



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extraordinary Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

W.P. (C) No. 18 of 2017

1. The Indian National Congress,
(Sikkim Pradesh),
5th Mile, Tadong, East Sikkim.
 2. Shri Tara Kumar Pradhan (Shrestha),
Aged about 54 years,
Son of Shri Prem Kumar Pradhan,
Treasurer, Indian National Congress
(Sikkim Pradesh),
5th Mile, Tadong, East Sikkim.
- ... Petitioners.

versus

1. The State of Sikkim represented by the
Chief Secretary,
Government of Sikkim, Gangtok.
2. The Secretary,
Department of Home,
Government of Sikkim, Gangtok.
3. The Director General of Police,
Police Headquarter,
Gangtok, East Sikkim.
4. The District Magistrate,
District Administrative Centre,
East District, Gangtok.
5. The Superintendent of Police,
District Administrative Centre,
East District, Gangtok.



6. The Sub-Divisional Police Officer,
District Administrative Centre,
Gangtok, East Sikkim.
7. The Station House Officer,
Sadar Police Station,
Gangtok, East Sikkim.
8. Mr. Bijay Subba,
Inspector of Police,
Sadar Police, Gangtok.

... Respondents.

Appearance:

Mr. Pratap Khati, Advocate for the Petitioners.

Mr. J.B. Pradhan, Addl. Advocate General and Mr. Karma Thinlay, Senior Government Advocate with Mr. Santosh Kr. Chettri, Asstt. Government Advocate for the State-Respondents.

J U D G M E N T

(29.05.2017)

Satish K. Agnihotri, CJ

The first petitioner is a national political party and the second petitioner is the Treasurer of the first petitioner. Assailing the alleged action of the eighth respondent by interfering with the public announcement system used by the petitioner-party in the street corner meeting held at Kanchanjunga Shopping Complex, Gangtok, East Sikkim, the petitioners have come up with this petition seeking directions to the official respondents to



take action against the eighth respondent and also to pay compensation to the tune of Rs.3.00 lakhs to the petitioners for damages caused. Further, a security is sought to the entire family of the petitioner No. 2.

2. The brief facts, as projected by the petitioners, are the petitioners organized a street corner meeting at Kachanjunga Shopping Complex, Gangtok on 13th November, 2016 for the purpose of creation of awareness of rights and liabilities through public announcement system between 1000 to 1600 hrs. at the Kanchanjunga Shopping Complex, with prior permission dated 11th November, 2016 of the competent authority. It is submitted that the meeting was organized as per schedule, complying with the conditions of the permission granted by the fifth respondent. It is alleged that the eighth respondent, who is also arrayed as seventh respondent in official capacity, came to the venue of the meeting at around 1300 hrs. with some police personnel and started using abusive, unparliamentary and filthy language against the leaders and also disconnected the wire connection to the public announcement system, which was widely published in the electronic and print media on the next day. It is further contended that the action of the eighth respondent was unlawful, violative of fundamental rights guaranteed under the provisions of Articles 14, 19 read with Article 21 of the Constitution of India



and also has caused irreparable damages to the prestige and status of the petitioners. It is further stated that the first information report (FIR) was lodged before the fifth respondent vide letter dated 14th November, 2016, which yielded no response. Thereafter, a representation was also made to the third respondent and further representation was made through advocate's notice dated 24th January, 2017 to all the concerned authorities. Finding no response/action from the authorities, the petitioners were constrained to file the instant writ petition seeking the aforestated reliefs.

3. Mr. Pratap Khati, learned counsel appearing for the petitioners, would contend that the eighth respondent has exceeded his jurisdiction and violated the fundamental rights of the petitioners enshrined under Articles 14, 19 (1) (a) (b) and 21 of the Constitution of India. The said respondent disconnected the wire connecting the public announcement system, knowing fully well that the meeting was conducted with due permission from the competent authority. Thus, the petitioners are entitled to compensation to the tune of Rs.3.00 lakhs and also a direction to the authorities to take stringent action against him. Referring to a decision of the Supreme Court in **Anita Thakur & Ors. vs. Govt. of J & K & Ors.**¹, wherein Rs.3.00 lakhs in total as



compensation was awarded to the petitioners therein, the learned counsel would submit that the petitioners are also entitled to the compensation as prayed for.

4. Per contra, Mr. J.B. Pradhan, learned Additional Advocate General appearing for the respondents would contend that on receipt of representation dated 15th November, 2016, addressed to the second respondent, the fourth respondent was directed to submit a report. The fourth respondent in turn directed the Additional District Collector, East to make an enquiry and submit a report. On enquiry, it was found that the eighth respondent has not exceeded his power and also not violated the condition of the permission granted therefor. That a public complaint was received around 1155 hrs. on 13th November, 2016 for the loudspeakers used by the organizers of the meeting which was causing nuisance to the general public. The eighth respondent with other police personnel visited the venue and requested the organizers to change the direction of the loudspeakers towards the venue. On finding refusal, the loudspeakers were changed towards the venue without disconnecting the wire, which resulted into decrease of the public nuisance caused due to high volume of loudspeakers. Referring to the affidavit dated 24th April, 2017 filed on behalf of the third,



fourth, fifth and sixth respondents, Mr. Pradhan would submit that the organizers have flouted the conditions of permission dated 11th November, 2016. The volume of the public announcement system was beyond the permissible limit and the loudspeakers were directed towards outside the venue causing nuisance to outsiders. On a complaint received from the public, the volume of the loudspeaker was regulated without disconnecting the wire, as alleged.

