, some of the Municipal Corporations have framed policies. Some policies provide for grant of permissions provided pandal or temporary booth does not obstruct one fourth or one third width of the street or footway. If only on the basis of the width of the road and width of the proposed pandals or temporary booths, discretion under the aforesaid sections is to be exercised, it will amount to complete non application of mind. Moreover, it will be arbitrary. Paramount consideration for the exercise of the discretionary powers under both the sections is whether the grant of permission will obstruct the vehicular traffic on streets or the free movement of pedestrians on the foot-paths or footways. In a given case, street and/or footway or foot-path may be very wide. But the vehicular traffic or congestion may be to such an extent that erection of a structure of even a very small size may cause obstruction to the traffic or inconvenience to the pedestrians. In a given case, on a smaller street, there may not be much traffic or there may not be any congestion on footway or foot-path. On such a place erection of pandals can be easily permitted. Therefore, a policy which lays down permissible width of the temporary structure only on the basis of the

width of a street will be completely arbitrary. It will all depend on the extent of obstruction which may be created by the proposed pandal. Hence, while granting or considering the applications for grant of permission under Sections 234 and 317, all the aforesaid aspects will have to be considered by the Commissioner. The recording of concurrence by the Police Officers/District Magistrates is also not empty formality. On the contrary, while considering the question of recording concurrence, the said Officers have the same responsibility. Concurrence cannot be granted as a matter of course without application of mind without the due consideration of the aforesaid factors.

34 We have already referred to the provisions of both the enactments which provide that no digging work can be carried out on the streets without express permission of the Commissioners. Therefore, even if a permission is granted to erect pandal, without obtaining express permission, no digging work on the street can be carried out. As already pointed out, if such permissions for digging or making alterations on road or foot-path are granted, it is the statutory responsibility of the persons to whom permission is granted to restore the road to its original condition.

35 There is one more issue concerning the pandals or temporary booths erected for celebrating religious and other festivals. A contention

is raised by religious groups regarding fundamental right under Article 25 of the Constitution of India. It is claimed that if permission to erect temporary booths for celebrating religious festivals is denied, it will be an infringement of Article 25. As far as the scope of right conferred under Article 25 of the Constitution of India is concerned, the law is well settled. For the sake of convenience, we are referring to the decision of the Constitution Bench of the Apex Court in the case of *Dr.M. Ismail Faruqui Vs. Union of India and others*⁴. The Apex Court observed that the right guaranteed under Article 25 of the Constitution of India does not extend to the right of worship at any and every place. The Apex Court held that though the offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless a particular place has a particular significance for that religion so as to form an essential or integral part of the religion.

Paragraphs 77 and 78 are relevant which read thus:

“77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious

⁴ (1994) 6 SCC 360

practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.

- 78. While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.”**

(emphasis added)

36 While passing interim orders from time to time, this Court has made it expressly clear that the decision of this Court will apply to festivals/functions all religions and sects. We reiterate that position. Only by way of illustration that this Court may have referred to the religious festivals of Ganesh utsav, Navratri and Dahihandi. Offering a prayer in a particular manner, performing religious ceremony in a particular manner or celebrating religious festivals in a particular manner may be in a given case an essential part of a particular religion. But by no stretch of imagination, the right conferred by Article 25 will extend to celebrating such festivals and functions on streets and footways unless offering prayers or worship at a particular place is proved to be an essential part of a particular religion by reason of a particular significance of that place. Hence, ordinarily, no one can claim fundamental right under Article 25 to conduct a religious function or festival on a street or foot-path/footway.

37 To state briefly, in view of the law laid down in the case of Dr.M. Ismail Faruqui, while considering applications under Section 234 of the said Act of 1949 or Section 317 of the said Act of 1888 or under a similar Municipal Statutes, the Municipal Commissioners/ Commissioners of Police/ District Magistrates/Authorities cannot be influenced by the so called rights claimed under Article 25 of the Constitution of India. The law laid down by the Apex Court will have to be considered by the aforesaid Authorities while considering the applications for granting permission or for granting concurrence.

38 There is one more aspect of the matter which is reflected from the photographs produced on record in PIL 173 of 2010. The photographs show that on the pandals or temporary booths which may have been constructed for celebrating religious or other festivals after obtaining permissions, there is a display of hoardings/ banners/ advertisements/ flexes etc. Even in the open spaces and on the portion of streets or foot-way around the said public booths or temporary structures, hoardings, advertisements, photographs, etc are very often displayed. Under both the enactments, there are specific powers regulating and controlling advertisements, sky signs etc. Under the said Act of 1949, relevant provisions are Sections 244 and 245. Under Section 244, no person without permission of the Commissioner is entitled to erect, fix, retain any sky sign. There are similar provisions under the said Act of 1888 in

the form of Sections 328 and 328A which require that no sky sign or advertisement can be displayed without previous permission in writing of the Municipal Commissioner. Therefore, grant of permissions either under section 234 of the said Act of 1949 or under Section 317 of the said Act of 1888 will not enable the person holding permissions to make digging work on street or footway and to display advertisement/hoardings on or in the vicinity of pandal or temporary booths without obtaining statutory permissions in writing of the Municipal Corporations. In fact, while granting permissions under both the Sections 234 or 317, the Commissioner will have to impose a condition that the person holding a permission to erect pandal or temporary booth shall not damage the road or footway by digging thereon or otherwise without obtaining specific permission of the Municipal Corporation and no sky signs or advertisements shall be displayed either on the pandals or booths or in the vicinity thereof without obtaining specific permissions under the statutory provisions. Similarly, a condition should be imposed of not using loud-speakers/public address systems etc without obtaining the permission of the concerned Authority. Another condition should be of maintaining ambient quality standards in respect of the noise by setting out the Schedule under the said Act.

39 Under the interim orders of this Court, the District Collectors were directed to nominate the Revenue Officers now below the rank of Tahsildars to visit the various places in the Corporation areas of the State for a period of one week prior to all major religious festivals with a view to ascertain whether any temporary booths or pandals have been erected without obtaining permission. The said directions will have to continue with a modification that even the Municipal Corporations will have to constitute its own teams to visit the places in the city during the period of one or two weeks prior to every festival for the same purpose. We propose to issue an additional direction for creating grievance redress mechanism to enable the citizens to file complaints regarding illegal construction of pandals or temporary booths or other illegalities associated with the same. Even on anonymous complaints received through such grievance redress mechanism shall be considered and steps will have to be taken of demolishing the said illegal booths or pandals.

40 We may note here that the definition of development under the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") is very wide and such unauthorised acts of erection of pandals will amount to development within the meaning of MRTP Act. There are penal provisions under the said Act of 1966 which will have to be invoked in all such cases by the Municipal Corporations.

41 In the subsequent part of the decision dealing with the Noise Pollution Rules, we have pointed out a decision of the Apex Court wherein directions have been issued to develop public awareness about the issues of noise pollution. The State Government will have to seriously consider of starting awareness programmes especially in schools and colleges so that the students are made aware of the illegality associated with the use of roads and foot-paths for celebrating the festivals in the context of the rights of the citizens under Article 21 of the Constitution of India. If such awareness campaign is started at the level of the schools and colleges, it may ensure that the students are not swayed by religious sentiments.

42 In one of the interim orders passed by this Court, there is a direction issued that before every major religious festival, the Municipal Commissioner and the Police Commissioner and Police Superintendents, as the case may, should convene meetings sufficiently in advance and also invite local political leaders, representatives of organizations holding such religious festivals which will include local organization like Mohalla Committees. The object of holding such meetings is to make them aware about the right of the citizens under Article 21 and to seek their co-operation for implementation of the provisions of law.

With the aforesaid modification, we propose to continue all the interim directions issued from time to time.

IMPLEMENTATION OF NOISE POLLUTION RULES

43 Now we deal with the second issue regarding the implementation of the Noise Pollution Rules. Before we deal with the specific submissions made by the learned counsel representing the parties, we must advert to the concept of noise pollution. Before the Environment Protection Act came into force, the Air (Prevention and Control of Pollution) Act, 1981 (for short "Air Pollution Act") was enacted. The preamble of the Air Pollution Act reads thus:

"An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith

Whereas decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution;

And whereas it is considered necessary to implement the decisions aforesaid insofar as they relate to the preservation of the quality of air and control of air pollution;.."

By the Act No.47 of 1987, an amendment was carried out to the definition of of Air Pollutant under Section 2. The amended Clause (a) of section 2 as well as clause (b) thereof reads thus:

“2. Definitions.—In this Act, unless the context otherwise requires.—

(a) “air pollutant” means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

(b) “air pollution” means the presence in the atmosphere of any air pollutant;”

44 The words “including noise” were incorporated by way of amendment. On conjoint reading of clauses (a) and (b) of section 2, it is apparent that noise is also an air pollutant. Excessive noise is injurious to human beings, living creatures, plants, property and environment. When there is an excessive noise, it will become air pollutant and therefore, the presence of excessive noise will amount to air pollution. The Pollution Control Board was established under the Air Pollution Act and under the Water (Prevention and Control of Pollution) Act, 1974. There are certain provisions in the Air Pollution Act including the provision of Section 19 which enable a State Government after consultation with the State Board to declare any area or areas in the State as Air Pollution Control Areas. The functions of the State Board (in the present case the Maharashtra Pollution Control Board) have been laid down in Section 17 which reads thus:

“17. Functions of State Boards.—(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the functions of a State

Board shall be—

- (a) **to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;**
- (b) **to advise the State Government on any matter concerning the prevention, control or abatement relating to air pollution;**
- (c) **to collect and disseminate information relating to air pollution;**
- (d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise a mass-education programme relating thereto;
- (e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
- (f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;
- (g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft:

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

- (h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
- (i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
- (j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions

and generally for the purpose of carrying into effect the purposes of this Act.

- (2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.”

(emphasis added)

45 Except for the collection of certain data in terms of clause(c) which has been placed on record in some of the Petitions, we find that it is not the case made out by the Pollution Control Board that any other functions have been discharged in the matter of noise pollution. Under Sub-Rule (3) of Rule 4 of the Noise Pollution Rules, the Pollution Control Board has another important duty to perform. The said Sub-Rule reads thus:

“4(3)The respective State Pollution Control Boards or Pollution Control Committees in consultation with the Central Pollution Control Board shall collect, compile and publish technical and statistical data relating to noise pollution and measures devised for its effective prevention, control and abatement.”

46 At this stage, when we are on the provisions of the Air Pollution Act and the role of the Pollution Control Board, it is necessary to mention here another important duty assigned to the Pollution Control Board. In Civil Application St.No.18174 of 2016 filed by one of the intervenors in PIL No.173 of 2010, a copy of the notification issued by the Central Government bearing No.S.O.394(E) is placed on record which shows that the powers under clause (a) of Section 19 of the Environment Protection Act to set the criminal law in motion have been

conferred on the Chairpersons and Member Secretaries of the State Pollution Control Boards as well as the Regional Officers of the State Pollution Control Board. Significance of this notification deserves to be noted here. The Noise Pollution Rules have been framed in exercise of powers under Sections 5 and 25 of the Environment Protection Act. Section 15 of the Environment Protection Act contains provisions regarding the penalty. Under sub-section (1) of Section 15, it is provided that a person who fails to comply with or contravenes any provisions of this Act or Rules made thereunder or the directions issued thereunder may be punished by imprisonment which may extend to 5 years or with fine of Rs.1 lakh or both. In case of continuation of contravention for a period of one year after the conviction, the term of imprisonment may extend to 7 years. It is in this context that Section 19 is relevant which reads thus:

- “19. Cognizance of offences.—** No court shall take cognizance of any offence under this Act except on a complaint made by—
- (a) the Central Government or any authority or officer authorised in this behalf by that Government; or
 - (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.”

47 In view of the aforesaid notification issued by the Government of India, the Chairman or the Member Secretary or the Regional Officers of the Maharashtra Pollution Control Board have been authorised in terms of clause (a) of Section 19 to file complaints. If such Officers file

complaints, they are not required to give notice of sixty days as provided in clause (b) of Section 19. It is for this reason that in the said Civil Application filed by the Intervenor, specific directions have been sought against the Pollution Control Board enjoining the nominated officers to set the criminal law in motion under Section 19 as even the Police Officers are not empowered to set the criminal law in motion unless there is compliance with clause (b) of Section 19. In the said Central Government Notification, even the Collector is authorised under clause (a) of Section 19 to set the criminal law in motion.

48 Before we deal with the enforcement of the provisions of the Noise Pollution Rules or issue of inaction of the various Authorities to act in case of breaches, it will be necessary to refer to the provisions of the said Act as submissions have been canvassed across the bar as regards interpretation of the said Rules. From the definition of area/zone provided under clause (b) of Rule 2 read with the Schedule, it appears areas/zones have been divided into the categories of industrial area, commercial area residential area and silence zone. Clauses (c) to (f) of Rule 2 are relevant which read thus:

“(c) “authority” means¹ [and includes] any authority or officer authorised by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer,² [not below the rank of the Deputy Superintendent of Police] designated for the maintenance of the ambient air

quality standards in respect of noise under any law for the time being in force;

- (d) “court” means a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice and includes any court of law presided over by a judge, judges or a magistrate and acting as a tribunal in civil, taxation and criminal cases;
- (e) “educational institution” means a school, seminary, college, university, professional academies, training institutes or other educational establishment, not necessarily a chartered institution and includes not only buildings, but also all grounds necessary for the accomplishment of the full scope of educational instruction, including those things essential to mental, moral and physical development;
- (f) “hospital” means an institution for the reception and care of sick, wounded, infirm or aged persons, and includes government or private hospitals, nursing homes and clinics;”

Thus, the definitions of Court, educational institution and hospital are very wide and comprehensive.

Clause (i) of Rule 2 which defines public places which reads thus:

- “2(i) “public place” means any place to which the public have access, whether as of right or not, and includes auditorium, hotels, public waiting rooms, convention centres, public offices, shopping malls, cinema halls, educational institutions, libraries, open grounds and the like which are visited by general public;”

49 Night time is defined in the Schedule to be a period from 10.00 p.m to 6.00 p.m. Now, we come to the very important Rules. For the sake of convenience, we are reproducing Rules 3 to 8.

- “3. Ambient air quality standards in respect of noise for different areas/ zones.—**(1) 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.

- (2) The State Government¹ [shall categorize] the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.
- (3) The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.
- (4) All development authorities, local bodies and other authorities concerned while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise.
- (5) An area comprising not less than 100 metres around hospitals, educational institutions and courts may be declared as silence area/zone for the purpose of these rules.

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.
- (3) The respective State Pollution Control Boards or Pollution Control Committees in consultation with the Central Pollution Control Board shall collect, compile and publish technical and statistical data relating to noise pollution and measures devised for its effective prevention, control and abatement.”

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

- (1) A loudspeaker 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 system 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 loud-speakers 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;]
- (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.]

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 performance of a nature to attract crowds.
- (iv) whoever, bursts sound emitting fire crackers; or
- (v) Whoever, uses a loud speaker or a public address system.]

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 [or, if there is a violation of any provision of these rules regarding restrictions imposed during night time], 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 in charge of a police station or other information received by him [including from the complainant] 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, horn, construction equipment, appliance or apparatus] or contrivance which is capable of producing or re-producing sound, or
 - (iii)Sound caused by bursting of sound emitting fire crackers, or,]
- (b) the carrying on 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 [and to the original complainant, as the case may be,] 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.”

Schedule under the said Rules reads thus:

SCHEDULE

[See Rules 3(1) and 4(1)]

AMBIENT AIR QUALITY STANDARDS IN RESPECT 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 a.m. to 10.00 p.m.

2. Night time shall mean from 10.00 p.m. to 6.00 a.m.

3. Silence zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority.

4. Mixed categories of areas may be declared as one of the four abovementioned categories by the competent authority.

* dB(A) Leq denotes the time weighted average of the level of sound in decibels on scale A which is relatable to human hearing.

A “decibel” is a unit in which noise is measured.

“A”, in dB(A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear.

Leq: It is an energy mean of the noise level over a specified period.”

50 Sub-Rule (2) of Rule 3 confers power on the State Government to categorize the areas in the State into various areas/zones for the purposes of the implementation of Noise Pollution Rules. Sub-Rule (1) mandates that ambient air quality standards laid down by the Schedule to the said Rules for various areas/zones shall be maintained. Sub-Rule

(3) of Rule 3 enjoins the State Government to take measures for abatement of the noise pollution created by all sources and to maintain ambient air quality standards specified under the said Rules.

51 In the context of the submissions made by Shri Khambatta, the learned Senior Counsel for some of the Petitioners regarding the necessity of sound mapping, Sub-Rule (4) of Rule 3 is very material. It makes it mandatory for the Planning Authorities/Development Authorities while planning development activities or while carrying out the functions relating to town and country planning to take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace. Perhaps, this provision is consistent with the wide interpretation given by the Apex Court to Article 21 of the Constitution. Sub-Rule (4) of Rule 3 refers to the developmental authorities which in the context of the State will include the Planning Authorities under the MRTP Act. The carrying out functions of town and country planning referred in Sub-Rule (4) of Rule 3 will include preparation of regional plan for a region and preparation of development plans at the level of the Planning Authorities as provided under the MRTP Act. The Municipal Corporations, under the said Acts of 1888 and 1949 are the Planning Authorities within the meaning of the MRTP Act. Thus, in view of Sub-Rule (4) of Rule 3, while preparing

the draft development plans, the Municipal Corporations are under an obligation to take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise. We are dealing with the submission regarding noise mapping separately. The said submission is relevant in the context of this provision. The data created by noise mapping can immensely help the Planning Authorities in discharging their obligations under Sub-Rule (4) of Rule 3.

52 There is some controversy on the issue whether there is any need for the State Government to declare any particular area as a silence area/zone for the purpose of Noise Pollution Rules. Apart from the judicial pronouncements, answer to the said question lies in clause 3 of the Schedule which defines silence zone to mean an area comprising not less than 100 meters around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the Competent Authority.

53 This makes it clear that an area comprising not less than 100 meters around all hospitals, educational Institutions, courts as defined in the Noise Pollution Rules constitutes silence zone and no specific declaration to that effect is necessary. Only if some other or additional

area is to be notified as a silence zone, it is necessary for the State Government to make a declaration in that behalf. One of the contentions raised is that silence zone has to be declared by the State Government. In fact this issue is already settled as can be seen from the orders of this Court and the Apex Court. It will be necessary to make a reference to the relevant orders passed by this Court in Notice of Motion No.449 of 2003 in W.P. No.2053 of 2003. The order dated 25th September, 2003 reads thus :-

- “(1) Pending hearing and final disposal of this petition, i.e., Writ Petition No.2053 of 2003, no loud-speaker permission be granted in respect of “Silence zone” as defined and discussed in the Noise Pollution (Regulation & Control) Rules, 2000, as amended from time to time.
- (2) Pending hearing and final disposal of the petition, the respondents are directed to issue loud-speaker permission verifying and certifying before granting permission that the loud-speaker will not be used in a designated Silence zone.
- (3) The authorities will also ensure implementation and observance of the conditions mentioned in the permission.
- (4) It is also clarified that in case the petitioners point out that there is violation at any place, the authorities will take appropriate action in accordance with law.”

