

Calcutta High Court

Burrabazar Fire Works Dealers ... vs The Commissioner Of Police And ... on 26 September, 1997

Equivalent citations: AIR 1998 Cal 121

Author: A B Mukherjee

Bench: B P Banerjee, A B Mukherjee

ORDER

1. Two matters were heard together. One is an application filed by Mohan Fire Works and Chandan Golcha carrying on the business under the name and style of Chandan Mal Golcha for addition of party respondents in the disposed of Writ Application in C.O. No. 4303(W) of 1995 with a prayer for stay of the operation of the Memo No. 1039 dated 28th October, 1996 as well as Police Notification dated 2nd November, 1996 and to permit or allow manufacture, sell, dealing and/or trading and storing of fire works without any restriction and also to permit or allow bursting of fire works/caters of less than 90 dB at 5 kilo metre distance from the site of bursting without any restriction whatsoever. The other one is a writ application filed by Burrabazar Fire Works Dealers' Association against the imposition of ban on certain items of noisy fire works on the ground that the same violates the fundamental rights of the fire works Dealers to carry on trade and business guaranteed under Article 19(1)(g) of the Constitution of India.

2. As the same questions of fact and law involved, two cases were heard together and disposed of by a judgment. Though there is no scope for addition of party respondent in a disposed of writ application as the matter is heard along with another independent matter without formally adding them parties, their counsels were heard at length on the basis of the facts, figures and the law on the subject as the matter is of great public importance.

3. Mr. S.K. Kapoor with Mr. Debol Banerjee appeared for the applicant Mohan Fire Works and Mr. Sakti Nath Mukherjee appeared for the writ petitioner Burrabazar Fire Works Dealers' Association.

4. It was a contention of the learned Counsel appearing for the parties, is that neither the Pollution Control Board nor the Commissioner of Police have any authority and jurisdiction under the law to impose such a restriction or condition and that by imposing such ban on manufacture, sell or use of certain items of fire works, their fundamental right to carry on trade or business guaranteed under Article 19(1)(g) of the Constitution have been affected. The ban on certain items of fire works which were generating tremendous sound was stopped pursuant to a direction passed by this Court on 30th September, 1996 is to the following extent:

"We also direct the Pollution Control Board to take suitable measures to stop creating sound pollution by means other than the microphones, such as user of electric, air horn in public vehicles, fire works and other sources of sound nuisance. The Police Authorities should also perform their duties in this connection for the purpose of controlling the sound pollution in the State with active collaboration and co-operation with the Pollution Control Board."

5. This direction was issued by this Court in the background and in connection with the judgment of this Court in the case of Om Biraugana Religious Society v. State, reported in (1996) 100 Cal WN 617, where this Court explained the provision of Article 19(1)(g) of the Constitution of India and it was held that within the scope and ambit of the provisions of Article 19(1)(a) of the Constitution of India which provides Fundamental Rights of Citizens to Freedom of Speech and Expression and this right was only subject to restriction impossible under Article 19(2) of the Constitution. It was held that freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India by necessary implication, includes right not to listen and/or to remain silent. This right includes right to leisure, right to sleep, right to read and speak with others and even right to worship in his own way and that it was been held that sound is a known source of pollution and by means of sound through loud-speaker or others, citizens cannot be made captive listeners and which forced to hear something which his body or system cannot hear and which he does not like to hear or

likes to tolerate but he has to bear the tremendous effect of sound which had the effect of silencing him and have the chilling effect on all of his rights because of the tremendous sound and noise, the citizens cannot exercise all these fundamental rights. Every citizens have a right but his right comes to an end when it tends to interfere with others right. Nobody can enjoy an exclusive right of his at the cost of/or suspending the rights of others. In that judgment, it was held that the Police Authorities and/or Administrations have no right to grant permission to use microphone without any restriction with regard to the noise level and accordingly, directed that the Pollution Control Board should maintain Noise Level Register for measuring the level of noise and the said Authority shall indicate the level of noise, which could be permitted by use of microphone on any occasion. There were certain other directions in this order which is not relevant for the purpose of this case as on the strength of the said order, the Pollution Control Board have fixed up the noise level for different area and for that purpose divided the areas into four different zones, viz., (a) Industrial, (b) Commercial, (c) Residential and (d) Silence Zone. The silence zone includes, hospitals, nursing homes, schools colleges, Courts etc., where the noise level was fixed at a lower level whereas the noise level at the industrial area was fixed at higher level. Expert Committees were set up, who went into this matter and upon total consideration of the noise level in the city and suburbs and different parts of West Bengal fixed up the same.

6. The Member Secretary of the Pollution Control Board informed the Director General of Police, West Bengal as well as the Commissioner of Police, Calcutta by the Memo dated 28-10-1996, which is as follows :

"Hon'ble High Court at Calcutta was pleased to pass an order on 30-9-96, which read as follows :

"..... We also direct the Pollution Control Board to take suitable measures to stop creating sound pollution by means other than the microphone, such as user of electric or air horn of public vehicles, fire works and other sources of sound nuisance. The Police Authorities should also perform their duties in this connection for the purpose of controlling the sound pollution in the State with active collaboration and cooperation with the Pollution Control Board."

2. In pursuance of the aforementioned order the Director General of Police, Police Commissioner, Calcutta and all District Magistrate were requested not to allow manufacturing, selling or storing or any fireworks generating noise pollution. The fire works generating a noise above 65 dB in the ambient atmosphere will be unfit for manufacturing, trading and use.

3. The aforementioned direction may be circulated among the manufacturers, storing Agents and Selling Agents of the fireworks.

Apart from this, all the authorities are also requested to implement the guidelines of the State Pollution Control Board issued on 30-4-1996 and 13-8-1996 in respect of controlling noise pollution. The aforementioned instructions are in conformity with the order of the Hon'ble High Court at Calcutta in connection with X.O. No. 4303 (W) of 1996.