5. It is further urged by Mr. Pradhan that in the enquiry conducted by the Sub-Divisional Police Officer, it was found that the eighth respondent has not exceeded his power as on going to the site, he requested the organizers to minimise the volume and turn the speakers towards the gathering. On finding no response from the organizers, the eighth respondent turned the speakers towards the gathering. The aforestated report is supported by an affidavit. Predicating submission on the counter affidavit dated 22nd April, 2017 of the seventh and eighth respondents, Mr. Pradhan would further contend that the SHO has taken all necessary precautions without disturbing the ongoing meeting and turned only the direction of the loudspeakers to the gathering. They were advised to comply with the conditions of the permission. Wire of the loudspeaker was never disconnected



and the meeting was never disturbed. Thus, the allegations made by the petitioners are baseless and meritless.

6. It is also submitted by Mr. Pradhan that the permission granted on 11th November, 2016 by the competent authority clearly provides for having the volume of mike at low pitch and no inconvenience should be caused to the general public. The volume was also higher than the permissible limit. Thus, it was not a case of violation of fundamental rights to speech and expression as pleaded by the petitioners. The meeting was organized in clear breach of conditions stated in the permission dated 11th November, 2016. Accordingly, the petition deserves to be dismissed with cost.

7. Heard learned counsel for the parties, perused the pleadings and documents appended thereto.

8. The undisputable facts are that the petitioners made a request for grant of permission to hold the meeting and use loudspeakers at the rooftop of Kanchajunga Shopping Complex, Gangtok on 10th November, 2016. The petitioners were duly granted permission vide order dated 11th November, 2016 to hold a meeting at the desired place between 1000 to 1600 hrs. on 13th November, 2016. The conditions of the permission, *inter alia*, provide as under: -



- "3. The volume of mike should be low volume and no inconvenience should be caused to the general public.
4. Mike should not be installed above 8 ft. from the ground. (it shall be at a maximum height of 8 ft. from the ground).
5. Extension of wiring is not allowed beyond the venue of programme/meeting.
6. If at any point it is found that reason given for seeking mike permission default from original application same will be deemed cancelled immediately."

9. It is revealed in the enquiry that a complaint was received from the general public, stating that the meeting was so loud as to cause nuisance to the public at large, who were not a part of the meeting.

10. On receipt of the representation and complaint from the President and General Secretary of the Sikkim Pradesh Congress Committee, the Sub-Divisional Police Officer, Gangtok was directed to conduct an enquiry and submit a report. The Sub-Divisional Police Officer conducted an enquiry and on examination of several witnesses, held in his report dated 24.01.2017, as under: -

"5. Further, as per the GD Extract taken from GD Vide No. 403/404 dated 13.11.2016 Time 1155/1230 hrs. of Sadar Police Station, Gangtok it can be seen that on receipt of public complaint regarding use of loudspeaker at Kanchenjunga Complex SHO Bijoy Subba had proceeded at the venue to inspect the same. On reaching the venue he then requested the organizers of the meeting namely Dorjee Ongdi and Gyurmi to kindly lower the volume and to also change the direction of the 4 nos. of speakers towards the venue. But the request fell on deaf ears and then the SHO was compelled to change the direction of the speakers and also lowered the volume of the speakers. The SHO then booked the organizer of the meeting i.e. Shri Tara Kr. Pradhan (Shresthra), General Secretary, SPCC, U/S 160 of Sikkim Police Act, 2008 for violating the terms and conditions of the permission issued from the office of SSP, East vide provision of S.158(1) of SPA, 2008 and Memo No. 31/POL/SPE/ RDR/2006/897 dated 11/11/2016 for his trial in the Hon'ble Court of Law.



6. The independent witnesses have also supported the version of SHO/Sadar PS and the allegation of disrupting of meeting by disconnecting the line was found baseless. In fact the police officer had acted lawful and without any mala fide intention. Despite being requested to the organizer to lower the volume and turn the speakers towards the gathering the organizers did not listen to the lawful orders of SHO/Sadar PS and he was compelled to turn the speakers himself as shown in the photographs.

7. It is, therefore, submitted that PI Bijoy Subba, SHO/Sadar PS had acted as per law and not violated the freedom of speech of any individual as alleged in the complaint, please."