54 Thereafter, the State applied for review of the said order. The Review Petition was disposed of by order dated 19th December, 2003 by passing a detailed order. Paragraphs 3 to 8 of the said order reads thus :-

- “3 In our order passed in Notice of Motion No.449 of 2003 in Writ Petition No.2053 of 2003 on 25th September 2003, we had issued

certain directions in paragraph 3. Direction (1) reads as under :

“(1) Pending hearing and final disposal of this petition, i.e., Writ Petition No.2053 of 2003, no loud-speaker permission be granted in respect of “Silence zone” as defined and discussed in the Noise Pollution (Regulation & Control) Rules, 2000, as amended from time to time.”

- 4 The learned Advocate General submitted that reading Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as “the Rules”) with the Schedule thereto, **it is clear that the silence zone which has been defined in Note to the Schedule would not include hospitals, educational institutions, courts, religious places or any other area which is declared as such by the Competent Authority, but the prohibition under Rule 6 would apply to the areas comprising not less than 100 metres around such institutions.** (emphasis supplied)
- 5 It was also submitted that the paramount object of the Rule making authority is to save such institutions referred to in Note 3 of the Schedule. It was further submitted that the period/duration/timings of working hours of such institutions such as educational institutions, courts religious places etc may also be fixed and it may be clarified that for the remaining period, the provisions of the Rule would not apply.
- 6 The learned counsel for the original petitioner, on the other hand, contended that the Rule is very clear and the phraseology lays down consequences of any violation of silence zone area. **Construing reasonably the expression “Silence Zone” with clause (d) of Schedule which provides for ambient air quality standards in respect of noise. It is clear that the said standards will apply to such institutions.** It also provides limits for day as well as night time. Regarding second submission. It was contended that period/duration of timings would be immaterial as the area is situated in a silence zone.
- 7 So far as first point is concerned, in our opinion, direction issued by us on September 25, 2003 is clear. Prima facie, it appears to us that the provisions of Rule 6 of the Rules would apply to “an area comprising not less than hundred metres around” hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority. In our view, this would be in consonance with the phraseology used in clause (1) of Rule 6 which totally prohibits playing of “any

music” or using of “any sound amplifiers”. Had it been the intention of the Rule making authority that it would also apply to hospitals, educational institutions, courts, religious places, etc., the Rule making authority would not have used the expression “an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places, etc. Moreover, such interpretation would also permit activities within those institutions in accordance with law.

- 8 At the same time, however, the apprehension voiced by the learned counsel for the petitioners has also been taken care of. It cannot be considered that with regard to such organisations, institutions, etc. there is neither any standard nor limit whatsoever. In respect of such institutions also, the general provisions laid down in Rule 5 which place restriction on the use of loud speakers/public address system would apply.”

55 We have already made a reference to note under the Schedule which makes it abundantly clear that silence zone is an area comprising not less than 100 meters around hospitals, educational institutions, courts and religious places. Only if some other or additional area is to be declared as a silence zone, there is a necessity of a declaration by the Competent Authority. In the case of *Farhd K. Wadia v. Union of India*⁵, the Apex Court quoted with approval the same orders passed by this Court in Writ Petition No.2053 of 2003. The specific grievance in this case was about the failure of the State to declare areas around educational institutions/hospitals as silence zones. In paragraph 10, the said contention is recorded specifically which reads thus:

“10. Mr S. Ganesh, learned Senior Counsel appearing on behalf of the appellant, drawing our attention to the relevant Rules, would contend that as no silence zone has been notified in terms of the statutory rules, the High Court committed a

5 (2009) 2 SCC 442

serious error in passing the impugned judgment. It was urged that, in any event, an exemption should be granted in respect of Rang Bhavan having regard to the fact that it is not possible to hold a musical event at any other place in the city of Mumbai at such cheap rates. The State of Maharashtra, the learned Senior Counsel pointed out, has also been supporting the cause of the appellant.”

(emphasis added)

In Paragraphs 21 and 26, the Apex Court proceeded to observe thus:

“21. Contention that the State Government has not declared the said zone as a silence zone, in our opinion, is besides the point. **The High Court, while passing its interim order dated 25-9-2003, did not state that silence zone was required to be declared, but passed the order of restraint in respect of silence zone, as “defined and discussed in the Rules”. The parties thereto and particularly the State of Maharashtra understood the said order in that light.**

26. **The State Government is bound also by the order of this Court besides the order passed by the High Court.....”**

(emphasis added)

Therefore, the argument regarding absence of a specific declaration by the State need not detain us any further. We may note here that notwithstanding this legal position, the State Government has purported to issue a direction to the Municipal Corporations to demarcate the relevant areas as silence zones by putting up boards in the concerned area.

56 Rule 5 deals with not only use of loud-speakers/public address system but it also deals with sound producing instruments or a musical instrument or a sound amplifier. Under Sub-Rule (1) of Rule 5, it is provided that a loud-speaker or a public address system shall not be

used except after obtaining written permission from the Authority under the Noise Pollution Rules. Sub-Rule (2) provides that 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 such as auditoria, conference halls, banquet halls, community halls or during a public emergency. The Schedule defines night time to mean the period between 10.00 p.m to 6.00 a.m. Day time is defined as 6.00 am to 10.00 pm. Thus, even if permission is granted under Sub-Rule (1) of Rule (5) to use loudspeakers or public address systems, the same cannot be used between 10.00 pm till 6.00 am. Then comes Sub-Rule (3) which confers power of relaxation on the State Government. It confers power on the State to permit the use of loudspeakers or public address system and the like during night hours (between 10.00 p.m to 12.00 midnight) on or during any cultural or religious festive occasion not exceeding fifteen days in all during a calendar year. The said Sub-Rule requires the concerned State Government to specify in advance, the number and particulars of the days on which such exemption would be operative. Sub-Rule (3) is an exception carved out which permits the State Government to relax the prohibition under sub-Rule (3) for a period of 15 days in a calendar year by permitting use of loudspeakers/public address systems or the like between 10pm to 12 mid night. As stated

earlier, there is a challenge to this Sub-Rule (3) of Rule 5 in O.S. W.P. No.2053 of 2003. The said challenge does not survive in view of the decision of the Apex Court in the case of *Noise Pollution (VII) Vs. Union of India and Ors.*⁶ The Apex Court specifically dealt with the said issue in the said decision. In paragraph 8 of the said decision the Apex Court held thus :-

“8. **Looking at the diversity of cultures and religions in India, we think that a limited power of exemption from the operation of the Noise Rules granted by the Central Government in exercise of its statutory power cannot be held to be unreasonable. The power to grant exemption is conferred on the State Government. It cannot be further delegated. The power shall be exercised by reference to the State as a unit and not by reference to districts, so as to specify different dates for different districts. It can be reasonably expected that the State Government would exercise the power with due care and caution and in the public interest. However, we make it clear that the scope of the exemption cannot be widened either by increasing the number of days or by increasing the duration beyond two hours. If that is attempted to be done, then the said sub-rule (3) conferring power to grant exemption may be liable to be struck down as violative of Article 14 and 21 of the Constitution. We also make it clear that the State Government should generally specify in advance, the number and particulars of the days on which such exemption will be operative. Such specification would exclude arbitrariness in the exercise of power. The exemption, when granted, shall not apply to silence zone areas. This is only as a clarification as, this even otherwise is the position of law.**”

(emphasis added)

57 The Apex Court held that a limited power of exemption from the operation of the Noise Pollution Rules granted by the Central Government cannot be held to be unreasonable. Hence, the validity of Sub-Rule (3) was upheld by the Apex Court subject to clarification that

⁶ (2005) 8 SCC 796

the power to grant exemption is conferred on the State Government which cannot be delegated at all. The Apex Court also observed that scope of the exemption cannot be widened either by increasing the number of days or by increasing the duration beyond two hours. It was further observed that if that is done, Sub-Rule (3) will have to be struck down as violative of Articles 14 and 21 of the Constitution of India. Moreover, it was held that the power of granting exemption for a period of 15 days shall be exercised by reference to the State as a unit and different dates for different districts cannot be specified. What is more important is that a categorical pronouncement of law has been made by the Apex Court that even if relaxation under Sub-Rule (3) of Rule 5 is granted, it will not apply to silence zones. As observed by the Apex Court, even otherwise in view of Rule 6, the exemption granted by the State Government under Sub-Rule (3) of Rule 5 will not apply in silence zones. In view of this finding, the issue of validity of Sub-Rule (3) does not survive. However, it will be necessary to look into the exercise of said power of Sub-Rule (3) of Rule 5 by the State Government. In fact, in PIL No.2053 of 2003 and one more PIL which is part of the group, there is also a challenge to the exercise of the said powers by the State Government by issuing a notification. The said notification is issued by the State Government on 7th April, 2003 which is at Exhibit – “E” to Writ Petition No.2053 of 2003. However, the said notification is no

more applicable. Now, in exercise of the powers under the Sub-Rule (3) of Rule 5, a notification dated 31st July 2013 has been issued. In the said Government Resolution, 13 days have been specified for the entire State and the determination of remaining 2 days has been left to the decision of the District Collectors as per the demand from local people. We make it clear that in view of the law laid down by the Apex Court, the power of the State Government under Sub-Rule (3) of Rule 5 cannot be delegated at all and for different districts, different days cannot be specified. Therefore, that part of the notification dated 31st July 2013 which confers power on the Collectors to determine two days will have to be held as illegal. The decision as regards two days will have to be taken by the State Government in advance as contemplated by Sub-Rule (3) of Rule 5 and the said decision cannot be left to the District Collectors or any other authority as the Apex Court has in so many words has held that power under Sub-Rule (3) cannot be delegated by the State Government.

58 Now, we turn to Sub-Rules (4) and (5) which will have to be considered together. Sub-Rule (4) is applicable where loud-speaker or public address system or any other noise source is being used in a public place as defined in clause (i) of Rule 2. As noted earlier, public places includes auditoria, hotels, public waiting rooms, conference rooms, convention centres, public offices, shopping malls, cinema halls,

educational institutions and open grounds. Requirement of Sub-Rule (4) is that if loud-speaker or public address system is used in a public place after obtaining permission under Sub-Rule (1), the noise level at the boundary of the public place shall not exceed 10 db(A) above the ambient noise standards for the area or 75 db(A), whichever is lower. Thus, by way of illustration, if in an auditorium situated in a residential area, loud-speaker or public address system is used, at the boundary of the auditorium, noise level in day time shall not be more 65 db(A) as the Schedule prescribes level of 55 db(A) for residential area in day time. By way of another illustration, we may point out that if on an open ground in a residential area, loud-speaker or public address system is used, in view of Sub-Rule (4) of Rule 5, the noise level at the boundary of the public ground cannot be more than 65 db(A). As far as Sub-Rule (5) is concerned, it is applicable when privately owned sound system or sound producing instrument is used at a private place. Thus, Sub-Rule (5) will apply to all places other than public places as defined in clause (i) of Sub-Rule (2). By way of illustration, we may note here that if in a residential house, a privately owned sound system or sound producing instrument is used, at the boundary of the said residential house in a residential area, the noise level cannot exceed 60 db(A) during day time (55+5). Thus, two Sub-Rules are important which lay down that in a given case if use of loud-speakers or public address

systems or sound producing instruments is permissible in accordance with law, noise levels have to be maintained at the boundary of public place or private place. We note here that in view of Section 15 of the Environment Protection Act, any violation of any Rule in the Noise Pollution Rules is made an offence. It is in this context, the Sub-Rules (4) and (5) will have to be appreciated. We may again emphasis on the illustrations given earlier. If a public meeting is held on open ground where permission is granted to use loud-speaker or public address system, at the boundary of the said public ground, noise level will have to be maintained as provided in Sub-Rule (4) read with the Schedule.

59 Now, we come to Rule 5A which deals with restrictions on the use of horns, sound emitting construction equipments and bursting of fire crackers. Sub-Rule(1) provides that no horns shall be used in silence zone or during night time in residential areas except during a public emergency. Therefore, there is a complete prohibition on using horns in silence zones for all 24 hours of a day and in residential areas during night time. Only exception is in case of public emergency as distinguished from mere emergency. The grievance made in some of the Petitions is that this prohibition is hardly implemented in the State. As far as horns are concerned, there are other statutory provisions under the Central Motor Vehicles Rules, 1989 (for short “the said Rules

of 1989”). Rule 119 deals with horns. Rule 119 reads thus :-

“119.Horns.- (1) On and after expiry of one year from the date of commencement of the Central Motor Vehicles (Amendment) Rules, 1999, 308[every motor vehicle, agricultural tractor, power tiller and construction equipment vehicle] manufactured shall be fitted with an electric horn or other devices conforming to the requirements of IS: 1884 - 1992, specified by the Bureau of Indian Standards] for use by the driver of the vehicle and capable of giving audible and sufficient warning of the approach or position of the vehicle:

Provided that on and from 1st January, 2003, the horn installation requirements for motor vehicle] shall be as per [AIS-014] specifications, as may be amended from time to time, till such time as corresponding Bureau of Indian Standards specifications are notified.

- (2) No motor vehicle including agricultural tractor] shall be fitted with any multi-toned horn giving a succession of different notes or with any other sound-producing device giving an unduly harsh, shrill, loud or alarming noise.
- (3) Nothing contained in sub-rule (2) shall prevent the use on vehicles used as ambulance or for fire fighting or salvage purposes or on vehicles used by police officers or operators of construction equipment vehicles or officers of the Motor Vehicles Department in the course or their duties or on construction equipment vehicles, of such sound signals as may be approved by the registering authority in whose jurisdiction such vehicles are kept.”

60 What is material is Sub-Rule (2) which provides that no motor vehicle shall be fitted with any multi-toned horn giving a succession of different notes or with any other sound-producing device giving an unduly harsh, shrill, loud or alarming noise. Even the specifications of the horns have been set out in Sub-Rule (1). In fact, Sub-Rule (1) indicates that the horn should be such that it is capable of giving audible and sufficient warning of the approach or position of the

vehicle. Some of the PIL Petitioners are right in submitting that even prohibition of Sub-Rule (2) of Rule 119 is implemented only in breach.

61 As far as sirens and horns are concerned, the Government of Maharashtra has issued a notification dated 31st July, 2013 laying down standards for horns, sirens, multi-toned horns for the vehicles plying in the State of Maharashtra and their use. Clause (1) thereof provides that the sirens and multi-toned horns shall be continued to be banned except for police van, ambulance and fire brigades as prescribed under Rule 119 of the said Rules of 1989. Clause (3) provides that noise level of horns including siren/multi-toned horns should not exceed 10 db(A) louder than noise levels of the engine sound of the vehicles for each category as specified in part (E) of Schedule VI of the Environment (Protection) Rules, 1986. Further requirement is that the horns should be under the bonnet of a vehicle. Under the said notification, certain areas such as eco-sensitive zones like Matheran, Mahabaleshwar etc have been declared as no honking zones where any kind of honking from motor vehicles is prohibited at any given time except in extreme emergency situations. Sub-clause (d) of clause 5 provides that after due public consultation, residential areas will be declared as “no honking zones” by the concerned local authority. When we are on Rule 5A, it will be necessary to make a reference to one important notification issued by the State Government on 21st April, 2009. The said notification

which contains a direction to the local self-governments to declare certain zones as silence zones. Clause (3) of the said notification is important which provides for noise levels of various equipments such as DG sets, Coal Washeries, fire-crackers as set out in second Schedule to the said notification. The second Schedule to the said notification lays down Standards/Guidelines for control of Noise Pollution from Stationary Diesel Generators (DG). Various provisions such as controlling the noise from DG sets by providing an acoustic enclosure have been incorporated therein. The Second Schedule also deals with Noise Limits for Generator Sets run with diesel. It also deals with Noise Level Standards for Coal Washeries. Importantly, it lays down noise standards for fire crackers. Clause 4 which deals with noise standards for fire crackers reads thus :-

“4. Noise Standards for fire-crackers

A (i) **The manufacturer, sale or use of fire-crackers generating noise level exceeding 125 db(AI) or 145 dB(C) at 4 meters distance from the point of bursting shall be prohibited.**

(ii) For individual fire-cracker constituting the series (joined fire crackers), the above mentioned limit be reduced by $5 \log_{10} (N)$ dB, where N= Number of crackers joined together.

B. The broad requirement for measurement of noise from fire-crackers shall be -

- (i) The measurement shall be made on a hard concrete surface of minimum 5 meter diameter or equivalent.
- (ii) The measurement shall be made in free field conditions i.e., there shall not be any reflecting surface upto 15 meter distance from the point of bursting.
- (iii) The measurement shall be made with an approved sound level meter.

C. The Department of Explosives shall ensure implementation of these standards.”

(emphasis added)

62 Thus, manufacturing, sale or use of fire-crackers generating noise levels exceeding 125 dB(AI) or 145 dB(C) at 4 meters distance from the point of bursting has been completely prohibited. Moreover, Sub-Rule (2) of Rule 5A of the Noise Pollution Rules imposes a complete ban on bursting sound emitting crackers in silence zone for twenty four hours and in night time (10.00 pm to 6.00 am) elsewhere. This Sub-Rule as in case of other provisions of the said Rules is mandatory. By the aforesaid notification dated 21st April, 2009 there is a ban imposed on manufacture, sale or use of fire crackers generating noise of a particular level. Clause 6 of second Schedule of the Notification dated 21st April, 2009 lays down noise levels for vehicles applicable at manufacturing stage. We may note here that these noise levels specified are applicable only at manufacturing stage. Under Sub-clause (b) of clause 7 of second Schedule, noise levels of domestic appliances such as Window Air Conditioners, Air Coolers, Refrigerators and Diesel generator for domestic purposes have been specified. Even the noise levels of Compactors, rollers, front loaders, concrete mixers, cranes, vibrators been laid down. In one of the Petitions, a direction issued by the Mumbai Municipal Corporation is placed on record wherein construction activities have been restricted during the specified hours of

the day. One of the reasons why we have referred to the aforesaid notification is to point out that the requirements provided therein have mostly remained on paper and have not been implemented. Needless to say that all these requirements will have to be enforced by the machinery of the State. Sub-Rule (3) of Rule 5A imposes a complete prohibition on the use and operation of sound emitting construction equipments during in silence zone and during night time in residential areas. The State Government will have to issue a direction to all Planning Authorities to include a condition of complying with the requirements of Sub-Rule (3) while granting development permissions.