Compliance report may kindly be communicated, to the State Pollution Control Board on or before the 16th November, 1996."

7. The Commissioner of Police, Calcutta, passed orders being Police Order No. 1584 published in the Calcutta Police Gazette in its issue dated November 4, 1996 which is as follows :

"Orders by the Commissioner of Police, 1584.

NOTIFICATION

Whereas, information has been received from credible sources that there will be large scale manufacture, possession, transportation, sale, discharge and use of fire-works, sound of which are likely to generate noise

exceeding 65 decibel within the limits of Metropolitan area of Calcutta and its suburbs within the jurisdiction of Calcutta Police.

And, whereas, the schedule made under the Environment Protection Rules, 1986 and Environment Protection (Third Amendment) Rules, 1989 prescribed a decibel limit of 65 and below as Ambient Air Quality Standard for Commercial Areas;

And, whereas, discharge or use of any such fire-works as per list given below, is certain to generate noise exceeding 65 decibels causing thereby injury to the health of the members of the public;

And, whereas, I, D.C. Vajpai, Commissioner of Police, Calcutta being an Executive Magistrate for the Metropolitan area of Calcutta and for the Suburbs of Calcutta within the jurisdiction of Calcutta Police have been specially empowered by the State Govt. under Notification Nos. 2890- P. and A.R. (P) 2P-01/96 PC, dated 31-10-96 and No. 2894-P. and A.R.(P) 2P-01/96 PC, dated 31-10-96 respectively to act under Section 144 of the Code of Criminal Procedure, 1973 (Act of 1994);

And, whereas, in my opinion there is sufficient ground for proceeding under the said section for prevention of manufacture, possession, transportation, trading, sale, discharge and use of fire-works generating a noise above 65 decibels :

Now, therefore, in exercise of power conferred by the Sub-sections (1) and (4) of Section 144 of the Code of Criminal Procedure I, the said D. C. Vajpai, Commissioner of Police, Calcutta do hereby prohibit with effect from today (2-11-96) and until further orders within the limits of Metropolitan area of Calcutta and its suburbs within the jurisdiction, of Calcutta Police any person or persons from the manufacture, possession, transportation, trading, sale, discharge and use of the following fire-works, which have been detected by West Bengal Pollution Control Board as to generate noise above 65 decibel.

(1) Chocolate Bomb (2) Chain Crackers (3) Loose Crackers (4) Kali Patka (5) Dhani Patka (6) Dodoma (7) Seven Shots (8) Rocket Bomb and (9) Any other fire-works generating a noise exceeding 65 decibel as certified by the West Bengal Pollution Control Board.

This Notification is issued in conformity with the order passed by the Hon'ble High Court, Calcutta in the Writ Petition of 1996 :--

Burrabazar Fire Works Dealers Association and others, v. Commissioner of Police, Calcutta and others and also order passed by the Hon'ble High Court in C.O. No. 4303(W) of 1996. This order is subject to any further order which may be passed by the Hon'ble High Court in the same matter.

Violation of any provision or condition of this Notification by any person or persons is actionable and punishable under the law.

Given under my hand and seal this day of 2nd November, 1996.

D. C. VAJPAI

Calcutta Commissioner of Police

Dated the 2nd November, 1996. Calcutta."

8. Both Mr. Shakti Nath Mukherjee and Mr. S. K. Kapoor contended that the authorities concerned have not been able to understand the difference between 'Ambient Noise Level' and 'Impulsive or Impact Noise Level' Ambient Noise Level means noise level which is generated from various sources in the surrounding and

Impulsive Noise Level is a sort of sudden generation of sound and its duration is few second.

9. It is submitted that the provision's of under Section 16(2)(h) of the Air (Prevention and Control of Pollution) Act, 1981 provided power upon the Central Pollution Control Board "lay down standards for the quality of air" and definition of environment pollutants has been defined in Section 2(b) of the Environment (Protection) Act, 1986, which means" any solid, liquid or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to environment". Rule 3 of the Environment (Protection) Rules, 1986 provides :

"(1) For the purpose of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environmental pollutants from the industries, operations or processes shall be as specified in (Schedule I to IV).

(2) Notwithstanding anything contained in Sub-rule (1), the Central Board or a State Board may specify more stringent standards from those provided in (Schedule I to IV) in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons, therefor, in writing."

10. Schedule III framed under Rule 3 of the Environment (Protection) Rules, 1986 provides as follows :--

Ambient Air Quality Standards in Respect of Noise

Area Code Category of Area Limits in dB (A)

Day Time Leg. 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 is reckoned in between 6a.m. and 9 p.m.

Note -- 2 Night time is reckoned in between 9 p.m. and 6 a.m.

Note -- 3 Silence zone is defined as areas up to 100 metres around such premises as hospitals, educational institutions and Courts. The Silence Zones are to be declared by the Competent Authority.

Use of vehicular horns, loud-speakers and bursting of crackers shall be banned in these zones.

Note -- 4 Mixed categories of areas should be declared as one of the four abovementioned categories by the Competent Authority and the corresponding standards shall apply."

11. According to the learned Counsel, appearing on behalf of the petitioners, these are the provisions for protection of sound pollution under the law. It is submitted that Schedule III laying down Ambient Air Quality Standard in respect of noise could not be framed as it submitted that noise is not a matter, noise is not connected with any solid, liquid or gas and the emission or discharge of any solid, liquid or gas, is not related to sounds. These are the arguments made from the bar but there was no pleading and no case has been made out in the petition.