11. It has come on record that the President, Sikkim Pradesh Congress Committee has made a representation to the Chairman, National Human Rights Commission, New Delhi, on 28th November, 2016. Taking cognizance of the said representation, the National Human Rights commission has sought for an enquiry report from the Director General of Police, Sikkim. The Addl. Superintendent of Police, East District Police, it appears, was directed to conduct an enquiry into the allegations made by the President, Sikkim Pradesh Congress Committee. In his enquiry report, the Additional Superintendent of Police, East, has observed as under: -

"An enquiry on the already mentioned incident was conducted whereby the following witnesses to the incident were examined:

1. Pappu Mallik 30 yrs. S/o Mohan Mallick R/o Indira Bye Pass, Gangtok. Profession: Journalist.
2. Chung Chung Bhutia, 30 yrs W/o Milan Gurung R/o Rongli. Profession: Government Employee.
3. Ongchen Bhutia 36 yrs S/o Sonam Bhutia R/o Machong, Gangtok. Profession: Government Employee.
4. Yogendra Gurung 28 yrs S/o N.L. Gurung R/o Tashiding. Profession: Government Employee.
5. Sanjay Kr. Prasad 38 years S/o Rama Shankar Prasad R/o Lall Bazar, Gangtok. Profession: Businessman.
6. Satish Kumar 29 years S/o Moti Lall Gupta R/o Gangtok. Profession: Businessman.



7. Amit Kr. Prasad 26 yrs S/o Lt. Rama Shanker Prasad R/o Gangtok. Profession: Businessman.

All the above witnesses have mentioned in their statement that the volume of the mike/speaker was too loud which was causing them inconvenience and that the SHO and his team had done what needed to be done legally. Copy of statements of the witnesses attached herewith. *Annexure 'D'*.

Conclusion

After observing all the evidence on paper, it can be seen that Shri Tara Kr. Pradhan (Shreshtra), SPCC has clearly violated the conditions of the permission of use of mike under the provision of Section 158 (1) of Sikkim Police Act, 2008 and that the SHO PI Bijoy Subba had rightfully booked him U/s 160 of Sikkim Police Act, 2008."

The said enquiry corroborates the finding recorded in the earlier enquiry conducted by the Sub Divisional Police Officer.

12. On perusal of various reports, it is found that the meeting was conducted as per the permission, however, the loudspeakers installed by the organizers were directed outside the venue, blaring in loud volume so as to cause public inconvenience. The eighth respondent, accompanied by other police personnel, visited the venue and advised the organizers to lesser the volume of the loudspeakers and also to turn the loudspeakers towards the venue, which it appears, was not heeded, and accordingly, the loudspeakers were turned towards the venue. Connecting wire to the loudspeakers were not snapped as alleged.

13. It is not a case of the petitioners that the meeting was disrupted or any untoward incident had happened or the police have exceeded its power more than regulating the direction of



the loudspeakers. The petitioners have failed to establish any breach or infringement of any fundamental right guaranteed to the petitioners under Articles 14 and 19 read with 21 of the Constitution of India. Thus, the petitioners' claim of compensation is unfounded and deserves to be rejected. In the case of **Anita Thakur** (supra), cited by the petitioners, a peaceful march was stopped by the authorities, which resulted into pelting of stones and due to some lapses on the part of the authorities, it took an ugly turn. In such view of the matter, the compensation was directed to be paid. But, in the case on hand, no such situation has occurred and the meeting was carried out peacefully without any violence or untoward incidents and as such the observation made in the case is not applicable to the facts of the case.

14. So far as relief to grant security to the second petitioner and his family members are concerned, it is the concern of police agency in case of threat to the person or/and property, on verification of a representation, if any, made to the concerned police authorities. In the fact of the case, no direction to grant security is warranted.

15. It is imperative to state herein that the Supreme Court in **Noise Pollution (V), In Re²**, observed as under: -

2 (2005) 5 SCC 733



"11. Those who make noise often take shelter behind Article 19(1)(a) pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others. Nobody can indulge in aural aggression. If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19 (1) (a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by the High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are *Free Legal Aid Cell Shri Suman Chand Aggarwal v. Govt. of NCT of Delhi* : AIR 2001 Del 455 and *P.A. Jacob v. Supdt. of Police* : AIR 1993 Ker 1. We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in entire agreement therewith."

16. In the State of Sikkim, honking horns in vehicles and bursting firecrackers in festive occasions are proscribed. Keeping in view such a spirit, the organizers of the public meeting ought to have taken care not to create excessive noise to cause unnecessary nuisance to the general public.

17. In fine, it is well settled principles of rule of law that regulation of volume of loudspeaker is necessary to contain noise pollution as the public at large are entitled to protection from excessive noise pollution. In the aforesaid analyses, I am constrained to observe that:



- (i) the police before taking any action to regulate noise pollution be directed to issue necessary instructions;
- (ii) in a case of meeting like this, prior notice ought to have given to the organizers in writing;
- (iii) in the event, the notice is not responded or not complied with, the police is entitled to take appropriate action in accordance with law;
- (iv) the organizers of such meetings are directed to observe conditions enshrined in the permission strictly; and
- (v) the permission granted be specific, unambiguous, clear in understanding.

18. Resultantly, I do not find any merit in the case and accordingly the petition fails and is dismissed.

19. No order as to costs.

Chief Justice
29.05.2017

jk/

Approved for Reporting : Yes/~~No~~.
Internet : Yes/~~No~~.