63 There was some debate on the interpretation of Rule 6 of the Noise Pollution Rules which provides for consequences of any violation in silence zone/area. For violations specified in Rule 6, the stringent penalty under the provisions of Section 15 of the Environment Protection Act is attracted. The learned Senior Counsel appearing for the Petitioners in PIL No.85 of 2007 has made detailed submissions on this aspect and has filed written submissions. Even the learned Government Pleader has filed written submissions on this aspect. In the stand taken by the Petitioners in the said PIL and the State Government, there seems to be a very little difference as far as interpretation of the Rules regarding silence zone are concerned.

64 We have already made a reference to the orders passed by the this Court in relation to interpretation of the provisions relating to silence zone. The said two orders are in PIL No. 2053 of 2003. While we are on this aspect it will be also necessary to make a reference to the decision of the Apex Court in the case of *Farad K. Wadia vs. Union of India and others*. The issue was whether musical concerts in open theatre known as Rang Bhavan at Mumbai should be allowed to be held despite the fact that it is situated within 100 meters of educational institutions and hospitals. The decision records that a submission was made that great artists have performed in Rang Bhavan. The Apex Court has quoted the aforesaid two orders dated 25th September, 2003 and 19th December, 2003 in Writ Petition PIL No.2053 of 2003. The Division Bench of this Court accepted the submission of the learned Advocate General that in view of the definition of “silence zone”, the same will not include the hospitals, educational institutions, courts and religious places itself but the prohibition under Rule 6 would apply to the areas comprising not less than 100 meters around such institutions. Even otherwise, we have found on plain and conjoint reading of Sub-Rule (5) of Rule 3 and note 3 to the Schedule that silence zone is an area comprising not less than 100 meters around hospitals, educational institutions, Courts and religious places. But, it will not include the precincts of hospitals, educational institutions, religious places and

Courts. In short, by way of illustration, in case of a Court, precincts of the Court itself will not be a silence zone but an area comprising not less than 100 meters around the precincts Court will be a silence zone. Going back to the decision of the Apex Court in the case of *Farad K. Wadia*, the view expressed by this Court in the order dated 19th December, 2003 has been quoted with approval. The interpretation made by this Court is a purposive interpretation. An educational institution may have precincts consisting of open grounds and buildings. If the precincts of educational institutions are to be treated as forming part of the silence zone, it will be impossible to hold any functions in the open space or in the building. On this aspect, we must note here that as the precincts of hospitals, educational institutions, religious places and Courts will not be a part of silence zone, the other provisions of the Rules namely Rules 3 to 5A, 7 and 8 will continue to apply to the precincts of such institutions. It follows that if a loud-speaker or public address system is to be used within the precincts of the aforesaid institutions, Sub-Rule (1) of Rule 5 will have to be followed and written permission will have to be obtained. While using loud-speakers or public address systems within the precincts of the institutions, it will have to be ensured that in the adjacent silence zone of an area comprising of not less than 100 meters, ambient air quality standards as laid down in the Schedule namely 50db(A) at day time

and 40db(A) at night time will have to be maintained. In paragraph 8 of the order dated 19th December, 2003 passed in Review Petition in Writ Petition No.2053 of 2003, this Court observed that in respect of the said institutions, general provisions laid down in Rule 5 would certainly apply. This part of the the said order is quoted with approval by the Apex Court in case of *Farad K. Wadia (supra)*.

65 That takes us to Rules 7 and 8. Under Sub-Rule (1) of Rule 7, a person may, if the noise level exceeds ambient noise standards by 10 dB(A) or more given in the corresponding columns of the Schedule against any area/zone or, if there is any violation of any provisions of the Rules regarding restrictions imposed during night time, make a complaint to the authority. Sub-Rule (2) provides that it is the obligation of the authority to act upon such a complaint and take action against the violator in accordance with the provisions of the Rules and any other law in force. Rule 8 will have to be read along with Rule 7. Rule 8 confers wider power. It confers power on the authority to pass a written order and to issue directions for preventing, prohibiting, controlling or regulating 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, horns, construction equipment,

appliance or apparatus as well as sound caused by bursting of sound emanating fire crackers. Action under Sub-Rule (1) of Rule 8 can be taken if the authority is satisfied from the report of an officer in charge of a police station or other information received by him including from a complainant that it is necessary to do so in order to prevent annoyance, discomfort, injury or risk of annoyance. Thus, under Rule 7 if a complaint is made, the authority as defined under the Noise Pollution Rules is under an obligation to act and take action which will also include the action of setting criminal law in motion. If on receiving a complaint or from the report under Sub-Rule (1) of Rule 8, if the authority is satisfied in terms of Sub-Rule (1) of Rule 8, it has no option but to take action of even stopping the use of loud-speaker, public address system etc. The authority can take action not only on the basis of complaint as contemplated by Rule 7 but also on the basis of report of an officer in charge of a police station or any other information received by him. It follows that apart from Rule 7, if a complaint is made by any citizen to the officer in charge of the police station about any violation, it is the obligation of the officer in charge of the police station to forthwith inform the authority contemplated under the Noise Pollution Rules to enable the authority to take immediate action. We have already adverted to the definition of authority under clause (c) of Rule 2. As per the definition of authority, District Magistrate or Police

Commissioner or any other officer not below the rank of Deputy Superintendent of Police specially designated in this behalf becomes an authority. In terms of interim orders passed by this Court in PIL No.173 of 2010, the State Government through Environment Department has issued a notification dated 28th July, 2015. The said notification records the decision of the State Government to appoint Police Commissioners, Deputy Police Commissioners, Assistant Police Commissioners as authority in a place where there is a Commissioner of Police. It provides that at other places, the Superintendents of Police and Deputy Superintendents of Police shall be the authority under the provisions of the Noise Pollution Control Rules. As per the directions issued by this Court, publicity has been already given to the names, office addresses, contact numbers of such officers. Thus, the officers mentioned in the notification dated 28th July, 2015 apart from the District Magistrates are the authorities under the Noise Pollution Rules, who are under an obligation to take action in accordance with Rule 8 of forthwith stopping the use of loud-speakers/ music system, musical instruments, work of construction, etc. Rule 7 provides that authority will take action in accordance with law. At this stage, it will be necessary to make a reference to Section 15 of the Environment Protection Act which reads thus :-

“15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.—(1) Whoever fails to comply with

or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

- (2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.”

66 Hence, contravention of any of the provisions of the Environment Protection Act or the Rules made (including the Noise Pollution Rules) or directions issued thereunder is an offence which attracts stringent penalty as provided in Section 15 of the Environment Protection Act. Section 17 is also an important provision. If an offence under Section 15 is committed by any department of the Government, the head of the department shall be deemed to be guilty of the offence and shall be liable to be proceeded against. What is important is Section 19 which lays down the procedure for taking cognizance of the offences punishable under Section 15. We have already quoted Section 19.

67 On plain reading of Section 19, if any person other than Central Government or authority or officer authorised in this behalf by that Government in accordance with clause (a) thereof wants to set criminal

law in motion, that person has to give notice of 60 days of the alleged offences and of his intention to make a complaint as provided in clause (b) of Section 19. Therefore, if the authority under the Noise Pollution Rules or any police officer wants to file a complaint, he has to abide by clause (b) of Section 19. Therefore, an offence cannot be registered at least for a period of 60 days from the date of its commission. As far as clause (a) is concerned, there is a notification issued by the Central Government which is annexed to CA(St.) No.1817 of 2016. As per the said notification, the District Collectors have been appointed as authority under clause (a) of Section 19. The Chairpersons, member Secretaries and regional officers of the State Pollution Control Board who have been delegated powers under Section 24 of Air Pollution Act are also authorities under clause (a) of Section 19.

68 Therefore, we propose to direct the authority under the Noise Pollution Rules to ensure that as soon as a complaint is received or information is received from the Police Officer or information is otherwise received regarding any major violation of the Noise Pollution Rules, immediate information thereof shall be provided to the officers of the Maharashtra State Pollution Control Board or the District Collector who have been authorised under (a) of Section 19 to take action. As soon as such intimation is received, either the District

Collector or officers of the Pollution Control Board will have to take immediate steps to make a complaint contemplated by Section 19 of the Environment Protection Act in as much as if the Collector or the authorised officers make a complaint, it is not necessary for them to follow requirement of giving 60 days notice under Section 19. Even the police officers can set criminal law in motion after taking recourse to clause (b) of Section 19.

69 The judgment will not be complete unless we advert to two aspects. The first aspect is about the serious consequences of noise pollution. The second aspect is about the rights claimed on the basis of Articles 19(1)(g) and 25 of the Constitution of India.

EFFECT OF NOISE POLLUTION

70 In fact before the Noise Pollution Rules came into force, there is detailed report submitted to this Court by a committee headed by the Hon'ble Smt Justice Sujata Manohar in which various details of health hazards caused by use of loud-speakers have been set out. However, it is not necessary to elaborately quote the said report on this aspect as this issue has been elaborately dealt with by the Apex Court in the case of *Noise Pollution (V) In Re*⁷. In the said landmark and well known decision, the Apex Court has discussed the concept of air pollution. The Apex Court has referred to the definition of air pollutant and air

⁷ (2005) SCC 733

pollution under the Air Pollution Act. Paragraph 15 onwards the Apex Court has made a detailed discussion about noise as nuisance and health hazard. The Apex Court in paragraph 19 observed that noise can disturb our rest, sleep and communication. It can damage our hearing and evoke other gynecological and pathological reactions. The Apex Court has considered the ill effects of noise pollution from paragraph 16 onwards upto paragraph 34 which read thus :-

16. **Noise is a type of atmospheric pollution.** It is a shadowy public enemy whose growing menace has increased in the modern age of industrialisation and technological advancement. **Although a soft rhythmic sound in the form of music and dance stimulates brain activities, removes boredom and fatigue, but its excessiveness may prove detrimental to living things. Research has proved that a loud noise during peak marketing hours creates tiredness, irritation and impairs brain activities so as to reduce thinking and working abilities.** Noise pollution was previously confined to a few special areas like the factory or the mill, but today it engulfs every nook and corner of the globe, reaching its peak in urban areas. Industries, automobiles, rail engines, aeroplanes, radios, loudspeakers, tape recorders, lottery ticket sellers, hawkers, pop singers, etc., are the main ear contaminators of the city area and its marketplace. The regular rattling of engines and intermittent blowing of horns emanating from the caravan of automobiles do not allow us to have any respite from irritant noise even in suburban zones [Ranbir Singh, Noise Pollution: Environment and the Law, as printed in Indian Bar Review, Vol. 23 (3 & 4), 1996, p. 86.] .
17. In the modern day noise has become one of the major pollutants and it has serious effects on human health. Effects of noise depend upon the sound's pitch, its frequency and time pattern and length of exposure. Noise has both auditory and non-auditory effects depending upon the intensity and the duration of the noise level. [P.S. Jaswal and Nistha Jaswal — Environmental Law, Second Edn., p. 331.] It affects sleep, hearing, communication, mental and physical health. It may even lead to madness in people.

19. Noise can disturb our work, rest, sleep, and communication. It can damage our hearing and evoke other psychological, and possibly pathological reactions. However, because of the complexity, variability and the interaction of noise with other environmental factors, the adverse health effects of noise do not lend themselves to a straightforward analysis [Parivesh Newsletter: Central Pollution Control Board, December 1996 at p. 4.] .

(i) *Hearing Loss*

20. “Deafness, like poverty, stunts and deadens its victims.” — says Helen Keller. Hearing loss can be either temporary or permanent. Noise-induced temporary threshold shift (NITTS) 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, the permanent hearing impairment that is attributable to the natural aging process, can be experienced simultaneously**

(iii) *Disturbance of sleep*

21. NIPTS occurs typically at high frequencies, usually with a maximum loss at around 4000 Hz [N.B. — Hz is the 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).] . 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) \pm 5 dB(A) in their regulations and recommended practices [*Ibid.*, as in fn 9.] .

(ii) *Interference with communication*

22. The interference of noise with speech communication is a process in which one of two simultaneous sounds renders the other inaudible. An important aspect of communication interference in occupational situations is that the failure of workers to hear warning signals or shouts may lead to injury. **In offices, schools and homes, speech interference is a major source of annoyance [*Ibid.*] .**

(iii) *Disturbance of sleep*

23. Noise intrusion can cause difficulty in falling asleep and can awaken people who are asleep [*Ibid.*] .

(iv) *Annoyance*

24. Noise annoyance may be defined as a feeling of displeasure evoked by noise. The annoyance-inducing capacity of a noise depends upon many of its physical characteristics and variations of these with time. However, annoyance reactions are sensitive to many non-acoustic factors of a social, psychological, or economic nature and there are considerable differences in individual reactions to the same noise [*Ibid.*]

25. **Noise can change the state of alertness of an individual and may increase or decrease efficiency.** Performance of tasks involving motor or monotonous activities is not always degraded by noise. At the other extreme, mental activities involving vigilance, information gathering and analytical processes appear to be particularly sensitive to noise [*Ibid.*] .

(vi) *Physiological effects*

26. **It has been determined that noise has an explicit effect on the blood vessels, especially the smaller ones known as pre-capillaries.** Overall, noise makes these blood vessels narrower. Noise causes the peripheral blood vessels in the toes, fingers, skin and abdominal organs to constrict, thereby decreasing the amount of blood normally supplied to these areas [*Ibid.*] .
27. **Possible clinical manifestations of stress concomitant with noise are: (i) galvanic skin response, (ii) increased activity related to ulcer formation, (iii) changes in intestinal motility, (iv) changes in skeletal muscle tension, (v) subjective response irritability perception of loudness, (vi) increased sugar, cholesterol and adrenaline, (vii) changes in heart rate, (viii) increased blood pressure, (ix) increased adrenal hormones, (x) vasoconstriction.** Not only might there be harmful consequences to health during the state of alertness, but research also suggests that effects may occur when the body is unaware or asleep [Noise Effects Handbook: A Desk Reference to Health and Welfare Effects of Noise, by Office of the Scientific Assistant, Office of Noise Abatement and Control, US Environmental Protection Agency, October 1979, revised July 1981.] .
28. **Investigations have revealed that the blood vessels which feed the brain, dilate in the presence of noise. This is the reason why headaches result from listening to persistent high noise**

[Parivesh Newsletter: Central Pollution Control Board, December 1996, at pp. 4-6] .

29. Field studies have also been conducted on various other groups such as people living near airports, and school children exposed to traffic noise, showing that there may be some risk for these people. In addition, laboratory studies on animals and humans have demonstrated a relationship between noise and high blood pressure. Other studies have shown that noise can induce heart attacks [*Ibid.*, at fn 17a.] .
30. Prolonged chronic noise can also produce stomach ulcers as it may reduce the flow of gastric juice and change its acidity.
32. Quite a few field studies have been done on workers in Europe, examining the relationship between noise and illness. In these studies, noise has been related to the following: general morbidity (illness); neuropsychological disturbances — headaches, fatigue, insomnia, irritability, neuroticism; cardiovascular system disturbances — hypertension, hypotension, cardiac disease; digestive disorders — ulcers, colitis; endocrine and biochemical disorders.

(vii) Noise and the unborn

33. **There is ample evidence that environment has a role in shaping the physique, behaviour and function of animals, including men, from conception and not merely from birth.** The foetus is capable of perceiving sounds and responding to them by motor activity and cardiac rate change [Lestre W. Sontang: The Fels Research Institute. (Quoted in Noise: A Health Problem, United States Environmental Protection Agency, Office of Noise Abatement and Control, Washington, D.C., August 1978.)] .

(viii) Special effects on the unborn, children and human beings generally

34. **The foetus is not fully protected from noise. Noise may threaten foetal development. Noise has been linked to low birth weights.** Levels of noise which do not interfere with the perception of speech by adults may interfere significantly with the perception of speech by children as well as with the acquisition of speech, language, and language-related skills. [National Academy of Science Report — USA, quoted and referred to in Noise: A Health Problem, published by United States Environment Protection Agency (Office of Noise Abatement and Control, Washington D.C.), August 1978.] Because they are just learning, children have more difficulty in understanding language in the presence of noise than adults do. Reading ability also may be seriously impaired by noise. [Noise:

A Health Problem, published by United States Environment Protection Agency (Office of Noise Abatement and Control, Washington D.C.), August 1978.] Apart from children, noise pollution causes several adverse effects on human beings generally. Some of these are: (i) hearing loss, (ii) non-auditory physiological response such as stress, arousal response, cardiovascular effects, etc., (iii) communication interference, (iv) performance interference, and (v) sleep disturbance and so on. [Noise Effects Handbook: A Desk Reference to Health and Welfare Effects of Noise, by Office of the Scientific Assistant, Office of Noise Abatement and Control, US Environmental Protection Agency, October 1979, revised July 1981.]”

(emphasis added)

71 In paragraph 35 onwards, the Apex Court has discussed several sources of noise pollution such as road traffic noise, aircraft noise, construction noise, noise in building, noise in consumer products, noise in fire-crackers. We may advert to the directions issued by the Apex Court The said directions are in part XII of the judgment starting from paragraph 174 which reads thus :-

“XII. Directions

It is hereby directed as under:

(i) *Firecrackers*

174. 1. On a comparison of the two systems i e the present system of evaluating firecrackers on the basis of noise levels, and the other where the firecrackers shall be evaluated on the basis of chemical composition, we feel that the latter method is more practical and workable in Indian circumstances. It shall be followed unless and until replaced by a better system.
2. The Department of Explosives (DOE) shall undertake necessary research activity for the purpose and come out with the chemical formulae for each type or category or class of firecrackers. DOE shall specify the proportion/composition as well as the maximum permissible weight of every chemical used in manufacturing firecrackers.

3. The Department of Explosives may divide the firecrackers into two categories – (i) sound-emitting firecrackers, and (ii) colour/light-emitting firecrackers.
 4. **There shall be a complete ban on bursting sound-emitting firecrackers between 10 p.m and 6 a.m.** It is not necessary to impose restrictions as to time on bursting of colour/light-emitting firecrackers.
 5. Every manufacturer shall on the box of each firecracker mention details of its chemical contents and that it satisfies the requirement as laid down by DOE. In case of a failure on the part of the manufacturer to mention the details or in cases where the contents of the box do not match the chemical formulae as stated on the box, the manufacturer may be held liable.
 6. Firecrackers for the purpose of export may be manufactured bearing higher noise levels subject to the following conditions: (i) the manufacturer should be permitted to do so only when he has an export order with him and not otherwise; (ii) the noise levels for these firecrackers should conform to the noise standards prescribed in the country to which they are intended to be exported as per the export order; (iii) these firecrackers should have a different colour packing, from those intended to be sold in India; (iv) they must carry a declaration printed thereon something like “not for sale in India” or “only for export to country AB” and so on.
- (ii) Loud-speakers

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

- 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.