12. It is further submitted that the said dB limit for day time and night time which has been followed in toto by the West Bengal Pollution Control Board and imposed restrictions in the State of West Bengal on the aforesaid standard is wholly related to Ambient Noise Level and not Impulsive Noise Level. In order to demonstrate the capacity to bear the Ambient Noise Level and impulsive noise level, reference was made to Table 1 and Table 3 of the West Bengal Factories Rules, 1958 which regulates the permissible exposure in case of continuous noise viz., ambient noise and permissible exposure level of impulsive noise (sudden noise) from the said table it appears that the factory premises, the prescribed limit is 90 dB for 8 hours a day and 100 dB for 2 hours a day. So far as the impulsive noise is concerned, the permissible exposure limit, was prescribed to be, is within Pick Sound Pressure Level in dB 140 permitted impulsive noise can be 100 times and on the contrary in the Pick Sound Pressure Level in dB 120 it could be 10,000 nos. This West Bengal Factories Rules was promulgated in the year 1958 and it is not known on what basis and on what report this had been done. Be that as it may, these are the conditions and restrictions that has been laid down under the Factories Rules to prevail in the factory and that analogy will not be and cannot be made applicable to noise level in open air where the receivers or sufferers are the public and the citizens at large. It has to bear in mind that while working in a factory if any employee incurs any disability of any kind partial or in whole including hearing loss, there are adequate provisions under the Workmen's Compensation Act to compensate the loss of health and/or hearing caused (sic) any workman while he is in employment. These are occupational hazards and every worker has accepted the job with these occupational hazards and law has given sufficient protection in case of permanent or partial disablement under the law.

13. It was further submitted that under the law or by the Central Pollution Control Board no sound level or standard for fire crackers have been laid down and accordingly the West Bengal Pollution Control Board and/or the Police have no authority or jurisdiction to lay down such conditions and restrictions which amounts to deprivation of the petitioners right to carry on trade or business guaranteed under Article 19(1)(g) of the Constitution. It was submitted that there was no provision for the delegation of power under the acts of the State Pollution Control Board and the Central Pollution Control Board has the power to lay down standard for the quality of air. The expression of 'Quality' is descriptive of organic composition of substance to express in definite quantitative units and definitive character, nature and degree of excellence of an article. This is the dictionary meaning of the word 'Quality' as per Black's Law Dictionary.

14. Accordingly, it is very doubtful to hold that the quality of the air includes sound. Noise has been given a variety of definitions depending on the circumstances in which it occurs and effects it produces. It has been defined, as "a number of tonal components disagreeable to man and intolerable to him because of the discomfort fatigue agitation and in some cases pain it causes", (See Noise Control by Christopher N. Penn). Sound may be defined as any pressure variation that human ear can detect.

15. Our attention has also been drawn to the minutes of the second meeting of the National Committee on Noise Pollution Control held in Calcutta on 5th September, 1997 wherein with regard to noise standard for fire works, the following was considered and recommended :

"The Chairman suggested that either of the two criteria via, (i) annoyance or (ii) hearing impairment, may be adopted for fixing standards for fire-works. Some members were of the opinion that first criterion may be adopted, as use of fireworks causes annoyance and disturbance to public at large. They stressed that the sound-causing fire-works should be immediately banned and they did not agree with the suggestion for phasing out of such fire-works over a period of 1 -2 years. The Member Secretary, West Bengal Pollution

Control Board, informed the members that West Bengal Pollution Control Board has already banned the use of fire-works causing noise more than 65 dB(A) which was subsequently upheld by the Hon'ble High Court, Calcutta.

Some members were in favour of the second criterion. Reference was made to the draft guidelines prescribed by the Bureau of Indian Standards which stipulate that the noise levels of fire-works should not exceed 100 dB (Impulse) at 4 m distance. Earlier, an Expert Committee set up by CPCB, in 1989, had recommended that the noise levels of fire-works should not exceed 90 dB (Impulse) at 5 m distance.

After detailed discussion, the Committee recommended that noise making fire-works, which generate noise more than 100 dB (Impulse) at 4 m distance, be phased out within next two years. If any State Board desires to ban such fireworks earlier, they may do so depending on local conditions."

16. Burrabazar Fire Works Dealers' Association filed a Writ Application one year back in this Court whereupon the Hon'ble Justice Samaresh Banerjee after giving detailed reasons rejected the prayer for injunction and being aggrieved by order of 1st November, 1996, the petitioner moved the Supreme Court to a Special Leave Petition but ultimately the Supreme Court in view of the fact that the writ application is pending and the parties have a right to prefer an appeal, the Supreme Court did not pass any order on the said Special Leave Petition. The Hon'ble Justice Samaresh Banerjee while disposing of the prayer for interim order had observed.

"The fact that the petitioners are carrying on their business under valid licence granted under the Explosives Act and the Rules made thereunder are not disputed. Such licence, no doubt, permits the petitioners to carry on such business. But the provisions of such Acts, specially the Environment Protection Act, 1986, has got an overriding effect over all other enactment. Section 24(1) of the Environment Protection Act, 1986, provides, inter alia, that the provisions of the said Act, and the Rules and Orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act. Under Section 3(1) of the said Act, the Central Government has power to take all such measures for the purpose of protecting and improving the quality of the environment, preventing and controlling environmental pollution. Under Section 3(2)(h) of the said Act, such measures may include laying down standards for the quality of environment in its various aspects. Under Section 6(2)(a) thereof, the Central Government may frame Rules for laying down such standards, i.e., the quality of air for various areas. Such Rules have been framed, viz., Environment Protection Rules, 1986. The Environment Protection (Third Amendment) Rules, 1989 inserted a Schedule laying down the Ambient Air Quality Standard in respect of noise which contains the limit in Decibels in respect of different areas which appears to be, so far as industrial area is concerned, 75 in day time and 70 in night time, in commercial area 65 in day time and 55 in night time, for residential area 55 in day time and 45 in night time and in silence zone 50 in day time and 40 in night time. The same Standard of Ambient Air Quality Standards in respect of noise has also been laid down by the Central Board in exercise of its power under Section 16(2)(a) of the Central Board Air (Prevention and Control of Pollution) Act, 1981. It will thus appear such Standards has been fixed by the Central Pollution Board and it has now sought to be enforced by the present respondents against the petitioners which is not really arbitrary one is sought to be argued on behalf of the petitioners, but a statutory one is obviously determined by the experts. If any restriction is, therefore, sought to be imposed on the petitioners in respect of sale of fire-works having noise level exceeding such a limit, it cannot be said that the respondents are seeking to impose an arbitrary limit."