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

(emphasis added)

72 The Noise Pollution Rules were amended in the year 2006 and 2010 for giving effect to some of the above direction.

73 One of the most important directions given by the Apex Court is based on need for creating general awareness towards the hazardous effects of noise pollution. The Apex Court suggested suitable chapters may be added in the text-books which teach this aspect at the initial/early level of education. There is a direction to organise special

talks and lectures in the schools to highlight the menace of noise pollution and the role which can be played by younger generation in preventing it. A salutary direction is issued to have public awareness campaign in anticipation of festivals, events and ceremonial occasions. Though in the affidavits filed in PIL No.85 of 2007 certain material is placed on record to show that some efforts were made by the State, but there is no organised activity conducted by the State Government in terms of the directions contained in paragraph 177 of the decision of the Apex Court. The said direction regarding awareness and all the directions which continue to remain in force will have to be scrupulously followed by the State Government. In addition to the directions, the Noise Pollution Rules are mandatory and must be implemented. Therefore, in addition to the ban on bursting sound emitting fire crackers in night, the ban imposed on bursting of the same in silence zone by Sub-Rule (2) of Rule 5A shall be followed.

RIGHT TO USE LOUD-SPEAKERS/ PUBLIC ADDRESS SYSTEMS IN
THE CONTEXT OF FUNDAMENTAL RIGHTS UNDER ARTICLES 19(1)
(g) and 25 OF THE CONSTITUTION

74 Submissions have been made in one of the PILs as regards the use of loudspeakers on mosques for the purpose of “Azan”. Azan is a call given to attend prayers. The call is made from minaret of a mosque. A party in person made detailed submissions stating that the muslim religion does not permit use of loud-speakers for Azan. We may note

here that loud-speakers are being installed not only on mosques but on the places of worship of some other religions as well. Use of loud-speakers is being prominently made for celebrating Ganapati, Navratri, Dahi Handi and other Hindu festivals and processions. Law on this aspect will have to be considered by this Court. As seen from some of the intervention applications filed in Criminal PILs, whenever the issue of noise pollution or breach of Noise Pollution Rules is raised, there is always an argument made based on Articles 19(1)(a) and Article 25. In the aforesaid decision of the Apex Court in Noise Pollution (V) In re, in paragraph 112, the Apex Court has quoted with approval the view taken by the Kerala High Court in the case of *P.A. Jacob v. Superintendent of Police*⁸. The paragraph 112 reads thus:

“112. In *P.A. Jacob v. Supdt. of Police* [AIR 1993 Ker 1] it was said: (AIR p. 1)

“The right to speech implies, the right to silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehends freedom to be free from what one desires to be free from. Free speech is not to be treated as a promise to everyone with opinions and beliefs, to gather at any place and at any time and express their views in any manner. The right is subordinate to peace and order. A person can decline to read a publication, or switch off a radio or a television set. But, he cannot prevent the sound from a loudspeaker reaching him. He could be forced to hear what, he wishes not, to hear. That will be an invasion of his right to be let alone, to hear what he wants to hear, or not to hear, what he does not wish to hear. One may put his mind or hearing to his own uses, but not that of another. No one has a right to trespass on the mind or ear of another and commit auricular or visual aggression. A loudspeaker is a mechanical device, and it has no mind or thought process in it. Recognition of the right of speech or expression is recognition accorded to a human faculty. A right

⁸ AIR 1993 Ker 1

belongs to human personality, and not to a mechanical device. One may put his faculties to reasonable uses. But, he cannot put his machines to any use he likes. He cannot use his machines to injure others. Intervention with a machine, is not intervention with, or invasion of a human faculty or right. No mechanical device can be upgraded to a human faculty. A computer or a robot cannot be conceded the rights under Article 19 (though they may be useful to man to express his faculties). No more, a loudspeaker. The use of a loudspeaker may be incidental to the exercise of the right. But, its use is not a matter of right, or part of the right.”

75 Hence, the right to speech under 19(1)(g) implies the right to silence. It implies freedom not to listen, and not to be forced to listen. The right comprehends freedom to be free from what one desires to be free from. There is a fundamental right to the citizens to protect themselves against forced audiences. On this aspect, there is one important decision of the Apex Court in the case of *Church Of God (Full Gospel) in India vs K.K.R. Majestic Colony Welfare Association and others*⁹. The Apex Court noted that the question involved in the said appeal before it was whether 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. The Apex Court reiterated that no religion prescribes or preaches that prayers be performed by voice-amplifiers or beating of drums. Paragraphs 2 and 13 of the said decision reads thus :

“2. 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

9 (2000) 7 SCC 282

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 tranquillity of the 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 daytime 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, the old and the 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 (sic sensitive) to noise. Their rights are also required to be honoured.”

- “13. **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 Anandprasadji Maharaj v. State of Gujarat [(1975) 1 SCC 11] . After considering the various contentions, the Court observed that: (SCC p. 20, para 30)

“No rights in an organized society can be absolute. Enjoyment of one's 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: (SCC p. 20, para 31)

“A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and 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.”

(emphasis added)

76 Thus, the Apex Court specifically negated the argument based on Article 25 and 26 of the Constitution of India. Hence, no religion can claim that the use of loudspeakers/public address systems etc for prayers or for worship or for celebrating religious festivals is an essential part of the religion.

77 On this aspect, we may also make a useful reference to the decision of the Calcutta High Court in the case of *Moulana Mufti Syed Mohammed Noorur Rehman Barkati and Ors. vs. State of West Bengal and Ors*¹⁰. The claim in the Writ Petition was that Namaz is the second pillar of Islam and occupies a permanent position among the practical duties of the Muslims. It was claimed that use of microphones for the purpose of Azan is a part of the religious right guaranteed under Article 25 of the Constitution of India. Even the argument based on the Article 19(1)(a) was made before Calcutta High Court. Relevant paragraphs of the said decision read thus :-

“3. In this writ application, the petitioners case is that Namaz is the

¹⁰ 1998 SCC OnLine Cal 73

second pillar of Islam and occupies a permanent position among the practical duties of the Muslims. Muslims offer obligatory prayers in congregation in Mosques five times a day and offer prayer in common (Jammāt) to isolated prayers. **Azan is essential for all obligatory prayers and is called by Muezzin in loud voice to summon all Believers in Islam to prayers.**

4. It was further submitted by Mr. K. Banerjee, learned Advocate, appearing for the petitioners that when Azan was introduced by Prophet Muhammed (S.A.W.) it was called by a person from mosque in loud voice but by reason of passage of time, it was felt that a system was required to be introduced to invite the Believers in Islam to the congregational prayers by calling Azan through any instrument because of increase in population, industries and environmental changes it was not possible to reach the voice of Azan to the Believers of Islam. **Therefore, it was submitted that Azan was and/or is called through an electrical loud-speakers and/or microphones five times a day and it is claimed that user of microphones for the purpose of Azan is a part of the religious right guaranteed under Art. 25 of the Constitution.**
5. It was further submitted that the right to perform religious practice may be acquired also by custom. When so acquired, it would have the protection of Art. 25 in respect of all religious rites, practices, observances, ceremonies and functions which are customarily performed by the members of the petitioners community and not according to the version of the person who opposes.
6. In order to justify the use of microphones and the noise splitters, it was submitted that it was the duty of the citizens also to have a degree of tolerance, patience for the purpose of respecting other religion and custom.
8. Some of the Imam of some Mosques filed an application for modification of the original order passed in Om Birangana Religious Society's case the matter was heard at length and the Division Bench of this Court passed an order dated 17th April, 1997, wherein similar arguments and prayers were made, the Court in that case held that:

“Article 25 of the Constitution of India provides that “subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate

religion. The question is whether right to use microphones for the purpose of Azan is an integral and essential part of Muslim religion and whether that right is an absolute right and should be free from any restriction. Art. 25 of the Constitution makes freedom of conscience and free, profession, practice and propagation of religion subject to firstly public order, secondly, morality and health and lastly other provisions of Part-III of the Constitution of and Art. 19 of the Constitution.

In this case on April 1, 1996 this Court passed an order in disposing of the writ application, inter alia, holding that Freedom of Speech and Expression of a citizen guaranteed under Art. 19(1)(a) of the Constitution cannot be interfered with save and except in accordance with the provisions of Art. 19(2) of the Constitution. This Court held that public cannot be made captive audience or listeners by the use of Microphones after obtaining permission from the police and persons who are otherwise unwilling to bear the sound and/or music or the communication made by the loudspeakers, but they are compelled to tolerate all these things against their will and at the cost of their health. This Court held further that if permission is granted to use microphones at a louder voice, such a course of action takes away the rights of a citizen to speak with others, the right to read or the right to know and the right to sleep and rest or to think any matter. It was held that a person and/or an organisation simply applying a permission and after obtaining permission he is not entitled to display loud-speakers. It was held that 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 or listener to listen sound from microphones. It was observed that freedom of speech and expression as guaranteed under Art. 19(1)(a) of the Constitution of India includes by necessary implication, freedom not to listen and/or to remain silent. One cannot exercise his right at the cost and in total deprivation of others' rights. A right cannot be conferred by the authorities concerned upon a person of a religious organisation to exercise their rights suspending and/or taking away the rights of others. **It was also observed by this Court that it is well-settled that the right to propagate one's religion means the right to communicate a person's belief to another or to expose the tenets of that faith. The question is whether the right to practise or propogate religion includes the right to use loud-speakers and microphones for the purpose of chanting religious tenets or religious texts and/or the indiscriminate use of microphones or loud-speakers during the religious performance in the society. Freedom of speech**

is guaranteed to every citizen so that he may reach with the minds of willingness and not coerced unwillingness. There cannot be any dispute that sound is a known source of pollution. The adverse and ill effect of sound on human body is also known. It has a tremendous impact on the nerves system of human being. It was further held by this Court 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 practise, profess and propagate religion as guaranteed under Art. 25(1) of the Constitution but that is not an absolute right. The provisions of Art. 25 is subject to the provisions of Art. 19(1)(a) of the Constitution. It was held that on true and proper construction of the provisions of Art. 25(1) of the Constitution read with Art. 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like of which he does not require. Amplifier and microphone create tremendous noise and sounds which may travel at least half to one kilometre away. Having regard to the provisions of Art. 19(1)(a) of the Constitution, it cannot be said that the authorities can issue permission to use microphones without having any regard to the fundamental rights of the fellow citizens. Such authorities by granting permission to display microphones cannot make the public the captive listeners. The citizens have a right to enjoy their lives in the way they like, without violating any of the provisions of the law. A citizen has a right to leisure right to sleep, right not to hear and right to remain silent. He has also the right to read and speak with others. Use of microphones certainly takes away the right of the citizens to speak with others, their right to read or think or the right to sleep. There may be heart patients or patients suffering from nervous disorder and may be compelled to hear this serious impact of sound pollution which has had an adverse effect on them and it may create health problems.

Under those conditions, this Court has passed an order directing the West Bengal Pollution Control Board to fix up the sound level within the State and accordingly the Pollution Control Board has fixed up the sound level and this Court directed that there will be no use of microphones between 9 p.m. to 7 a.m. as the people has a right to sleep and leisure and that right cannot be interfered with by anybody. This is the background for which the order has been passed.

Mr. Chatterjee's clients could not satisfy this Court that without

the Microphone Azan cannot be given as it is known to everybody that in the past Azan was used to be given by human voice and that voice was sweet and by the use of electronic devices, viz. microphone that sweetness disappeared and on the contrary it is creating a tremendous sound pollution. **Accordingly, it cannot be said that for giving Azans the applicants should be allowed to use microphones in the early hours of the day and that is before 6 O'clock in the morning. Azan is definitely an integral and essential part of the Muslim Religion, but use of microphones is certainly not an integral part of Azan.**"

In that case, it was also held that "Whether a sound is sweet or not is a matter which cannot be decided by the Court; after all sound is sound whether it is sweet or sour and whether people likes it or not There are people who are a habit of listening in louder voice, but it is not the habit of all citizen. A citizen's right of freedom of speech and expression has been guaranteed under Art. 19(1)(a) of the Constitution and the same cannot be allowed to be suspended or taken away by others by using the microphones and loudspeakers at random. A citizen has a right to speak with his family members, has right to worship, meditation, right to live alone in peace and silence, has a right to read or think, and a student has a right to read for examination and such rights cannot be allowed to be suspended by any means whatsoever and this Court passed an order to that effect on April 1, 1996. It further appears that for violation of the order passed by this Court by using the microphones and loudspeakers in louder voice several complaints have been filed by the Pollution Control Board before this Court against different clubs, organisations, Durga Puja, Kali Puja, Jagatdhatri Puja, Saraswati Puja Committees and they have volunteered to admit their guilt and paid fines as imposed by this Court and they assured before this Court that in future they will not violate any condition as laid down by this Court and/or direction of the Pollution Control Board and as circulated by the State Government in this behalf.

We are of the view that now the time has come when everybody has to think either to survive or to perish. If the pollution is not controlled the human-being cannot survive in the long run. It is evident that sound is one of the recognised mode of creating pollution and this sound pollution has to be controlled by all means. **One may like sound, but he has no right to take away or abridge the right of others. There is no religious freedom in this country excepting the provisions of Art. 25 of the Constitution which is subject to public order, morality and**

health and other provisions of part III including Art. 19(1)(a) of the Constitution of India.

Accordingly, when the Constitution-makers have made it abundantly clear that one has a freedom of religion and that freedom of religion is subject to others' right as guaranteed under Art. 19(1)(a) of the Constitution, namely, religious freedom cannot abridge or take away or suspend others' right under Art. 19(1)(a) regarding their freedom of speech and expression. If on the basis of the submissions made by Mr. Chatterjee and Mr. Idris Ali, learned counsel for the appellants, this Court modifies its earlier order, we are of the view that in that event this Court will lose its secular character.

This Court is bound to maintain and follow secularism as clearly laid down in the Preamble of the Constitution of India as hereunder:

“WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into;
SOVEREIGN SOCIALIST SECULAR DEMOCRATIC
REPUBLIC and to secure to all its citizens:

JUSTICE, social economic and politician;
LIBERTY of thought, expression belief, faith and worship;
EQUALITY of status and of opportunity;
and to promote among them all
Fraternity assuring the dignity of the individual and the unity
and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT, AND GIVE TO OURSELVES THIS CONSTITUTION.”

Accordingly, when an order has been passed, it is applicable to all the religion and the political parties and the people of the State, this Court cannot make any discrimination in the matter of enforcing the order and making a relaxation in favour of a particular section of the community or a particular religion and that would be a destructive of the concept of secularism. When an order is passed by this Court after taking into consideration of all the aspects of the matter as explained in our order dated April 1, 1996, we do not find any reason to alter, modify and/or vacating the order passed this Court which has already reached its finality. The said order must be enforced and carried out by all sections of people in the State.”

9. In *Om Birangana's case*, (*Om Birangana Religious Society v. State*, in C.O. No. 4303(W) of 1995, judgment delivered on April 1, 1996) the rights of the citizen in India guaranteed under Art. 19(1)(a) of the Constitution and other aspects and matters incidental thereto had been considered in detail vis-a-vis the provisions of Art. 25(1) of the Constitution and it was *inter alia* held that;

“Article 19(1)(a) provides Fundamental Rights on all citizens to Freedom of Speech and Expression, and that this right is only subject to restriction imposable under Art. 19(2) of the Constitution. The reasonable restriction on the exercise of freedom of speech and expression could be imposed in the interest of sovereignty and integrity of India, the security of the State, friendly relations with the foreign State, public order, decency or morality or in relation to contempt of Court, defamation, incitement to an offence.

The freedom of speech and expression of a citizen should not be interfered with save and except in accordance with the provisions of Art. 19(2) of the Constitution. It is a matter to consider whether the public are captive audience or listeners 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 of the communication made by the loudspeakers, but he is compelled to tolerate all these things against his will and health. If permission is granted to use microphones at a louder voice, such a course of action takes away the rights of a citizen to speak with others, the right to read or the right to know and the right to sleep and rest or to think any matter. Can it be said that a person and/or an organization simply applying a permission and after obtaining permission is entitled to display loud-speakers from local authorities? 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.

Freedom of speech and expression guaranteed under Art. 19(1)(a) of the Constitution of India includes by necessary implication, freedom not to listen and/or to remain silent, One cannot exercise his right at the cost and in total deprivation of others' rights. A right cannot be conferred by the authorities concerned upon a person or a religious organisation to exercise their rights suspending and/or taking away, the rights of others.

In this connection, Mr. Samanta learned counsel appearing on behalf of the petitioner, submitted that right to propagate religion is guaranteed under Art. 25 of the Constitution. Art. 20(1) of the Constitution provides that subject to public order, morality and health and other provisions of Part-III of the Constitution, all persons are equally entitled to freedom of conscience, and that right to freely profess, practice and propagate religion.

It is well-settled that the right to propagate one's religion means the right to communicate a person's belief to another or to expose the tenets of that faith. The question is whether the right to propagate religion includes the right to use loudspeakers and microphones for the purpose of chanting religious tenets or religious texts and/or the indiscriminate use of microphones or loudspeakers during religious performance in the society. Freedom of speech is guaranteed to every citizen so that he may reach with the minds of willingness and not coerced unwillingness.

There cannot be any dispute that sound is a known source of pollution. The adverse and ill effect of sound on human body is also known. It has a tremendous impact on the nervous system of human being.

The American Supreme Court in the case of *Ward v. Rock Against Racism*, 491 US 781, upheld the city regulations designed to regulate the volume of excessively amplified music at the Naumberg Accoustie Hand shell in New York city's Central Park to protect those who use a quiet, recreational area of the park called the Sheep Meadow and also to protect resistance in Central Park West area.

In this case, the American Supreme Court rejected the challenge to these city noise regulations.

The religion that has been performed by the petitioner and others, is nothing new but the same is there for several centuries. 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 Art. 25(1) of the Constitution but that is not an absolute right. The provisions of Art. 25 is subject to the provisions of Art. 19(1)(a) of the Constitution. On true and

proper construction of the provisions of Art. 25(1), read with Art. 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require.

Amplifier and microphone create tremendous noise and sounds which may travel at least half to one Kilometer away. Having regard to the provisions of Art. 19(1)(a) of the Constitution, it cannot be said that the District Magistrate Sub-Divisional Officer and the police authorities are the sole authority who can grant at will permission without having any regard to the fundamental rights of the fellow citizens. Such authorities, by granting permission to display microphone, cannot make the public the captive listeners, the citizens have a right to enjoy their lives in the way they like, without violating any of the provision of the law. A citizen has a right to leisure, right to sleep right not to hear and right to remain silent. He has also the right to read and speak with others. Use of microphones certainly takes away the right of the citizens to speak with others, their right to read or think or the right to sleep. There may be heart patients or patients suffering from nervous disorder may be compelled to bear their serious impact of sound pollution which has had an adverse effect on them. It may create health problems.

Pollution is a factor which has now a prime importance in the modern society. The effect of sound on human bodies is very serious.

Accordingly, no authority would grant permission to use microphones without having any regard to the rights of the fellow citizens or the people of the area. Such a sound pollution cannot be altogether stopped, but the sound level has to be reduced in such a manner and in such a form so that the sound may not travel beyond a certain limit, as for example, in a public meeting microphones or amplifiers may be necessary so that the listeners may hear the speeches delivered by the leaders and for that purpose the sound has to be regulated in such a manner so that it may not travel beyond a reasonable limit and/or such a sound cannot be allowed to travel beyond the zone in which the listeners are there.”

27. **Further use of microphone is not a integral of Azan and/or necessary for making Azan effective. Azan is there and will be there. But simply, because microphones has been invented and ultimately it is found that it is one of the major source of sound pollution and it affects the fundamental right of the citizens under Article 19(1)(a) of the Constitution and making the citizens captive listeners, suspending all their**

fundamental and legal rights. None can claim an absolute right to suspend other rights or it can disturb other basic human rights and fundamental rights to sleep and leisure. The argument that the Environmental (Protection) Act. Rules and the Schedule therein are ultra vires under Articles 14 & 25, is wholly misconceived as it had not resulted any discrimination and so far as Sound Pollution is concerned, citizens have a right to be protected against excessive sound under Article 19(1)(a) of the Constitution. The restrictions on the use of microphone as imposed by the Court. Central Pollution Control Board and the State Pollution Control Board has to be carried out by all concern at any cost. Simply because no such formal restrictions has been imposed in other parts of India and the fundamental rights under Article 19(1)(a) is enforced strictly in the State of West Bengal and it is not enforced in other parts of India that does not amount to any case of any discrimination. Accordingly, in our view, the petition is misconceived and have no merit at all. Accordingly, the petition is dismissed.

(emphasis added)

78 The Calcutta High Court in no uncertain terms held that on true and proper construction of Article 25(1) read with Article 19(1)(a) of the Constitution of India, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require. Thus, the argument that the use of microphones is an integral part of Azan or is necessary for effective Azan has been turned down. We respectfully agree with the said view taken by the Calcutta High Court.

79 There is one more decision of the Apex Court which is relevant in the context of rights of citizens under Article 21 of the Constitution of India. It is the case of *Ram Leela Maidan Incident, In re*¹¹. The Apex

¹¹ (2012) 5 SCC 1

Court dealt with the issue of privacy as a part of Article 21 of the Constitution of India and held that right to sleep has always been treated to be a fundamental like right to breath, to eat, to drink, to blink, etc. The Apex Court held thus:

“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 breathe, to eat, to drink, to blink, etc.

327. An individual is entitled to sleep as comfortably and as freely as he 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.”

80 In view of the authoritative pronouncement of law by the Apex Court in the case of *Church of God (Full Gospel) in India v. K.K.R. Majestic*¹², no religion or religious sect can claim that the use of loud-speakers or similar instruments for prayers or for worship or for celebrating religious festivals is an essential part of religion which is protected under Article 25. We hold that there is no fundamental right to use loud-speakers or similar instruments under Article 19(1)(a) of the constitution. On the contrary, the use of such instruments contrary to the Noise Pollution Rules will be a violation of fundamental rights of

¹² (2000) 7 SCC 282

citizens under Article 21 of the Constitution as well as fundamental right of citizens of not being forced to listen something which they do not desire to listen.

81 As far as the directions given by the Apex Court in the case of Noise Pollution (V) In re, are concerned, we have already held that the State is bound to comply with the said directions. We are fortified by the view taken by the Apex Court in the case of *Balwant Singh v. Commr. of Police*¹³.

“23. In our considered view, **in the light of the authoritative pronouncement rendered by this Court on the issue of noise pollution in Noise Pollution (5), In re [Noise Pollution (5), In re, (2005) 5 SCC 733]** , it is not necessary for this Court to again deal with the same issue except to issue appropriate directions for its compliance.

24. We, accordingly, direct the respondents to ensure strict compliance with the directions contained in paras 174 to 178 of the judgment of this Court in Noise Pollution (5), In re [Noise Pollution (5), In re, (2005) 5 SCC 733] , and for ensuring its compliance, whatever remedial steps are required to be taken by the State and their department(s) concerned, the same be taken at the earliest to prevent/check the noise pollution as directed in the aforesaid directions.”

(underline supplied)

82 We must record here that in the written submissions filed in PIL No.173 of 2010, a fair stand has been taken by the State Government as regards interpretation of Rule 6 of Noise Pollution Rules. Though such a stand is taken, the perusal of the orders passed from time to time in this group of Petitions shows there is hardly any implementation made by

¹³ (2015) 4 SCC 801

the State Government of the Noise Pollution Rules. In fact, time and again, this Court was required to issue very stringent directions to the State Government. The one of the main reasons for the failure is that adequate numbers of meters for measuring noise levels are not available with the State. The Noise Pollution Rules came into force in the year 2000. The orders passed in PIL No.173 of 2010 will reveal that till August 2016, the State Government has not even procured the requisite number of meters. Therefore, this Court was required to issue a direction to the State Government to collect data from various police officers as regards their requirement of meters. The order dated 4th January, 2016 records that the learned Government Pleader made a statement that there were very few meters available in the State and in fact the requirement of the State was of 1843 meters. It shows that there is never any serious effort made by the State Government for implementation of the Noise Pollution Rules for last 16 years. Therefore, under the order dated 4th January, 2016 a direction was issued to the State Government to grant necessary approval for acquiring 1843 meters. Time of three months was granted to procure 1843 meters. The said time expired on 3rd April, 2016. This Court found that no steps were taken to procure the meters within the stipulated time and that is why this Court was compelled to issue a notice of contempt to Shri K.P. Bakshi, Additional Chief Secretary, Home

Department. Notwithstanding the disposal of the main Petition, the notice of contempt will remain pending as the direction to acquire requisite number of meters will continue to operate. Even as of today, the meters have not been procured. The learned AGP tendered across the Bar a letter dated 11th August, 2016 addressed by the Additional Director General of Police to the Additional Chief Secretary of the Home Department. The said letter records that a period of 60 days will be required for supply of the said meters. In short, the meters will be available only at the end of September, 2016. Right from the year 2014, very elaborate interim orders were passed by this Court in PIL No.173 of 2010 including detailed orders passed on 13th March, 2015 and 24th June, 2015. Notwithstanding the said orders, even requisite number of meters are not yet procured. We must note that these orders were passed for implementation of the directions issued by the Apex Court and the Noise Pollution Rules. The approach of the State Government has been very casual. The result of this gross delay in procuring meters is that during two important festivals of Dahi Handi and Ganapati of the year 2016, adequate number of meters will not be available with the police machinery. This inaction has to be deprecated.

83 Now, we turn to certain important submissions made in support of PIL No.85 of 2007. We have already noted Sub-Rule (4) of Rule 3 of Noise Pollution Rules which mandates that all Planning Authorities

while planning development activities or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining ambient air quality standards in respect of noise. There is a specific prayer made in PIL No.85 of 2007 on the aspect of noise mapping. It is pointed out that one of the Planning Authorities (MMRDA) had in fact invited tenders for undertaking exercise of noise mapping in the city of Mumbai but no progress could be made. It was pointed out by the learned Senior Counsel that the purpose of noise mapping is to prepare a map of the city with details of silence zones, residential zones, high construction areas etc in sufficient detail to allow it to serve as a base for strategic planning and development of the city. In fact the Petitioners therein are relying upon a detailed report prepared by them highlighting the benefit of noise pollution mapping. A submission was made that there is an urgent need of procuring scientific data to determine the existing noise levels from various sources and to identify the measures to reduce the noise levels. It is pointed out that noise map prepared on the basis of noise mapping will be a very important strategic tool available in the matter of town planning. It is pointed out that LIMA technology is available which allows prediction of noise levels at various spots after taking initial physical readings.

84 In our view, the said submission made across the Bar is very well supported by Sub-Rule (4) of Rule 3. If the Development Authorities or Planning Authorities are under a mandate to take into consideration all the aspects of noise pollution as a parameter of quality of life, noise mapping will be essential. For example, if while preparing a development plan, a particular area is to be reserved for educational institutions or hospitals, data made available by noise mapping will be very helpful. If the noise map shows that in a particular area, the noise levels are very high, that area will not be reserved for hospitals or educational institutions. Even the precise locations of all the silence zones in the city will be demarcated. As stated earlier, affidavits on record indicate that in principle, the MMRDA had decided to undertake the said task. But in the Petition it is pointed out that except for area of Sahar Airport, in no other area, this exercise has been done. Apart from its use in planning, it will help the authorities to evolve measures for reducing noise pollution in various areas. We, therefore, propose to issue the necessary directions to the State to consider of undertaking exercise of noise mapping. In any event, the State Government will have to issue a direction to all the Planning Authorities to abide by Sub-Rule (4) of Rule 3. We are informed that the draft revised development plan for the city of Mumbai is under consideration. Needless to state that while finalising the Development Plan, provisions of Sub-Rule (4) of

Rule 3 will have to be complied with especially when Sub-Rule (4) says that all aspects of noise pollution are to be treated as parameters of quality of life.

85 In PIL No.85 of 2007, another issue which is canvassed is as regards noise created by Helicopters in the City of Mumbai. Another grievance made is regarding the noise created due to construction activities. Perusal of the Noise Pollution Rules will indicate that the mandate of legislature is to maintain ambient air quality standards in respect of noise. Therefore, any activity which contributes to the failure to maintain the ambient air quality standards described in Schedule will come under the purview of mischief sought to be prevented by the Noise Pollution Rules.

86 Therefore, it is the obligation of the State Government and all concerned to ensure that noise pollution is prevented in all respects and there is no infringement of fundamental right of the citizens under Article 21 of living in pollution free atmosphere. We have already referred to Sub-Rule (3) of Rule 3 which provides that the State Government shall take measures for abatement of noise including the noise emanating from the vehicular movements. The Noise Pollution Rules deal with all categories of noises including bursting of sound

emitting firecracker, use of loud-speakers or public address systems and noise produced by construction equipment. We have already adverted to the Notification dated 21st April, 2009 issued by the Environment Ministry. The State Government by the said Notification has laid down the standards for noise created from various sources such as Generators. As noted earlier, Sub-Rule (3) of Rule 3 provides that the State Government shall take measures for abatement of noise including the noise emanating from vehicular movements. Though the Notification dated 21st April, 2009 refers to noise standards for various categories of automobiles at manufacturing stage, the State Government has not exercised power under Sub-Rule (3) of Rule 3 as regards noise emanating from the vehicular movements. As stated earlier, as regards the horns, the State Government had issued notification dated 31st July, 2013.

87 As far as landing of helicopters on helipads is concerned, in Public Interest Litigation No.85 of 2007, there is an Affidavit filed by the Respondent No.6 (Ministry of Environment and Forest of the Union of India). The stand taken in the said Affidavit is that the landing and take off of helicopters is associated with higher noise levels though momentary. Such events associated with higher level of noise would result in increase of average noise level in the vicinity. In paragraph 12

of the said Affidavit, a statement has been made that in view of the higher noise levels in Mumbai in general during the day time and night time, new helipads are avoidable. In view of this clear statement on oath made by the Ministry of Environment and Forest of the Union of India, while considering the applications made for seeking permissions for erecting new helipads in the city, the statements made in the Affidavit will have to be considered. The possible noise pollution which may be created by use of proposed helipad will have to be taken into consideration by the concerned Authorities.

88 As far as noise pollution is concerned, there is one more relevant statutory provision which is Section 38 of the Maharashtra Police Act, 1951 which reads thus:

“38. Power to prohibit, etc. continuance of music, sound or noise.

(1) If the Commissioner or District Superintendent is satisfied from the report of an officer in charge 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 or annoyance, disturbance, discomfort or injury to the public or to any persons who dwell or occupy property in 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 the playing, beating, clashing, blowing or use in any manner whatsoever of any instrument, appliance or apparatus or contrivance which is capable of producing or reproducing sound, or (b) the carrying on, in or upon, any premises or any trade, avocation or operation resulting in or attended with noise.*

- (2) *The authority empowered under sub-section (1) may, either on its own motion or on the application of any person aggrieved by an order made under sub-section (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 pleader 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.”

89 The provision is similar to Rule 8 of Noise Pollution Rules. Under Section 38 of the Maharashtra Police Act, the power is conferred to the Commissioner of Police and Superintendent of Police to order prevention or prohibition of music sound or noise. On receiving a report/complaint of nuisance created by music or sound or instrumental noise, the Officer in-charge of the concerned Police Station the same communicate the said report immediately to the Commissioner of Police or the Superintendent of Police to enable to the said authority to take immediate action under Section 38 of the Maharashtra Police Act.

90 The issues involved in these group of Petitions do not relate to any particular religion or sect. We are dealing with enforcement of fundamental rights of the citizens under Article 21 of the Constitution of India and therefore, we are not dealing with any specific allegation made pertaining to religious activities of a particular religion. What we had laid down, will apply to all religions and sects.

91 In Public Interest Litigation No.161 of 2015, initially the Petitioner appeared in person but at the time of hearing, she was represented by an Advocate who has made submissions. In fact, written submissions were also tendered. After the hearing was concluded, the Petitioner appearing in person had tried to seek interim relief. Her grievance as we can gather from the Petition drafted by the Petitioner in person is that notwithstanding complaints made by her, the Police Officers are not taking any action. In the directions which we propose to issue while disposing of these Petitions, the grievances made in the Petition will be taken care of.

92 Before we summarize our conclusions, as noted earlier, as the State Government did not comply with order dated 4th January, 2016 directing procurement of 1843 meters, by an order dated 3rd May, 2016, a notice of contempt has been issued to Shri K.P. Bakshi, Additional Chief Secretary (Home), returnable on 1st July, 2016. Though there is no Affidavit filed by the Contemnor, during the course of dictation of judgment, a statement was made by the State Government that meters will be procured within a period of 60 days. As the Contempt has not been purged and as there is a considerable delay on the part of the State Government in complying with the order of this Court,

notwithstanding the disposal of the matters, the Contempt notice will remain pending.

93 Now we summarize our important/main conclusions as under:

- (i) The provisions of Noise Pollution Rules are mandatory in nature and therefore, all concerned authorities are bound to implement the said provisions.
- (ii) In view of Sub-Rule (1) of Rule 5, a loud-speaker or a public address system shall not be used except after obtaining written permission from the authority as prescribed in clause (c) of Rule 2 of the said Rules. We clarify that if a license for use of loud-speaker or public address system is required under any other provision of law such as Maharashtra Police Act, 1951, or the Rules framed thereunder, a loudspeaker or public address system shall not be used without obtaining such a license as well. Even after grant of written permission, the person holding the permission is duty bound to maintain the noise level as prescribed by the Schedule and Sub-Rules (4) and (5) of Rule 5 of the Noise Pollution Rules.
- (iii) Notwithstanding grant of permission to use the loud-speaker or public address system, such a loud-speaker or a public

address system or any sound producing instrument or musical instrument or a sound amplifier shall not be used at night time (between 10 p.m. to 6 a.m.). Exception to this rule is Sub-Rule 3 of Rule 5 which permits the State Government to permit use of loud-speakers or public address systems during night hours between 10 p.m. to 12 midnight, during any cultural or religious occasions not exceeding in all 15 days during a calendar year. However, the said provision is not applicable to silence zones. The second exception is wherein a loud-speaker or a public address system or a sound producing instrument or a musical instrument or a sound amplifier is used in closed premises for communication in auditoria, conference rooms, community halls, bouquet halls, etc. The third exception is in case of public emergency. We clarify here that though Sub-Rule (2) of Rule of 5 carves out an exception to the prohibition on use of loudspeaker or public address system etc. in night time, in case of auditoria, conference rooms, conference halls, community halls, bouquet halls, the noise levels will have to be maintained as provided in Sub-Rule (4) and (5) of Rule 5. For example, if a loudspeaker or a public address system or any sound pollution instrument is used in a community hall, at the boundary of the community hall, in the

night, the noise level shall not exceed 10dB(A) above the prescribed noise standard for the area or 75dB(A), whichever is lower. Hence, in case of a residential area, at the boundary of a community hall, the noise level in the night can be maximum 55dB(A).

- (iv) We hold that Sub-Rule (3) of Rule 5 is valid. However, as held by the Apex Court, the power of fixing 15 days in a year as provided in Sub-Rule (3) will have to be exercised by the State Government. The Notification dated 31st July, 2013 issued by the Environment Ministry of the State Government fixes 13 days specified therein. The decision of two other days is left to the District Collector. This part of the Notification is completely illegal being contrary to the law laid down by the Apex Court. The power of the State Government under Sub-Rule (3) of Rule 5 cannot be delegated to any other authority. We may note here that in the Notification dated 31st July, 2013, it is provided that in Ganpati Utsav there is a relaxation for four days. Again the choice of these four days is left to the District Collectors. This choice shall be exercised by the State Government and not by the Collector. The 15 days cannot be different from district to district. Even to that extent, the notification dated 31st July, 2013 is illegal.

- (v) We may note here that the said notification provides that the State Government has specified Shivjayanti, Ed-E-Milad, Dr.Ambedkar Jayanti, 1st May, Navrati Utsav (Ashtami and Navami), Diwali (one day Laxmi Poojan), Christmas and 31st December, in addition to four days of Ganpati festival. We make it clear that extension of time granted on these 15 days to use loudspeakers up to midnight will not apply to silence zones.
- (vi) The noise level at the boundary of a public place defined under clause (i) of Rule 2 will have to be maintained as provided in Sub-Rule (4) of Rule 5, even if a license is granted under Sub-Rule 1 of Rule 5 to use loudspeaker in the public place. By way of illustration, we may state that in case of an open ground covered by clause (i) of Rule 2 in respect of which a license has been granted under Sub-Rule (1) of Rule 5 which is situated in the residential area, in view of Sub-Rule (4) of Rule 5, maximum level of noise during the day time and night time can be 65 dB(A) and 55 dB(A) respectively.
- (vii) Under Sub-Rule(5) of Rule 5, if privately own sound system and sound producing instrument is used in private place, at the boundary of private place, the noise level cannot be more than

5 dB(A) above the prescribed noise standard specified for the area as provided in the Schedule. Thus, in case of residential area, in the day time, the noise level cannot exceed 60dB(A) at the boundary of private place.