17, Excepting laying down the Ambient Noise Quality Standards in respect of Noise in four different zones, no attempt has yet been made by the Law Making Authority or the Rule Making Authority to lay down any standard for Impulsive Noise Level. Unfortunately, in India no such restriction has been made on the user of microphones or loud-speakers for which this Court had occasion to consider the matter not only from the pollution angle but in the context of the rights of the citizens guaranteed under Article 19(1)(a) of the Constitution of India and held that nobody has got any right and/or any fundamental right to suspend the rights of the other citizens of this country. Ordinarily, the duty of the Court is to enforce the law and normally

the Court shall leave the matter to the Parliament or the Legislature but the Supreme Court in the case of Union of India v. Raghubir Singh ,

held that it is used to be disputed that Judges make law. Today, it is no longer a matter of doubt that the substantial volumes of law governing the lives of citizens and regulating the functions of the State flows from the decisions of the Superior Court. In Pomal Kanji Govindji v. Vrajlal Karsandas Purohit , it has been held by the Supreme Court that the law must respond and be responsive to the felt and discernible compulsions of circumstances that would be quitable, fair and just and unless there is anything to the contrary in the statute, Court must take cognizance of the fact and act accordingly. In M. C. Mehta v. Union of India , it was held that where a law of the past does not fit in the present context, the Court should evolve a new law and in National Workers' Union v. P. R. Ramkrishnan , it was held, if the law fails to respond, to the needs of the changing society, then either stifle the growth of the society and choke its progress or if the society is vigorous enough it will cast away the law which stands in the way of its growth. Law must therefore, constantly be on the move adopting itself to the fast changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation.

"The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again practitioners are faced with new situations, where the decision may go either way. No one can tell what the law is until the Courts decide it. The Judges do every day make law, though it is almost hearsay to say so. If the truth is recognised then we may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present."

("The Reform of Equity", in C. J. Hamson (ed.), Law Reform and Law-Making (1953), p. 31.)

18. James S. C. Reid, 'The Law and the Reasonable Man', 1968, Proceedings of British Academy, 193, 194-5, said,

"I suppose that almost every doctrine of the common law was invented by some Judge at some period in history, and when he invented it he thought it was plain common sense -- and indeed it generally was originally. But, with the passage of time, more technically minded Judges have forgotten its origin and developed it in a way that can easily cause injustice. In so far as we appellate Judges can get the thing back on the rails let us do so; if it has gone too far we must pin our hopes on Parliament."

19. In course of hearing the Law Officer of the State Pollution Control Board filed a written submission to the Court wherein it was stated that pursuant to the order of this Court dated 30th September, 1996, the State Board had taken a decision fixing the sound level of the fire works at 65 dB. At that stage the learned Counsel appearing for the applicants requested the State Board to disclose the decision taken by the State Board fixing the noise level of the fire works and on that basis the Commissioner of Police, Calcutta prohibited manufacture, storage, and sale of certain fire works whose noise level was higher than 65 dB. Surprisingly the State Board could not produce any order or decision of the State Pollution Control Board fixing the noise level of the fire works in the State of West Bengal pursuant to the order of this Court dated 30th September, 1996.

20. Under such circumstances, Mr. Sakti Nath Mukherjee, learned Advocate appearing for the applicants submitted that it was surprising that without taking any formal decision by the State Pollution Control Board, the manufacturing, storage, sale and use of certain items of fire works were banned and for stopping business the State Board is responsible for causing huge loss to the fire-works manufacturers and dealers, for the last one year. Secondly, it was submitted that under the Air (Prevention and Control of Pollution) Act, 1981, the West Bengal Pollution Control Board has no authority and/or jurisdiction to impose any restriction on the noise level of the fire-works as it is submitted the same was within the exclusive power of the Central Board for the Prevention and Control of Air Pollution.

21. In this connection, Mr. Bikash Ranjan Neogi, appearing on behalf of the State Pollution Control Board, submitted that Section 4 of the Air (Prevention and Control of Pollution) Act, 1981 confers power upon the State Board to take such action. Section 4 of this act provides that in any State in which the Water (Prevention and Control of Pollution) Act, 1974, is in force, and the State Government has constituted for that State a State Pollution Control Board under Section 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted under Section 5 of this Act of 1981 and accordingly that State Pollution Control Board shall without prejudice to the exercise and performance of its powers and function under the earlier Act, exercise of powers and performance, the functions of the State Board for the Prevention and Control of Air Pollution under this Act. In this case, the State Pollution Control Board was constituted under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and accordingly the State Board can also be held to be an authority under the Act, 1981.

22. On the question of ambient and impulsive noise is concerned, much have been argued at length and it was pointed out that the impulsive noise is more tolerable and bearable and or less injurious or harmful than ambient noise. This question has to be decided in the State of affair existing in our country particularly in the cities and metropolis of India and its suburbs. The ambient noise generated by vehicular traffics, by use of air or electric horn, condition of the bad roads, use of generator noise creates a serious impact in raising the ambient noise level to an alarming extent and during the Kali Puja, Deepwali, which are the festivals of light and not of sound, the crackers are burst in millions simultaneously and continuously all over the country, in that event because of the manner in which the crackers are burst, it cannot be said that it is mere impulsive or in other words, it no longer remains as a sudden sound. During these festivals the use of crackers no longer remains as an impulsive sound but merges and becomes an ambient and/or continuous sound at a high-pitch hour after hour, in the Indian context, and behaviour it can be said that the expression of ambient noise and impulsive noise loses its character and significance. One thing is clear that the Pollution Control Board fixed 75 to 40 dB as a higher noise level for different areas for the use of Microphone over and above the ambient noise level from other sources in the City.