(viii) In any case, the noise level at the boundary of a public place or private place cannot exceed 75 dB(A).

(ix) As far as horns are concerned, there is a complete prohibition on use of horns in silence zone and during night time (from 10 p.m. to 6 a.m.) in residential areas. The only exception is in case of public emergency. In addition to the prohibition imposed by Sub-Rule (1) of Rule 5(A), the horns will be governed by Rule 119 of the Central Motor Vehicles Rules, 1989 which lays down the specifications of horns in Sub-Rule (1) of Rule 119. Sub-Rule (2) imposes a complete prohibition on vehicles being fitted with multi-toned horns giving a succession of different notes or with any other sound-producing device giving an unduly harsh, shrill, loud or alarming noise. Needless to add that in case of violation of Rule 119 the concerned authorities will have to take not only action of removal of objectionable horns but also setting criminal law in motion.

(x) As regards horns, the State Government shall ensure that all the requirements of the Notification dated 31st July, 2013 issued by the Environment Department are complied with including the requirement of maintaining no honking zones in the areas provided in clause 5 thereof. Thus, even the requirements of Notification dated 31st July, 2013 are mandatory .

(xi) There is a complete prohibition on use of sound emitting construction equipments in silence zone or during the night time in residential zone. Apart from the fact that the authority under the Noise Pollution Rules is under an obligation to enforce the said Rules, the State Government must issue directions to all Planning Authorities in exercise of powers under section 154 of MRTP Act enjoining the planning authorities to impose condition in the development permissions as regards compliance with clause (iii) of Rule 5A.

(xii) In view of Sub-Rule (5) of Rule 3, silence zone comprises of an area within the distance of 100 meters around hospitals, educational institutions, and Courts. As educational institutions, hospitals and courts have been defined in Rule 2, for applicability of Sub-Rule (5) of Rule 3, it is not necessary

to have a specific declaration issued in respect of the silence zone around hospitals, educational institutions and Courts. As it is clear from clause 3 of the Schedule, only in the event any other area or additional area (over and above 100 meters) is to be declared as a silence zone, a specific declaration will be necessary. On plain reading of Sub-Rule (5) of Rule 3, a silence zone means an area of 100 meters on all sides of precincts of educational institutions, hospitals, religious places and courts and not the area within the precincts of the said institutions.

- (xiii) In view of the clause (v) of Rule 6 of the Noise Pollution Rules, using loud-speaker or public address system is an offence and therefore, a permission under Sub-Rule (1) of Rule 5 to use loud-speaker or public address system in the open spaces in silence zone cannot be granted. Apart from prohibition on grant of license to use loud-speakers or public address systems in silence zones, in except in completely covered and enclosed places in silence zone, there is a complete ban on beating a drum or tom-tom or on blowing a horn, either musical or pressure, or trumpet or beats or sounds any instrument playing of any music, using any sound amplifiers, holding of mimetic musical or other performances of a nature.

- (xiv) On plain reading of clauses (i) to (v) of Rule 6, the prohibition provided therein is applicable to the open spaces in the silence zone. In view of the clause (iv) of Rule 6, there is a complete ban on blasting of sound on firecrackers in silence zone. There is a complete ban on bursting sound emitting crackers between 10.00 pm and 6.00 am.
- (xv) Even if a loud-speaker or public address system (as distinguished from privately owned sound system) is used within the precincts of the hospitals, educational institutions and Courts, wherever permission under Sub-Rule (1) of Rule 5 is needed, the same shall be mandatory and condition precedent for its use. Needless to add that even if a permission is granted and if such instruments are used in the precincts of hospitals, educational institutions and courts, the same are subject to all other provisions of the Noise Pollution Rules and, therefore, noise levels at the boundary shall be as provided in Sub-Rules (4) and (5) of Rule 5 which are applicable to the silence zones. The prohibition in clauses (i) to (iv) of Rule 6 will not apply to completely covered and closed premises within silence zone, but the said premises will be governed by all the Rules incorporated in the Noise Pollution Rules including Sub-Rules (4) and (5) of Rule 5.

(xvi) Needless to add that if an open area forming part of the precincts of the hospitals, educational institutions and courts, etc is covered by silence zone of other hospitals or educational institutions or courts, the prohibition provided in Rule 6 will also apply to open areas forming a part of the precincts of such hospitals, educational institutions and courts.

(xvii) In view of section 15 of the Environment Protection Act, whoever fails to comply with or contravenes provisions of the Noise Pollution Rules, all orders or directions issued thereunder is liable for penalty. Such non-compliance or contravention attracts imprisonment for a term which may extends to five years and fine which may extends to one lakh. Thus, non-compliance of the Noise Pollution Rules or contravention of the Noise Pollution Rules shall attract penalty under Section 15 of the Environment Protection Act and therefore, it is the duty of all the Authorities of the State to ensure that the offences under Section 15 are registered.

(xviii) Under Rule 7, if a complaint is made to the authority under clause (c) of Rule 2 in the cases governed by Sub-Rule (1) of Rule 7, the authority is an obligations to act upon the complaint and to take action against the violator in

accordance with the provisions of Noise Pollution Rules and other laws. Under rule 8 if the authorities is satisfied from the report of the Officer in-charge of the Police Station or any other information received by him by way of complaint or otherwise, the authority has a power to prohibit use of instruments as provided in Rule 8.

- (xix) Action contemplated by Sub-Rule (2) of Rule 7 will be action under Rule 8 as well as the action of setting criminal law in motion either by taking recourse to clause (b) of Section 19 of the Environment Protection Act or by informing the District Magistrates or the Regional Officers of the Maharashtra Pollution Control Board to set criminal law in motion in accordance with clause (a) of Section 19 of the Environment Protection Act.

- (xx) The power under section 8 shall be in addition to the power of the Commissioner or the Superintendent of Police as the case may be under section 38 of the Maharashtra Police Act, 1951 and the power of the District Magistrate to take action in accordance with Section 133 of the Code of Criminal Procedure, 1973.

(xxi) We hold that all places of worship of all religions are bound by the provisions of the Noise Pollution Rules and no religion or sect can claim fundamental right of using loud-speakers or public address systems or instruments creating noise as a part of right conferred by Articles 19(1)(a) and 25 of the Constitution of India.

(xxii) Thus, we hold that all places of worship of all religions shall scrupulously follow the provisions of the Noise Pollution Rules and no such place of worship is entitled to use loudspeakers or public address systems without obtaining permission under Sub-Rule (1) of Rule 5. Needless to add that in case of a place of worship is in a silence zone, the law laid down by this Court which is applicable to silence zones shall squarely apply to such places.

(xxiii) We hold that the power of the Commissioner of Municipal Corporations established either under said Act of 1949 or said Act of 1888 or other Municipal Authorities in other Municipal areas of permitting erection of temporary booths and pandals for the purpose of religious and cultural festivals is only an enabling power. The said power cannot be exercised if the erection of pandal or temporary booth is likely to obstruct free

flow of vehicular traffic on any street. Similarly, permission to erect pandals or temporary booths on foot way/foot paths cannot be granted if the erection of such pandals or temporary booths is likely obstruct free movement of pedestrians on the footways or foot-paths. No one is entitled to claim that holding of religious functions/ceremonies on streets and footways is protected by Article 25 of the Constitution of India. No one has fundamental right of offering prayers or worshiping on a street or footway by obstructing free flow of traffic as it is not an essential part of any religion.

(xxiv) We hold that a right available to citizen to have roads in reasonable condition and to have foot-paths and footways in reasonable condition is a part of right guaranteed under Article 21 of the Constitution of India. The said right includes right to have obstruction free streets and footways or foot-paths.

(xxv) We hold that any breach of the Noise Pollution Rules shall amount infringement of fundamental right of citizens under the Article 21 of the Constitution of India and apart from the other remedies available, the citizens will have right to seek compensation from the State within the meaning of Article 12

of the Constitution of India on account of breach of fundamental rights.

(xxvi) As observed earlier permission, if any, granted to erect temporary booth or pandal does not enable the person holding permission to use loud-speaker or public address system, to do digging on the road or foot-path or foot way or to carry out any work thereon and to display advertisement and/or hoardings on such booth/pandal or nearby such booth/pandal unless specific permissions of the concerned authorities are obtained.

(xxvii) We make it clear that the Commissioners of Municipal Corporations/ Municipal Authorities while considering the Applications made for grant of permission to erect temporary booths or pandals on streets and footways will have to apply their mind as to whether grant of such permissions will affect free flow of vehicular traffic on the street or free flow of pedestrian movement on the footway. Similarly the Commissioner of Police and or the District Magistrate, as the case may be, while considering the issue of concurrence will have to apply their mind on the said aspects.

(xxviii) In our view, the straight-jacket formula adopted by the some of the Municipal Corporations of permitting erection of temporary booths or pandals having a particular length and width depending upon the width of the street is not legal. Any such policy is arbitrary being violative of Article 14 as it permits the erection of temporary booths/ pandals on streets and footways without taking into consideration the effect thereof on free flow of traffic on streets and free movement of pedestrians on footways.

(xxix) We hold that power to grant such power is discretionary. In the event the Applicant has committed breaches of terms and conditions on which permission was granted earlier, the Commissioners of the Municipal Corporation will have discretion to refuse permission.

(xxx) Every aggrieved citizen shall not be forced to approach the Court of law. Therefore, grievance redress mechanism shall be created by all the Authorities for dealing with the complaints about the illegalities.

94 Hence, we dispose of the Petitions by passing following directions in the light of the law laid down by us in the judgment:

- i) All interim directions issued by this Court from time to time in Public Interest Litigation No.173 of 2010 and other Petitions in the group which are not inconsistent with this final judgment and order shall continue to operate notwithstanding disposal of these Petitions. We make it clear that as copies of the judgment which was dictated in open Court may not be available immediately considering length of the judgment, all concerned shall continue to be bound by all the interim directions which have not been specifically modified and therefore, all the authorities shall ensure that the said directions are complied with during the religious festival which are likely to be celebrated shortly;
- ii) All concerned authorities shall ensure that a loud-speaker or a public address system shall not be used except after obtaining written permission from the authority contemplated by the Noise Pollution Rules in accordance with Sub-Rule (1) of Rule 5 in addition to the license required to be obtained under the Rules, if any, framed under the Maharashtra Police Act of 1951;
- iii) Appropriate redress mechanism shall be created by all concerned in all Municipal areas for receiving complaints in

accordance with Rule 7 of the Noise Pollution Rules and also for reporting breach of other Rules in the Noise Pollution Rules. For the reasons which we have recorded above, the authority under the Noise Pollution Rules, the Police Officers and the licensing authorities under the said Act of 1951 are under an obligation to entertain every complaint alleging the breach of the Noise Pollution Rules including even anonymous complaints. Therefore, toll free number shall be provided by the State Government in every town or city having Municipal Corporation or Municipal Council to enable the authorities to receive complaints about the breaches of Rules in addition to usual and conventional modes. A facility shall be also made available to submit complaint by e-mail, by SMS and by Whats-app message. A register shall be maintained of the complaints received on toll free number as well as by all other modes and a complaint number shall be provided to the complainants. The complaints register shall also incorporate actions taken on the basis of the complaints. Moreover, action taken report shall be displayed on the website of the District Collector/ Municipal Corporations. The complaints shall be also received on Telephone No.100.

The State government shall comply with these directions within two months from today;

- iv) On receiving information as provided in Sub-Rule (1) of Rule 8 of the Noise Pollution Rules, the authority concerned shall immediately apply its mind on the question of passing an order under Sub-Rule (1) of Rule 8. The authority will have to also consider of immediately issuing an order of suspension of license/permission granted to use loud-speaker or public address system. Immediately, on receipt of a complaint in any form, Appropriate police officer shall be deputed to the concerned site with a necessary machine/equipment to test whether noise level exceeds the ambient noise standards. Even if Police receive a complaint, such officer shall be accordingly deputed. The officer shall immediately report to the authority to enable the authority to take action. If the police officer notices that public address system or loud-speaker is being used without license/permission, he shall forthwith ensure that the use of the loud-speaker or public address system is stopped. If the officer finds that the loud-speaker or public address system is used by the license holder during night hours on any day which is not specified in Sub-Rule (3) of Rule 5 of

Noise Pollution Rules, the officer concerned shall immediately ensure that the use of loud-speaker or public address system is stopped. The police officer shall forthwith stop use of loud-speakers and public address systems in silence zones;

- v) The State Government shall notify the names and addresses and all particulars such as contact numbers of the authorities under the Noise Pollution Rules and the Rules framed under the said Act of 1951 within the limits of all the Municipal Corporations and Municipal Councils. Wide publicity shall be given to the said particulars in local newspapers, on local cable networks and on the website of the District Collector as well as the concerned Municipal Corporations. The same shall be displayed on the notice Boards of all the Ward Offices. We grant time of two months to the State to give such publicity;
- vi) Wide publicity shall be given to the grievance redress mechanism in the manner provided in clause (iv) above before every major festival religious or otherwise;
- vii) In addition to the mechanism as provided above, a citizen shall be entitled to lodge oral complaint about the breach of

Noise Pollution Rules or Loud Speaker Rules framed in exercise of powers under Section 33 of the said Act of 1951 on telephone number 100. Immediate action shall be taken by the Police on the basis of such oral complaints. The State Government shall direct that the identity of complainants shall not be disclosed to the wrong doers or any other person even if the identity could be established from the telephone number from which complaint is received. We make it clear that anonymous complaints shall be entertained on the telephone number 100. On receiving complaints, a police officer shall immediately visit the spot and shall forthwith stop illegal use of public address system or loudspeaker or a musical instrument;

- viii) On receiving complaint in any form about the breach of Noise Pollution Rules, the Police Officer visiting the site shall record noise level by use of requisite meter which shall be recorded in a panchanama. Adequate number of Machines/equipment to measure noise level shall be always made available by the State. At present total 1853 meters shall be immediately provided. The meters shall be maintained properly and sufficient funds shall be allocated for repairs/maintenance of meters;

- ix) Well in advance before the commencement of festivals such as Ganesh Utsav, Navratri and Dahi Handi, the Police Commissioners /District Magistrates/ Municipal Commissioners shall convene a meeting of all major organizations holding such functions and appraise them of the provisions of law and the consequences of breach of the provisions of law. Even the local political leaders shall be invited to attend the meetings along with members of Mohalla Committee, if any. The meetings shall be to impress upon everyone to abide by the Noise Pollution Rules and the relevant provisions of statutes concerning regulation of construction of temporary booths/pandals on streets;
- x) We direct that the authorities under the Noise Pollution Rules and the authorities under the Rules relating to grant of licenses framed under the said Act of 1951 shall verify before the grant of license/ permission to use loudspeakers or public address systems whether the applicant has made any breach of any Rules or license conditions when similar license/ permission was earlier granted to such Applicant during particular festival at a particular place earlier. If it is found that the applicant has made any breach of any Rules

or license conditions when license was granted earlier, the authority shall be entitled to refuse the license/ permission;

- xi) The State Government shall issue a direction to the authorities under the Noise Pollution Rules that they shall take all possible steps to ensure due compliance with the Noise Pollution Rules. The directions of this Court shall be communicated to all such authorities and all police stations within Municipal Corporation/Council limits. Compliance with these directions shall be made by the State Government within two months;
- xii) We direct that the discretionary powers under the section 234 of the said Act of 1949 and Section 317 of the said Act of 1888 to grant permission to erect temporary booths or similar structures on streets(including foot-paths/footways) for holding of festivals/ceremonies shall be exercised by the Commissioners subject to the law laid down by this Court in this Judgment and Order. We also direct the Municipal Corporations to take immediate action of demolition in respect of the temporary booths/ structures erected on public streets without obtaining the requisite permissions. Such action shall be taken even before the religious

festivals/functions commence. We also direct that whenever such permissions are granted, a condition shall be incorporated therein of prominently displaying a copy of permission and the material particulars of such permission on the temporary booths or structures covered by Section 234 of the said Act of 1949 and Section 317 of the said Act of 1888. Any booth or pandal which does not display such permission shall be demolished/removed;

xiii) While exercising the power under section 234 of the said Act of 1949 and Section 317 of the said Act of 1888, the Commissioners of the Municipal Corporations shall be bound to ensure that the fundamental right of citizens to have roads and foot-paths and/or footways in a reasonable condition and free of obstructions which is guaranteed by Article 21 of the Constitution is not violated;

xiv) We direct the District Collectors of all the Districts in the State to constitute a team of Revenue Officers not below the rank of Tahsildars for each Municipal Corporation area. The members of the team shall regularly visit the areas within the limits of the Municipal Corporations for a period of 7 days before the date of commencement of the major

religious festivals and during the festivals to ascertain whether any temporary booths/structures have been erected on public streets and foot-paths/footways without obtaining permission of the Municipal Commissioners. Any such structure which does not display the the permission and material details thereof shall be deemed to be illegal. The members of the team shall be under an obligation to immediately bring to the notice of the concerned Municipal officers/designated officers, the temporary booths erected on streets and foot-paths or footways without obtaining permission of the Commissioners or in breach of the conditions in permissions. The Municipal Authorities shall forthwith take action of removal on the basis of such information. Even the Municipal Corporations shall constitute a team of Officers who will carry out the same task which is entrusted to the Revenue Officers as above. These directions shall be implemented immediately;

- xv) We direct all the Municipal Corporations to create a grievance redress mechanism for receiving complaints as regards illegal pandals or booths erected on streets on par with the grievance redress mechanism ordered to be created for dealing with complaints regarding breach of the

Noise Pollution Rules. The grievance redress mechanism shall be created for receiving complaints by all possible modes. The Municipal Corporations shall nominate officers in each Wards who shall be responsible for dealing with the complaints. Compliance with these directions shall be made within one month;

- xvi) If any such illegal activities involve public nuisance covered by section 133 of the Code of Criminal Procedure, 1973, necessary action shall be taken in accordance with law by all the concerned authorities;
- xvii) We make it clear that this Judgment and Order as well as the earlier orders shall apply to festivals/ceremonies of all the religions and sects. This Judgment and Order shall apply to the places of worship of all the religions;
- xviii) We direct the State Government to issue directions to all the District Collectors and Municipal Corporations in the light of the law laid down by this Court in this Judgment and Order. Compliance shall be made within a period of two months from today;

- xix) In the event, the Municipal Commissioners or the Municipal Staff or the members of the team constituted by the Collectors need police help and protection for the implementation of this Judgment and Order or the implementation of the provisions of law, on an application being made by them, all concerned local police station shall forthwith provide adequate police protection to them;
- xx) Before every major religious or cultural festivals, the State and the Municipal Corporations shall give adequate publicity to the grievance redress mechanism available for filing Complaints regarding the breach of the Noise Pollution Rules and illegal pandals and booths on streets and footways. Adequate publicity shall be given to the availability of the grievance redress mechanism with all the particulars in leading daily news papers as well as on television channels. Detailed notices shall be put up as regards availability of the said mechanism in all police stations within the Corporation limits and in Ward Offices of the Municipal Corporations and in the offices of the Revenue Officers such as Divisional Commissioner, Collector, Additional Collector, Deputy Collector, Tahasildar etc.;

- xxi) Whenever a complaint is received by the authority as regards violation of the Noise Pollution Rules, the same shall be forwarded to the Commissioner and/or the Superintendent of Police as the case may be with a view to enable the said authority to take action under section 38 of the Maharashtra Police Act, 1951;
- xxii) In case of any complaint received by the authority as regards non-compliance with the Noise Pollution Rules or breach of the Noise Pollution Rules, the concerned authority shall set criminal law in motion by taking recourse to clause (b) of Section 19 of the Environment Protection Act. If non-violation or breach is of a very serious nature, the authority shall bring the same to the notice of the District Collector or the Regional Officers of the Maharashtra Pollution Control Board who have been authorized by the Central Government under clause (a) of Section 19 of the Environment Protection Act so that criminal law can be set in motion by the said authorities. Needless to add that when such request is made by the authority under the Noise Pollution Rules, the Collector or the Regional Officers of the Maharashtra Pollution Control Board, as the case may be, shall take immediate steps to set

criminal law in motion in accordance with law under clause (a) of Section 19 of the Environment Protection Act;

xxiii) As soon as a complaint is received by the Officer In-charge of Police Station regarding noncompliance of the violation of the Noise Pollution Rules, he shall immediately forward the same to the authority under the said Rules. On receiving a report from the Officer in-charge of Police Station or on receiving a complaint or receiving information in any other manner, if rule 8 is attracted, the authority shall ensure that immediate order is passed under Rule 8;

xxiv) We direct the State Government to take action against the authorities constituted under the Noise Pollution Rules in the event of their failure to take prompt action as contemplated by Sub-Rule (2) of Rule 7 and Rule 8 of the Noise Pollution Rules as the failure on their part results in to violation of fundamental rights under Article 21 of the Constitution of India. The Municipal Corporation shall take action against the officers who fail to take immediate action of demolition of illegal booths/ pandals on streets. Allowing construction of illegal pandals/ booths on streets also

violates the fundamental right of the citizens under Article 21 of the Constitution of India;

xxv) We direct the State Government to issue a direction to all the Planning Authorities requiring compliance with Sub-Rule (4) of Rule 3 while preparing development plans under the provisions of the Maharashtra Regional and Town Planning Act, 1966. As held earlier, under Sub-Rule (4) of Rule 3, all the Development Authorities and local authorities while planning development activity such as preparation of development plan shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the standards in respect of noise. Needless to add that while sanctioning a development plan and sanctioning a regional plan, the State Government will have to comply with Sub-Rule (4) of Rule 3 of the Noise Pollution Rules;

xxvi) In the light of the mandatory requirement of Sub-Rule (4) of Rule 3, the State Government shall consider of undertaking exercise of noise mapping in all major cities in the State as availability of data obtained by noise mapping

will help all the concerned authorities to discharge their duties under Sub-Rule (4) of Rule 3. We direct the State Government to take appropriate decision on this aspect within a period of two months from the date on which an authenticated copy of the Judgment and Order is produced by the Petitioners or parties to the Petition in the office of the Principal Secretary of the Environment Department of the State Government. While considering this issue, the State Government shall consider the material placed in support of Public Interest Litigation No.85 of 2007;

xxvii) All concerned authorities while considering the applications for grant of permission to erect helipads shall take into consideration, the statements made in the Affidavits filed in Public Interest Litigation No.85 of 2007 by on behalf of the Ministry of Environment and Forest of the Government of India;

xxviii) The State Government shall take all measures in terms of Sub-Rule (3) of Rule 3 of Noise Pollution Rules including measures for abatement of noise including the noise emanating from the vehicular movement and noise emanating from construction activities. The measures

proposed to be taken by the State Government in terms of Sub-Rule (3) of Rule 3 shall be placed on record by the State Government by filing Affidavit within a period of three months from today;

xxix) As pointed out earlier, while granting permissions for erection of pandals/temporary booths, a condition shall be imposed that loud-speakers or public address systems shall not be used without obtaining permission under Sub-Rule (1) Rule 5 of the Noise Pollution Rules. A further condition shall be imposed that hoardings, advertisement/banners/flexes etc shall not be displayed on the booths or in the vicinity of booths without obtaining express permission and no digging shall be made on streets, foot-path or footway without obtaining a specific permission. A condition shall be also imposed of complying with the Noise Pollution Rules by specifying the prescribed noise levels as laid down in the Schedule;

xxx) As directed by the Apex Court, we direct the State Government to conduct public awareness programmes inviting attention to the members of the public to the Noise Pollution Rules and especially the adverse effects of the noise pollution not only on the human beings but on all

living beings. As directed by the Apex Court, the State Government shall issue necessary directions, for holding such public awareness programmes especially in schools and colleges throughout the State so that students are educated on the adverse impact of sound pollution. Such public awareness programmes shall be conducted by the State for the benefit of the members of the public by taking co-operation of television channels, social media, FM channels etc. Such awareness programmes for the benefit of the citizens shall be frequently conducted especially before commencement of major religious and cultural festivals;

xxxi) The notification dated 31st July, 2013 issued by the State Government under Sub-Rule (3) of Rule 5 of the Noise Pollution Rules is partly illegal as held in Clause (iv) of paragraph 93 above;

xxxii) The Commissioner of Police, Pune shall ensure that all the relevant complaints made by the Petitioner in PIL 161 of 2015 the copies of which are on record of the Petition are dealt with and action taken is communicated to her in writing in one month;

- xxxiii) The Applicants in Notice of Motion No.118 of 2010 shall make appropriate representation to the Railways about their grievances which shall be decided in accordance with law within a period of one month from the date on which the representation is made;
- xxxiv) All Petitions and Applications/Notices of Motion stand disposed of in terms of the above directions. The reliefs which are not specifically granted shall be deemed to have been refused;
- xxxv) Contempt notice issued in Public Interest litigation No.173 of 2010 shall remain pending which shall be placed on board for hearing on 4th October 2016 under the caption of “directions”;
- xxxvi) For the purposes of considering the implementation of the directions issued by this Court as regards festivals to be held in August and September 2016, the disposed of Petitions shall be listed on 4th October 2016 under the caption of “directions”;
- xxxvii) For complying with rest of the directions the time of three months has been granted, the Petitions shall be listed on 2nd December 2016 under the caption of “directions”.

(A.A. SAYED, J.)

(A.S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
PUBLIC INTEREST LITIGATION NO.173 OF 2010
WITH
CIVIL APPLICATION NO.124 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.173 OF 2010
WITH
CIVIL APPLICATION (ST) NO.18174 OF 2016
IN
PUBLIC INTEREST LITIGATION NO.173 OF 2010

Dr.Mahesh Vijay Bedekar ...Petitioner
V/s.
The State of Maharashtra and ors. ...Respondents
—

WITH
CONTEMPT PETITION NO.123 OF 2017

Dr.Taramati S. Pathak. .. Petitioner
Vs
Shri S.Babar, Sr. Inspector of Police and Ors. .. Respondents
—

WITH
CONTEMPT PETITION ST. NO.11339 OF 2017
WITH
CONTEMPT PETITION ST.NO. 35443 OF 2016

Hirali Foundation,
Through its Secretary & Trustee
Mrs.Sarita P. Khanchandani. .. Petitioner
Vs
Smt. Vijaya Kanthe,
Additional Municipal Commissioner & Others. .. Respondents
—

CONTEMPT PETITION ST. NO.22665 OF 2017

Reena Richard	..	Petitioner
Vs		
The State of Maharashtra, Through its Secretary and Others.	..	Respondents
—		

CONTEMPT PETITION ST. NO.24393 OF 2017

Ganpati Chawk Mitra Mandal, Through its Vice President.	..	Petitioner
Vs		
the State of Maharashtra and Others.	..	Respondents
—		

PIL/173/2010 A/W CAIST/22565/2016 AND CAI/5/2017

Mr. S.M.Gorwadkar, Sr. Counsel I/b Mr. Sanjay H. Gangal for Petr.
 Mr. A.A.Kumbhakoni, A.G. a/w Mr. A.B. Vagyani, G.P. and Mr.Manish
 Pabale, A.G.P. & Mr. Akshay Shinde and Mr. R.S. Sawant, Asstt. AGP and
 Ms. G.R. Golatkar, Asstt.AGP for R.Nos. 1(A) to 1(D)
 Dr. Sadhna Mahashabde for R. No. 1(E)
 Mr. D.A.Dube & Mr. Upendra Lokegaonkar for R. No.3
 Mr. A.Y.Sakhare, Sr. Counsel a/w Mr. J.J. Xavier, Mrs. Vidya Gharpure &
 Mr. Vinod Mahadik for Respondent No.11
 Mr. Abhijit P. Kulkarni for R. No.14
 Mr. Nikhil Chavan for Respondent No. 26
 Mr. R.S.Apte, Sr. Counsel i/b Mr. N.R.Bubna for R.No. 2 & 16
 Mr. Nitin Gangal for Respondent No . 5
 Mr. Pramod G. Kathane for Respondent No. 9 & 17
 Mr. A.S. Rao a/w Mr. Prashant Kamble for R. No.13
 Mr. A.V. Anturkar, Sr. Counsel I/b Ms. Kalyani Tulankar for Intervener
 Mr. N.P. Deshpande for M.P.C.B.
 Ms. Priyanka Varavdekar for Amravati and Nagpur Municipal
 Corporation

CP/123/2017

Ms. Sucheta Dattatray Ghaisas for petitioner.

Mr. A.A.Kumbhakoni, A.G. a/w Mr. A.B. Vagyani, G.P. and Mr.Manish Pabale, A.G.P. & Mr. Akshay Shinde and Mr. R.S. Sawant, Asstt. AGP and Ms. G.R. Golatkar, Asstt.AGP for state

CPST/11339/2017

Mr. S.M. Gorwadkar a/w Mrs. Sana Yusuf Baugwala for Petitioner
Mr. A.S. Rao and Mr. Prashant Kamble for R. Nos. 2 & 7

CPST/35443/2016

Mrs. Sana Yusuf Baugwala for petitioner,

Mr. Nikhil Chavan for R. No.1

Mr. Nitin P. Deshpande for R. No.5

—

CPST/22665/2017

Ms. Reena Richard Petitioner in person

Mr. A.A.Kumbhakoni, A.G. a/w Mr. A.B. Vagyani, G.P. and Mr.Manish Pabale, A.G.P. & Mr. Akshay Shinde and Mr. R.S. Sawant, Asstt. AGP and Ms. G.R. Golatkar, Asstt.AGP for Respondent No.1

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CPST/24393/2017

Mr. Abhijit Tikar for petitioner

Mr. A.A.Kumbhakoni, A.G. a/w Mr. A.B. Vagyani, G.P. and Mr.Manish Pabale, A.G.P. & Mr. Akshay Shinde and Mr. R.S. Sawant, Asstt. AGP and Ms. G.R. Golatkar, Asstt.AGP for Respondent No.1, 3,4 & 5

Mr. A.P. Kulkarni for R.No.2

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WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.85 OF 2007

Awaaz Foundation and another	..	Petitioners
vs.		
State of Maharashtra and others	..	Respondents
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PUBLIC INTEREST LITIGATION NO.74 OF 2007
WITH
 NOTICE OF MOTION NO.118 OF 2010
WITH
 PUBLIC INTEREST LITIGATION NO.83 OF 2010

Society for Fast Justice and Anr.	...	Petitioners
V/s.		
The State of Maharashtra & Ors.	...	Respondents
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WITH
 WRIT PETITION NO.2053 OF 2003

Dr. Yeshwant Trimbak Oke & Ors	...	Petitioners.
V/s		
Union of India & Ors.	...	Respondents.
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WITH
 WRIT PETITION NO.1503 OF 2005

A. P. Lewis	...	Petitioner
V/s.		
Union of India and Anr.	...	Respondents
--		
Shri A.A. Kumbhakoni, Senior Counsel along with Ms. Uma Palsule-Desai, AGP for the State.		
—		

WITH
WRIT PETITION NO.357 OF 2003

H.S.D'Lima

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

—

PIL/85/2007

Dr. Birendra Saraf a/w Mr. Rohan Cama & Mr. Shanay Shah, a/w Mr. Ishwar Nankani a/w Ms. Gauri Memon, i/b. Nankani & Associates for Petitioners

Mr. A.A.Kumbhakoni, AG a/w Ms Uma Palsule-Desai, AGP for Respondent no. 1 State

Mr. A.Y.Sakhare, Sr. Counsel a/w Mr. J.J.Xavier, Mr. Vinod Mahadik & Ms. Sharmila Modle for respondent No. 5 BMC

Mr. Upendra Lokegaonkar i/b Mr. N.R.Prajapati for Respondent UOI

Ms. Kiran Bagalia for respondent no. 4

Ms.Sadhna Mahashabde for Respondent No.2

WP/357/2003

Mr. Sagar Rane for petitioner in WP/357/2003

Mr.A.A.Kumbhakoni, AG a/w Ms Uma Palsule-Desai, AGP for Respondent no. 1 State

WP 2053/03

Dr. Birendra Saraf a/w Mr. Rohan Cama & Mr. Shanay Shah a/w Mr. Ishwar Nankani a/w Ms. Gauri Memon, i/b. Nankani & Associates for Petitioners

Mr. Rui Rodrigues for respondent no. 1 UOI

Mr. A.A.Kumbhakoni, AG a/w Ms Uma Palsule-Desai, AGP for Respondent 2 & 3 State

PIL74/07

Mr. A.A.Kumbhakoni, AG a/w Ms Uma Palsule-Desai, AGP for Respondent no. 1 & 5 State

Ms. Sadhna Mahashabde for respondent no. 3

PIL/83/2010

Mr. A.A.Kumbhakoni, AG a/w Mr. L.T.Satelkar, AGP for Respondent No.1 & 6 to 9 State
Mr.D.P.Singh a/w. Mr. G.R.Sharma for Respondent Nos.3 & 4
Mr. C.M.Lokesh, for Respondent No.5

WP/1503/2005

Mr. A.A.Kumbhakoni, Sr. Counsel a/w Ms Uma Palsule-Desai,
AGP for the State

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CORAM : A.S.OKA, &
RIYAZ I. CHAGLA,JJ.

DATE : 29TH AUGUST 2017

ORAL ORDER : (PER A.S.OKA, J)

1. With great deal of anguish that we are dictating this order. But the events which have happened are so extraordinary that we have no choice in the larger interests of the Judiciary but to record those extraordinary events.

2. Public Interest Litigation No.173 of 2010 and other connected matters were disposed of by a Division Bench of this Court (A.S.Oka & A.A.Sayed, JJ) by the judgment and order dated 10th, 11th, 12th and 16th August 2016. It is a matter of record and it is an undisputed fact that as per the administrative order passed by the Hon'ble the Chief Justice on 18th November 2016, these disposed of

Petitions were ordered to be placed for considering compliance before a Division Bench of which one of us (A.S. Oka, J) is a member. Several orders were passed after the 18th November 2016 dealing with the issue of implementation of the directions issued by this Court. As recorded in the order dated 24th August 2017, the final decision in the matters was substantially challenged by the State Government by way of a Special Leave Petition before the Apex Court. The challenge failed and as of today, the decision has become final.

3. On 22nd August 2017, these Petitions were listed before this Bench for considering compliance of various directions. On that date, an affidavit was filed by the State Government of Smt. Archana Shirke, Under Secretary of the Environment Department placing on record a copy of the Notification dated 10th August 2017. On the basis of the said Notification, a contention was raised by the learned Advocate General that the declaration granted in terms of Clause (xii) of Paragraph 93 of the final judgment has become inoperative as there is an amendment to the Noise Pollution (Regulation and Control) Rules, 2000. On 22nd August 2017, the submissions were heard for considerably long time. We had heard the learned counsel representing various parties as well as the learned Advocate General. Though the submissions were substantially heard, the same were not concluded. That is how the matters were ordered to be listed at 11.00 a.m on 23rd

August 2017. What transpired on 23rd August 2017 in this Court is noted in detail in Paragraph 4 of our earlier order dated 24th August 2017. Relevant part of the said paragraph reads thus:-

“4. ...As submissions were not concluded, the matters were kept yesterday at 11.00 a.m. **When the matters were called out yesterday at 11.00 am, this Bench made the learned Advocate General aware of the prima facie view formed by this Court after hearing the arguments at length on 22nd August 2017. Only object of pointing out prima facie view before the submissions were to be concluded was to give an opportunity to the learned Advocate General firstly to seek instructions from the State Government and secondly to address the Court on the prima facie view expressed by this Court. There is a consistent practice followed by this Court to express prima facie view so that best is brought out of the members of the Bar. Prima facie view expressed by this Court was that on the basis of the amendment brought about by the notification dated 10th August 2017, the directions issued by this Court as regards silence zone cannot be held to be inoperative and in any event, the State Government will have to make an application for review or modification of the final Judgment. This Court also expressed a prima facie view that since what is held in clause (xii) of paragraph 93 reproduced above was not based only on clause 3 of the Schedule which has been deleted by the amendment, in absence of any application for modification, the oral plea of the learned Advocate General cannot be considered. This Court also expressed a prima facie view that if the submissions of the learned Advocate General are correct, a part of the Judgment will have to be modified which has to be done by the same Bench which has passed the final Judgment and Order as per Chapter XXX of the Bombay High Court Rules and the corresponding provisions of the Original Side Rules. This Court has made it very clear to the learned Advocate General that this Court was willing to hear him further on his contention and the prima facie view expressed was subject to his further submissions. However, he sought time to take instructions. Thereafter, we**

kept back the matters till 1.00 p.m. The matters were taken at 1.10 p.m., when the learned Advocate General stated before the Court what were his instructions. He stated that the State Government was willing to make an application for review. His submission was that till the said application is filed and considered, the State Government will proceed on the basis of the statements made by Smt. Shirke that no silence zone is in existence as per the amended Noise Pollution Rules. However, he stated that in case of city of Mumbai where earlier declarations by the Mumbai Municipal Corporation of silence zones have been made, the silence zones will be taken up as guide lines. Therefore, he continued further submissions till 2.00 p.m. The submissions could have been over yesterday itself and we would have decided the issue yesterday itself. However, on the request made by the learned Advocate General on the ground that he was required to appear before the Full Bench headed by the Hon'ble the Chief Justice, we thought it fit to accommodate him. Therefore, we kept the matter today for hearing the further submissions of the learned Advocate General. If we would not have expressed our prima facie view, the matter would have been over yesterday in the first session of yesterday itself.”