23. Mr. Manick Chandra Das, learned Counsel appearing for the State of West Bengal, submitted that the State Government will carry out any direction of this Court and for that purpose it was submitted that any decibel limit may be fixed by this Court which will decide the issue.

24. Mr. Das also submitted that at the interim order, the matter came up for hearing before Samresh Banerjee, J., has decided such question which could not be reopened and on that basis that the sound level have been enforced. It was further submitted by Mr. Das that the applicants are allowed to manufacture, store and sell of fireworks without any restriction, in that event that would bring about a chaotic situation in the State where the people are against the use of such noisy fire-works.

25. Mr. Das also could not explain why 65 dB has been fixed for all areas when the Pollution Control Board had fixed decibel limit in residential area at day time 55 and at night time 45 and in the commercial area 65 dB was fixed for the day time and 55 dB for the night time. It was not a case where the Pollution Control Board had followed the same decibel limit as fixed as the Ambient Air Quality Standard in respect of noise created by Microphones.

26. It is very unfortunate that the Central Pollution Control Board held two meetings for the last 2 years but could not lay down any decibel limit for the fire-works nor the Central Pollution Control Board has made any serious attempt to regulate the use of microphones. Of course, under the Police Act and/or Calcutta Police Act and the Calcutta Suburbs Act, certain powers have been conferred upon the authorities mentioned therein for stopping such use of microphones which would cause nuisance. Till now the Central Government have not come forward with any specific policy and did not lay down any standard or guidance by means of legislation for use of microphones nor the Central Government Pollution Control Board has ventured to enter into this field when sound pollution has become a global problem. It does not require the exercise of any research work to hold that the sound pollution in other developed countries like Europe and America is not so bad or worse

like that of India where sound has become a menace to the society. The use of microphones and user of unrestricted noisy fireworks is creating a problem for last one decade and this problem is increasing to an alarming extent and when it appears to this Court that all other authorities are not at all concerned to tackle this problem, this Court in *Om Birangana's case* (1996 (100) Cal WN 617) in order to uphold the fundamental rights of the citizens as guaranteed under Article 19(1)(a) of the Constitution directed the Pollution Control Board to fix up a particular noise level so that the citizens' right to leisure, right to sleep, right to speak, right to read, right to worship, right to think are not forcibly taken away by the pollutants. Several pronouncements made by the Supreme Court in *Union of India v. Raghubir Singh* , *Pomalkanji Govindhi v. Vrajilal*

Karsandas Purohit , *M.C. Mehta v. Union of India*

, *National Workers' Union v. P. R. Ramkrishnan*

(supra) and other cases mentioned above that where a law of the past does not fit in the present context, the Court should evolve a new law and if the law fails to respond to the needs of the changing society, then either stifle the growth of the society and choke its progress or if the society is vigorous enough it will cast way the law which stands in its way of its growth. Law must, therefore, constantly be on the move adopting itself with the fast changing society and not lag behind.

27. Being conscious of and for giving effect to this legal position this Court directed the State Pollution Control Board by its order dated 30th September, 1996 to take suitable measure to stop creating sound pollution by means of other than use of microphones, such as by use of electric air horn in the public vehicles and fire works and other sources of sound nuisance. Accordingly, this Court had conferred power, in the background of the law laid down by the Supreme Court mentioned above and to protect the fundamental rights of the citizens of this part of country, upon the Pollution Control Board who was directed to take suitable measure to stop creating sound pollution inter alia, by fire works. Accordingly the source of power of the Pollution Control Board is the order of this Court. The order of this Court should be treated in addition to the powers conferred on the Pollution Control Board or other authorities under the law. It is admitted by various international Authorities and Experts that sound pollution has a tremendous effect on health and considering the fact that the West Bengal is a densely populated state where open space are few and rare and when the source of enjoyment of the young people of this state are only to create sounds. In Deepawali or in Kali Puja, it is the common experience to the people of this state that it is a festival of sound not a festival of light. There is no cultural or religious sanction behind this. It is very unfortunate that the Pollution Control Board failed to take decision as directed by this Court. In course of hearing the Pollution Control Board in writing that the State Pollution Control Board on the strength of the order passed by this Court had taken a decision which was implemented on the basis of which the ban was imposed on certain noisy fire works. Records were produced. The learned Counsels examined them but could not place before this Court anything to show that any decision was taken by the Pollution Control Board.

28. We express our strong displeasure to the course of action taken by the Pollution Control Board but in view of the fact that the restriction that was imposed without any formal order was designed to do some public good and the object was not to expose the people to sound nuisance which is admittedly a pollution, this Court in a peculiar facts and circumstances of this case only keeps it record on strong displeasure and directs the Pollution Control to strictly follow the orders and the Pollution Control Board should have taken a decision in compliance of the order passed by this Court and but not doing that they have brought about the situation which was not called for. There was no explanation for this failure.

29. True, according to the learned Counsel appearing on behalf of the applicants, the Central Pollution Control Board had not laid down any such decibel limit and it is also true that the applicants have not violated the directions and orders issued by the Pollution Control Board and/or the Police but faithfully carried out the above restrictions and/or impositions of ban. This Court records its appreciation to the actions of the fire works manufacturers and dealers is not trying to store or sell of the noisy fire works which was banned in an

irregular manner and consequently for the last one year.

30. Professor K.J. Nath, Director of All India Institute of Hygiene and Public Health, Directorate General of Health Services, Govt. of India has forwarded his comments to the Dy. Commissioner of Police, Calcutta Arms Act Department, by his letter dated 26-8-97 in which he had stated that according to Environmental Protection Agency, United States, the standard in respect of noise in commercial areas in a city during the day time is 65 dB(A) leg. However, in residential area and silence zone such limits are 55 & 50 respectively in the day time. Excessive noise above 65 dB(A) adversely affect the community health causing hearing impairment, neurological and psychological problems. This could have other serious long-term health and behavioural impact on the community. It is stated that the fire works are manufactured by using various chemicals which are hazardous in nature. Accidents due to explosions and fire may be caused from such manufacturing units unless adequate precautions are taken. There has been devastating fire causing serious loss of property and life in many cities due to explosions in fire works factories. As Calcutta city is congested with very high population density, manufacturing of fire works in the city of Calcutta need to be totally banned. The use of fire works must also be restricted to maximum limits to be fixed by the West Bengal Pollution Control Board.

31. The reasons for putting such restrictions on manufacturing, storing and selling of fireworks without restriction on sound level should not be allowed as Calcutta is one of the most densely populated and accident would cause heavy loss of life and damage of property.

32. Secondly, it is stated that the available road area in the city is 6% with heavy load and if accidents occurs it would aggravate the situation.

33. Thirdly, the fire works manufacturers may test the products causing noise pollution.

34. Fourthly, Calcutta experienced some devastating explosions and fire from the storage of chemicals in the past.

35. The opinion of Prof. K.J. Nath throws some light on the questions. Incidentally, it may be stated that in the matter of common knowledge that the roads and the streets in Delhi and Mumbai are much wider than Calcutta. The roads of Delhi are wider than Mumbai and in the city of Calcutta there are some streets and lanes which are three to four feet wide. There are some areas which are totally unplanned. Houses have been built by the side of the road in some areas without leaving any space between the road and the house. The city of Calcutta has got its peculiar problem as it is one of the oldest cities in the world. In recent times, efforts have been made to make it a planned city. The houses that have been built in the past have been allowed to remain. No comparison can be made between Indian cities and that of European and American cities. There are large open space kept in the other cities in the world and in Delhi also there are large areas which are kept open. But in the city of Calcutta and other parts of the State of West Bengal no open space are there. There are streets and lanes where even fire brigade could not enter because of the width of the road.

36. Under such circumstances, the problems which have been tackled or sought to be tackled in other parts of the world cannot be made a comparison which is sought to be made by the learned Counsels appearing on behalf of the petitioners.

37. Both Mr. Mukherjee and Mr. Kapoor, appearing on behalf of the Fire Works Manufacturers, drew the attention of this Court to a letter dated June 3, 1997 written by the Central Pollution Control Board to the Fire Works, and in the said letter the Member Secretary of the Central Pollution Control Board informed that the Central Pollution Control Board has published a report on "Ambient Noise Level in Delhi on the occasion of Deepawali Festival" based on the survey from 1993 to 1995. As per the report it was suggested that the crackers/fire works manufacturers are to produce less sound producing crackers as to meet standard limit and the crackers/fire works manufacturers are to produce the crackers to have a time delay between the ignition and explosion thereby reducing the potential damage due to sudden exposure and also stated that the noise

standards for crackers/ fire works have not yet been notified. However, the Central Pollution Control Board has evolved guidelines for bursting of crackers which were "bursting of crackers producing excessive noise (more than 90 dB(A) at 5 metre distance from the site of bursting) should not be permitted in areas other than the open areas to be specified for the purpose". Further directed bursting of crackers during night hour after 11 p.m. should be banned.

38. In this connection, Mr. Mukherjee & Mr. Kapoor, learned Counsels appearing for the petitioners in the manufacturers application submitted that this matter was taken in international level and even though no finality with regard to the sound level was fixed but it was suggested that it should be around 120 dB and that the maximum Noise Level of 140 dB has been agreed upon by all European Countries. This data and particulars have been submitted solely for the purpose of establishing to the Court that the 65 dB limit fixed up by the Pollution Control Board and the Police, was fixed arbitrarily without having any regard that does not affect health and/or the hearing power of the citizens.

39. Dr. Abirlal Mukherjee, Ex-Sheriff of Calcutta, an eminent E.N.T. Specialist, expert in the field for last one decade who is also a member of the Central Pollution Control Board and an expert in the Expert Committee appointed by the Pollution Control Board, on whose recommendation, the sound level has been fixed up in the State of West Bengal as aforesaid for four different zones. Having regard to the special feature, Dr. Mukherjee, who had occasioned to study the noise level of different streets and different areas, have submitted that the Ambient Noise Level in the different parts of Calcutta is already very high in comparison with the other countries of the world and in some parts of Calcutta only the traffic noise, the noise created on the road by the traffic and an use of horn, it is about 80 dB in the day time and in the night about 60 to 65 dB. This was due to bad condition of the roads and the use of noisy cars, trucks and buses. The situation has become already worse and over and above this abnormal sound level prevailing in the streets in the city of Calcutta and suburbs and other districts and it would be unwise and unhealthy and would create a serious impact on health if the use of fire works above 65 dB or use of microphone is allowed to exceed that dB limit.

40. Dr. Mukherjee disclosed the particulars of the percentages of the hearing loss, total and partial according to the study made by him. According to him 1 1/2% of the population in the city of Calcutta have completely lost hearing power and about 30% are partially affected.

41. In England and other countries of the world excepting U.K., there is no such constitutional protection and there is no fundamental right as provided by our Constitution and the Constitution of U.K. Our entire legal system is based on rights which means that even the Parliament or the Legislature cannot make any law suspending or interfering with the fundamental rights of the citizens unreasonably. Citizens fundamental rights under Article 19(1)(a) of the Constitution is a very important right so far as the citizens of this country are concerned.

42. Accordingly, Article 19(1)(a) of the Constitution of India, cannot be allowed to be suspended and no person or authority can do anything which would have a chilling effect of this important fundamental right of the citizen of this country. That is a reason the countries where there is no such fundamental right, right has to be given by enacting in a law which is not the case in India. The meaning of expression cannot be said to be confined only to speech and expression of anger or represent by a figure, symbol, letter etc.