(emphasis added)

4. There is one more event which is required to be noted. On 23rd August 2017, there was an administrative order passed by the Hon'ble the Chief Justice by which Public Interest Litigation St. No.24110 of 2017 was assigned to this Bench for hearing it along with the connected disposed of matters. The challenge in the PIL was to the Notification dated 10th August 2017 issued by the Central Government. We have already noted what transpired upto 2.00 p.m on 23rd August 2017.

5. The extraordinary events started thereafter. When the matters were called out on 24th August 2017 at 11.00 a.m., the learned Advocate General tendered a copy of a praecipe dated 24th August 2017 (described in the order dated 24th August 2017 as a letter”) addressed to Hon'ble Chief Justice which is on record and for convenience, we are today marking the same as “P1” for identification. Though the learned Advocate General stated that the praecipe was filed, he did not state on 24th August 2017 before this Bench that he had personally handed over the same to the Hon'ble Chief Justice in her chamber before 11 a.m. on that day. Yesterday, on a query made by the Court, he informed the Court that the praecipe was personally handed over by him to the Hon'ble Chief Justice by meeting her in Chamber before 11 a.m on 24th August 2017. It is not the case of the State that a notice was given to rival parties of the fact that the Learned Advocate General was to move the Hon'ble Chief Justice before the Court hours in her Chamber. In the said praecipe, there were serious allegations of bias made against one of us (A.S.Oka,J). The allegations of bias as can be seen from the Paragraphs 9 and 10 of the said praecipe were made based on the prima facie view expressed by this Bench on 23rd August 2017 at 11.00 a.m only for the sake of transparency and only to enable the learned Advocate General and other counsel representing the parties to assist the Court properly. We have already noted in our earlier order dated

24th August 2017 that this Court followed the tradition of expressing prima facie view only with a view to get proper assistance from the members of the Bar. In Paragraph 9 of the praecipe, it is stated thus:-

“9. With utmost respect and with utmost regard towards Hon'ble Shri Justice A.S.Oka (hereinafter for the sake of brevity referred to as the Hon'ble Judge), it is humbly submitted that during the course of hearing the Hon'ble Judge has expressed such views which clearly demonstrate that the Hon'ble Judge is biased in subject matter of these petitions.”

6. In Paragraph 12 of the said praecipe dated 24th August 2017, there were allegations of bias against one of us (A.S.Oka,J) of harbouring a serious bias in the subject matter of these Petitions against the State machinery. Paragraph 12 of the said praecipe reads thus:-

“12. These and such other aspects of the matter in general demonstrate that the Hon'ble Judge is somehow harbouring a serious bias in the subject matter of these petitions against the State Machinery in this matter.”

7. The further part of the order dated 24th August 2017 is self-explanatory as to what transpired after a copy of the praecipe was tendered by the learned Advocate General. Paragraphs 5 to 9 of the said order read thus:-

- “5. Yesterday, the Hon'ble the Chief Justice passed an Administrative Order assigning the PIL St.No.24110 of 2017 wherein the challenge is to the notification dated 10th August 2017. Today, when the matters were called out, the learned Advocate General has placed on record a letter dated 24th August 2017 signed by Shri Manish M. Pabale, AGP addressed to the Hon'ble the Chief Justice. The letter records that it was drafted on the instructions of Shri Vijay Patil, Deputy Secretary of the Home Department, Mantralaya. In the said letter, it is stated that one of the two Judges of this Bench (A.S.Oka,J.) is harbouring a serious bias in the subject matter against the State Machinery. Therefore, a prayer is made in the said letter to club all the connected matters. The learned Advocate General stated that when the said letter was submitted, the State was not aware of the order passed by the Hon'ble the Chief Justice of assigning the PIL St.No.24110 of 2017 to this Bench. However, he states that prayer in the application is for transfer of matters on Board and all connected matters. The learned counsel for the Union of India in PIL St.No.24110 of 2017 was at pains to point out that a matter involving similar challenge is adjourned by four weeks by another Bench.
6. We are shocked to record all this. As stated earlier, we followed the tradition of expressing prima facie view to the learned counsels representing the parties only with a view to get proper assistance from them. After the matters were adjourned yesterday with a view to accommodate the learned Advocate General, the State has filed the letter dated 24th August 2017 making serious allegations of bias against one of us (A.S.Oka,J.). We are not saying this to blame the learned Advocate General. But we are saying this for a different reason. The State should have respect for the highest Office of the learned Advocate General who is the constitutional functionary. Suffice it to say that by this conduct on the part of the State Government, they have made the position of the learned Advocate General most awkward. The Advocate General is

the leader of the Bar who is the Officer of the Court first. We are sorry to record that the State Government has not bothered to even consider the effect of such a prayer made today when the matters were adjourned yesterday to accommodate the learned Advocate General.

7. **The law as regards recusal is well settled and we may not restate it again. There is no question of recusing ourselves from this matter. However, as Hon'ble the Chief Justice is moved with an application for transfer, we deem it proper to defer the hearing of the matters till 3.00 p.m. In the normal course, we would have granted more time. But the learned senior counsel representing the petitioner in PIL St.No.24110 of 2017 is pressing for grant of ad-interim relief. Therefore, we direct that these matters shall be kept at 3.00 p.m.**
8. Without elaborating, in short, we also record submissions made by Shri Anturkar, Shri Gorwadkar and Shri Saraf that this action of making allegations of bias and of applying for transfer is completely malafide. The learned counsel Shri Saraf also contended that this attempt is made to make the whole issue academic with a view to ensure that there is a lot of noise pollution in coming Ganpati festival. He also stated that this application is politically motivated.
9. **The Registrar (Judicial-I) to ensure that when the said application/praecipe is placed before the Hon'ble the Chief Justice, a copy of this order is produced before the Hon'ble Chief Justice."**

(emphasis added)

8. After declining to recuse itself as per the settled law laid down by the Apex Court, this Bench could have proceeded with the

further hearing of the matters especially when there was no proper transfer application made and the allegations of bias were not supported by any affidavit. Since we were informed that the praecipe was filed, we thought it fit to adjourn the matter till 3.00 p.m. As far as the direction in Clause (9) of the said order dated 24th August 2017 is concerned, the direction to the Registrar (Judicial-I) was to place a copy of the said order dated 24th August 2017 along with said praecipe before the Hon'ble the Chief Justice. The whole object was to ensure that the Hon'ble Chief Justice is informed about the stage at which and the manner in which the praecipe was moved. The praecipe did not disclose the important and material fact that on 23rd August 2017, the matter was adjourned till 24th August 2017 only for accommodating the learned Advocate General. The Registrar (Judicial-I) was to comply with the direction in paragraph 9 of the order only after the order was corrected, signed and uploaded. We make it clear that we had not directed our staff to inform the said Registrar about the passing of the said order as the same was to be immediately signed in the afternoon recess. The order was dictated clearly and loudly in the open Court. Since the praecipe was handed over to the Hon'ble the Chief Justice personally by the learned Advocate General in her chamber, naturally, it was his duty or the Government Pleader's duty to immediately inform the Hon'ble Chief Justice about passing of the said order, either by mentioning before her Court or by filing a praecipe. That was not done.

Yesterday, i.e. on 28th August 2017, the learned Advocate General stated that as the leader of his team, he has accepted the said default on the part of his entire team. The effect of this default was serious. We must record here that in the afternoon recess on 24th August 2017 at about 2 p.m, in the chamber of one of us (A.S.Oka, J), we received a copy of the note submitted by the Registrar (Judicial-I) on the basis of the praecipe dated 24th August 2017 submitted by the State Government and an administrative order passed thereon of transfer of all the matters to a Full Bench presided over by Hon'ble Shri Justice Anoop V. Mohta. The Registrar (Judicial -I) did not point out to the Hon'ble Chief Justice the fact that we had dictated the Order because he was not aware and the State did not point out though its law Officers were aware of the said fact.

9. When we resumed the Court work on 24th August 2017 at 3.00 p.m, we found that most of the learned counsel in the matter were present. Obviously because they were not even aware that the order of transfer of the matters was already passed. We are not sure whether the law officers of the State were aware of the order of transfer. We give them a benefit of doubt. In the open Court, we had to point out to the learned counsel representing the parties that the Hon'ble the Chief Justice has already passed an order of transfer assigning all the matters to a Full Bench. The parties were not given a notice by the State

Government that the Hon'ble Chief Justice will be moved in her Chamber before 11.00 a.m. Unfortunately, it was left to this Bench to inform the parties about the transfer.

10. The allegations of bias, even assuming that they came from the highest authority of the State, were completely baseless and not even supported by an affidavit. In normal course, as we do, we would have been justified in ignoring the allegations with all the contempt it deserved as the same were not supported by an affidavit. However, in this case, it is apparent from the record that the Hon'ble Chief Justice acted upon the praecipe containing serious allegations of bias against one of us (A.S.Oka,J) and passed an order of transfer of all the pending matters which were specially assigned to the Bench headed by one of us (A.S.Oka,J) and PIL St.No.24110 of 2017 which was specifically assigned to this Bench on 23rd August 2017. The transfer was to a Full Bench. Therefore, these allegations of bias cannot be ignored as the allegations of bias were the only basis of the prayer for transfer made by way of a praecipe.

11. We may note here that yesterday in the morning before the Court hours, the Registrar (Judicial-I) handed over a photocopy of the administrative order dated 27th August 2017 passed by the Hon'ble the Chief Justice which recorded that in supersession of the earlier order

dated 24th August 2017 constituting a larger Bench, now all the matters will be placed before a larger Bench presided over by one of us (A.S.Oka,J) along with the Hon'ble Shri Justice Anoop V. Mohta and the Hon'ble Shri Justice Riyaz I. Chagla. The Registrar (Judicial-I) orally informed us that the Hon'ble the Chief Justice has telephonically directed him to inform us that even the administrative order dated 27th August 2017 was subsequently modified by directing that the disposed of Petitions which were pending before this Bench for reporting compliance will be heard by this Bench and PIL St.No.24110 of 2017 which was assigned to this Bench as well as the Writ Petition No.9508 of 2017 which was assigned to the Bench headed by Anoop V. Mohta will be heard by a larger Bench presided over by one of us (A.S.Oka,J) along with the Hon'ble Shri Justice Anoop V. Mohta and the Hon'ble Shri Justice Riyaz I. Chagla. In fact, the order dated 27th August 2017 of the Hon'ble Chief Justice records that all the matters should be listed on 28th August 2017.

12. Accordingly, the matters were listed. When these matters were called out before this Bench on 28th August 2017, we had certain queries to make to the learned Advocate General. After answering the said queries, the learned Advocate General tendered across the Bar another praecipe dated 29th August 2017 which we mark as "P2" for identification. It bears the signature of the learned Assistant

Government Pleader. It records that the praecipe was drafted as per the instructions of Shri Vijay Patil, Deputy Secretary to the Government of Maharashtra. The praecipe makes very interesting reading. The Paragraphs 2 to 4 of the said praecipe read thus:-

- “2. The aforesaid request (b) was made contending that “.....the Hon'ble Judge is somehow harbouring a serious bias in the subject matter of these petitions against the State Machinery in this matter. **The said contention was NOT raised as an allegation against the Hon'ble Judge personally but was limited specifically and limited only as to the 'subject matter' involved in the aforesaid group of matters.** The State itself holds the said Hon'ble Judge individually with pride in the highest esteem and has the highest regards and respect for him, which is demonstrated by the State in various matters decided by the said Hon'ble Judge, from time to time where the State is a contesting party or even otherwise.
3. However unfortunately, it appears that the said intention of the State Government has been widely misunderstood and misinterpreted and has been projected as if the State Government is against the judiciary in general and the Hon'ble Judge in particular, which the State Government never intended nor intends.
4. The State Government unconditionally withdraws even the said contention raised in paragraphs (9) and (12) of the original Application and expresses regret to the said Hon'ble Judge for the said contention and while tendering an unqualified apology also hereby expresses full faith and confidence in the said Hon'ble Judge.”

13. After making very serious allegations of bias against one of us (A.S.Oka,J) which could be certainly termed as scandalous, a stand was taken that though it was alleged that a Judge is harbouring a serious bias in the subject matter of these Petitions against the State Machinery, there were no allegations made against the Judge. Within a span of three days, a change was brought about which could be seen from the said praecipe dated 28th August 2017. As stated earlier, the praecipe proceeded on the footing that though there were allegations of bias made in the praecipe dated 24th August 2017, in fact, there were no allegations made against the Judge. It is not for us to go into the reasons why this U-turn is taken after three days. It is for the others to draw appropriate inference. We informed the learned Advocate General after reading the praecipe that the statements made therein and apology tendered therein cannot be accepted for more than one reason. The first and foremost reason was that apart from the allegations made were scandalous and apart from the fact that the allegations interfered with the due course of legal proceedings, the allegations were against this august Institution which exists for last 155 years. The second reason is that there was no affidavit filed by the appropriate authority tendering unconditional apology. The third reason was that the allegations of bias were so serious that the Hon'ble Chief Justice acted upon the same and passed an order of transfer.

14. Yesterday, the learned Advocate General stated that an affidavit will be filed today tendering an unconditional apology. At that time, we informed the learned Advocate General that it will be appropriate and it will be perhaps obligatory for the State to disclose the name of the decision making authority which took a decision to instruct the learned Advocate General to make allegations of bias against a sitting Judge of this Court. Today, an affidavit of Shri Vijay Patil, Deputy Secretary to the Government on whose instructions earlier documents were tendered in the Court has been filed. The affidavit does not disclose the name or designation of the authority which took a decision to make allegations of bias. The said affidavit dated 29th August 2017 is taken on record and marked "A1" for identification. The Paragraph 2 of the affidavit reads thus:-

"2. As per the authorization and instructions given to me by the State Government, the State Government hereby unconditionally withdraws each and every contention raised and/or allegation made against His Lordship the Hon'ble Shri Justice A.S. Oka in the Application dated 24.08.2017 and the State Government expresses regret to His Lordship the Hon'ble Shri Justice A.S.Oka for the said contentions and/or allegations and while tendering an unqualified apology to His Lordship the Hon'ble Shri Justice A.S.Oka also hereby expresses full faith and confidence in His Lordship the Hon'ble Shri Justice A.S.Oka."

15. The Paragraph 2 of the said affidavit dated 29th August 2017 makes the situation more serious as it is suggested that it is the entire State Government which took a decision to make an allegation of bias against one of us (A.S.Oka,J). The State Government, for obvious reasons, has avoided to mention the name of the real decision making authority.

16. As stated earlier, the allegations of bias were completely unfounded and without any basis and the same were not at all supported even by an affidavit by some officer. Now within a span of 3 to 4 days, the allegations of bias are being unconditionally withdrawn. Yesterday, we had informed the learned Advocate General that what was more worrying was the allegations and the manner in which these allegations were made in the praecipe which adversely affected the reputation of the Institution like Bombay High Court. Today, in the affidavit in Paragraph 3, it is stated a separate affidavit is filed before the Hon'ble the Chief Justice tendering an unconditional and unqualified apology to the entire Institution of the High Court of Judicature at Bombay. The Paragraph 3 of the said affidavit dated 29th August 2017 reads thus:-

“I say that a separate Affidavit is filed/tendered before the Hon'ble the Chief Justice tendering an unconditional and unqualified apology to this

esteemed Institution i.e. The Hon'ble High Court of Judicature at Bombay and the Hon'ble the Chief Justice of this Hon'ble Court for all the acts of omission and/or commission in this regard by the State Government as also for all consequences thereof.”

17. The Paragraph 2 of the affidavit dated 29th August 2017 contains unconditional apology which we have already quoted.

18. In normal course, this Court would have been justified in initiating an action under the Contempt of Courts Act against the Officers of the State who were responsible for committing a criminal contempt as making of such allegations and the manner in which the same were made amount to criminal contempt. We are not doing so for more than one reason. We will be guided by a very well-known opinion expressed by the Lord Denning in the case of *Regina v. Metropolitan Police Commissioner ex. p. Blackburn*¹ which is quoted with appreciation and approval by the Apex Court in the famous decision in the case of *In Re S. Mulgaokar*². We are guided by the following observations made by Lord Denning, which read thus:-

“Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations.”

19. We must note here that with great deal of emphasis the dignity of this august Institution rests on surer foundations. The second

1 (1968)2 WLR 1204

2 (1978)3 SCC 339

reason why we are not initiating the action for criminal contempt is obviously the unconditional withdrawal of allegations made against one of us (A.S.Oka, J) and tender of an unconditional apology within few days from the date on which the allegations of bias were made. Yesterday, we made it very clear that we are not at all touchy about the allegations made against one of us (A.S.Oka, J). The anguish expressed by us yesterday was due to the impact of such reckless and scandalous allegations made against an individual Judge on the entire institution of the Bombay High Court. Now in the said affidavit, there is an unconditional apology tendered to the entire Institution. The third reason why we are not initiating action for Contempt of Court is perhaps what is pointed out by the learned Senior Counsel Shri A.V.Anturkar. He stated that a signal has gone loud and clear.

20. The fourth reason is a different reason with which few may not agree. We are holding a constitutional office and we have taken an oath under the Constitution. We are expected to show mercy and magnanimity. Therefore, we are showing mercy by accepting the unconditional apology.

21. The other issue which will remain is of enormous damage which is caused to the Institution by the entire episode which started from 24th August 2017. As stated earlier, we agree with what is stated

by the learned senior counsel that now the message has gone clear and loud that interference by any authority including anyone holding a very high office with judiciary and any attempt to lower its dignity will not be tolerated at all and will be strictly dealt with.

22. We, therefore, accept the apology tendered in the affidavit of Shri Vijay Patil, Deputy Secretary on behalf of the Government of Maharashtra. We also accept the statement made that the State Government has unconditionally withdrawn each and every allegations made against one of us (A.S.Oka, J). Therefore, nothing further is required to be done only as far as the allegations of bias are concerned.

23. Place this group of Petitions on 7th September 2017 under the caption of “Directions” for considering compliance.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)