43. Supreme Court in the case of Cooverjee v. Excise Commissioner and the Chief Commissioner, Ajmer. (Constitution Bench) have held that there is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen. As it is a business attended with the danger to the community, it may be entirely prohibited and/or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of Governing Authority. It was further held, in order to determine the reasonableness of the restrictions regard must be had to the nature of the business and the condition prevailing in the trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all traders can be laid down. The right of every citizen to pursue any lawful trade or

business is obviously subject to such reasonable conditions as may be deemed by the Governing Authority of the country essential to the safety, health, peace, order and morals of the community.

44. Sounds created by fire works, loud speakers, air-crafts, railways are all the products of the technological age and high level of continuous sounds damages hearing and that there cannot be any two opinion about it. From the journals and the reports placed before this Court, it is clearly evident that several millions of people in different parts of the world have had their hearing damages because of generating of these sounds. The noise not only creates pollution but it is also a source of annoyance. Noise is also created by traffic and noise also disturbs sleep. In our country the people have a right to sleep peacefully. A citizen too have right to a decent environment as highlighted by the Supreme Court in various decisions which are all well-known in the field of pollution. The effect of bad night sleep as highlighted by an eminent scientist in the field FIONA GODLEE in his article in British Medical Journal, in which it was stated that noise can have positive effects on health. The effect of bad night sleep includes mood change, reduce cardiovascular performance and poor performance at intellectual and mechanical tasks and it was further observed, a recent review of research into noise and sleep recommends that sound at night in sleeping quarters should not exceed 45 dB(A). It was held that noise also adversely affects behaviour, increasing anxiety and reducing the incidence of helpful behaviour. Levels of aggression are increased by loud noise, an effect which may persist outside the noisy environment. Steel workers have more domestic disputes if they work in noisy areas. The other few impacts and illustrations of the effect of sound on human behaviour and the effect of sound which disturbs sleeps at night.

45. Noise has been identified as a pollutant under Air (Prevention and Control) Act, 1981. Noise admittedly is a hazard to health. For example, Calcutta is one of the greatest metropolitan cities of the world and the noise is one of the environmental pollutants that is encountered by the residents of Calcutta in day to day life. The ambient noise level in different essential areas in the city of Calcutta is alarming without loud speaker and fire works. In Ballyganj area it is 94 in the morning and 84 in the afternoon and 75 in the night. In Salt Lake even in afternoon it is 82 and at night it is 78. In commercial areas, in B.B.D. Bag in the early morning it is 87 and in the night it is 90. In Esplanade area in the morning it is 91 and in the night it is 81.

46. Having regard to this existing noise level which is called the 'Ambient Noise Level', the Pollution Control Board has fixed up the following dB limits in different areas :

Sl. No. Area Decibel

Day Time Night Time

1. Industrial Area 75 70
 2. Commercial Area 65 55
 3. Residential Area 55 45
 4. Silence Zone 50 40
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47. The day time referred to above is calculated from 6.00 A.M. to 9.00 P.M. and the night time is calculated from 9.00 P.M. to 6.00 A.M.

48. So, the fixation of 45 dB (A) at the night time for residential area gets full support from the opinion of the expert referred to in the British Medical Journal is that the sound at night in sleeping quarters should not exceed 45 dB(A).

49. The condition of the European countries, England and America cannot be equated that the condition prevailing in the State of West Bengal particularly in the city of Calcutta. In some parts of the city of Calcutta, the density of population is the highest in the world. The West Bengal is a state where the density of population is also higher than the rest of India. This has a historical background which could not be lost sight of because of partition of India, there were influx of millions of refugees from the then Eastern Pakistan now known Bangladesh and influx of traders and the business communities from different parts of India and Calcutta can be said to be a true cosmopolitan city in the true sense of the term here people from different states, different religions live in an atmosphere which cannot be found in any part of India. West Bengal has got its own peculiar problem and this court cannot decide a matter looking at the Europe or America where the amenities and the facilities are better. Density of population is very very thin. Roads are maintained in a perfect order. Traffic noise is insignificant. The use of horn by vehicles is a thing which is prohibited there unless in case of emergency. People are disciplined. Traffic moves in a disciplined manner. No horns are there. The Ambient Noise Level in those countries are not at par with those noise level in the city of Calcutta and 3 or in different parts of the State of West Bengal.

50. Accordingly, whatever may be decided by the European countries or America, cannot have any direct bearing on the fixation of the sound level in the State of West Bengal. In other civilised countries, cars move without making any noise or sound. Condition of the roads is such that it cannot create any noise beyond tolerance. People in those countries are not in the habit creating unnecessary sounds but in our country because of the gift of the technology sound has become a source of pleasure, for few peoples including some young people. Use of unnecessary horn in the vehicles has become a part and parcel of Indian culture. Even in residential areas one can experience that in the next door a patient is hobbling between life and death but neighbours are for their own pleasure, viewing television or radio or making disco dance by playing record player at a high pitch forgetting that such a tremendous sound is quickening the death of a neighbour who requires peace in that time. This is the culture in which we are living and this culture if allowed to be continued, in that event we have to face extinction. We have to remember poet Rabindra Nath Tagore, have said being frustrated with the evils of modern civilisation that,

(vernacular matter omitted)

(TAKE BACK THE MODERN CIVILISATION AND RETURN US BACK OLD FOREST CIVILISATION)

51. According to the decision of the Supreme Court in Cooverjee v. Excise Commissioner and the Chief Commissioner, Ajmer, (supra) have held that right of every citizen to

pursue any lawful trade or business is obviously subject to such reasonable condition as may be deemed by the Governing Authority of the country essential to the safety, health, peace, order and morals of the community.

52. Accordingly, safety, health and peace is guaranteed to the citizens of India and none can carry on any trade or business which may seriously affect safety, health and peace of the Community.

53. Accordingly, it must be held that Article 19(1)(g) of the Constitution of India does not guarantee the fundamental right to carry on trade or business which creates pollution or which takes away that communities'

safety, health and peace. It cannot be said that a citizen have a fundamental right under Article 19(1)(g) of the Constitution of India to carry on trade or business and/or manufacture poison which may be used for killing of people. This right is negative as nobody has any right to carry on any trade or business in intoxicating liquours by virtue of the right conferred under Article 19(1)(g).

54. We are of the view that there is no inherent or fundamental right in a citizen to manufacture, sell and deal with fire works which will create sound beyond permissible limit and which will generate pollution which would endanger the health and the public order. A citizen or people cannot be made a captive listener to hear the tremendous sounds caused by bursting out from a noisy fire works. It may give pleasure to one or two persons who burst it but others have to be a captive listener whose fundamental rights guaranteed under Article 19(1)(a) and other provisions of the Constitution are taken away, suspended and made meaningless.

55. The order passed by the Commissioner of Police, pursuant to the purported directions issued by the Court and the Pollution Control Board of West Bengal have not banned the manufacturing, selling or dealing or using all types of fire work, but only few fire works have been picked up and prohibited which creates noise beyond permissible limit.

56. A citizen of this country must be allowed to live in a society which is peaceful, free from mechanical and artificial sounds which creates a tremendous health hazards and adverse effect on the citizen. Citizens have a right to live in a society which is free from pollution. If pollutants are encouraged, in that event that would be the beginning of the end of the civilisation.

57. It is contended that the Parliament and/or the Legislature in their wisdom, had not passed any law for putting such a restriction and in the absence of any specific provision in any law, the administration cannot do this thing through the order of the Court, this criticism have no force. If a citizen has a right it is also equally a duty on the part of this Court to see that such rights are preserved and not allowed to be destroyed. Legislature may not rise to the occasion but that does not mean that Court will keep its hand folded in the absence of any legislative mandate. The courts are the custodian of the rights of the citizens and if the court is of the view that citizens' rights guaranteed under the Constitution of India are violated, the court is not powerless to end the wrong. Principle of judicial activism confers power upon the court to be active and not to remain inactive for the purpose of protecting rights, duties and obligations of the people. Article 51A of the Constitution casts the fundamental duties on every citizen to protect and improve the natural environment including forest, lake, river, wild life and to have compassion for living creatures. Tremendous sound is unacceptable not only to human being, but all the other animals. It is well-known that for driving wild elephants from the localities and to save the locality from these wild elephants fire works are used.

58. Accordingly, tremendous sound beyond permissible limit is contrary to civilised order. Even the domesticated animals like pet dogs are afraid of sound. There cannot be any contrary conclusion than to hold that artificial sound created by modern technology cannot be tolerated by the living creatures and it cannot be said to be good for the society. Further the Deepawali festival is a festival of light and not a festival of sound, and, accordingly, it cannot be said that it is a part of the culture or a part of any religious order to use noisy fire works for the purpose of celebrating such religious function. There are sounds which create soothing effect on a living creature like vocal music or instrumental music, but noise created by machines, is a product of the technological age. Music also generates some sort of sound and the use of fire works and microphones also generate sound but there is a gulf of difference between the two types of sounds. Sound created by music or instrumental music is soothing for the human being but not a tremendous sound created by use of microphones and/or fire works which create sound all of a sudden and results in a serious impact on health which is a nuisance and punishable under the law.

59. In *R. v. Secretary of State for Transport ex. p. Richmond upon Thames London Borough Council* (No. 4), (1996) 4 All ER 903, the Court of Appeal considered the power of the Secretary of State acting under powers conferred on him by section 78 (3) of the Civil Aviation Act, 1982, made an order imposing new night flight

restrictions at Heathrow, Gatwick and Stansted airports for various periods. The decision followed consultation papers and imposed aggregated seasonal limits on the maximum number of aircraft movements permitted at the airport. The restrictions in respect of the summer periods allowed more noise than that which had actually been experienced in the summer of 1988, but less noise than that which had been permitted under the restrictions in force at that time. The applicant local authorities, whose inhabitants were affected by aircraft noise, filed application for judicial review of the decision of the Secretary of State. It was held that in the context of the power of the Secretary of State what was important was that the people should be able to understand the policy objectives the Secretary had identified when he began the decision-making process and that they had a chance of making informed submissions to him about the way in which he should exercise his powers against that policy background. The situation since 1993 and subsequent consultation papers had set out the proposals fairly and rationally in an intelligible policy context. It followed that the Secretary of State had not infringed the legitimate expectation of local residents.

60. In England, there is no written Constitution like that of India and in the absence of any constitutional right of the citizens, an Act was passed for the purpose of controlling the movement of certain noiser aircrafts by imposing complete ban in the scheduled movements between certain times. The English common law does not give them a right to sleep as such, but in the ordinary way their comfort and health is protected by the law of tort, which regulates conduct as between neighbours by such mechanisms as the law of nuisance (which is based on the concept of a reasonable amount of give and take) or the law of negligence (which creates duties of care to avoid unreasonable amounts of noise which may cause foreseeable injury to health). If, however, the noise-creator's activities are sanctioned by statute, the common law right to damages, or the equitable right to seek injunctive relief, are removed in the context of Section 76 (1) of the Civil Aviation Act, 1982. The European Convention on Human Rights (the Convention for the Protection of Human Rights and Fundamental Freedoms Time, 4 November, 1950; TS 71 (1953) : Cmd 8969), the balance between the rights of the individual and the rights of the State is achieved through different mechanisms. This was illustrated in *Powell and Rayner v. UK* (European Court of Human Rights, judgment of 21 February, 1990, Series A No. 1724 at 18). The court then accepted, in the context of an application made under Article 8 (i) of the convention, that noise generated by aircraft in the vicinity of airports can affect the quality of (a person's) private life and the scope for enjoying the amenities of his home. However, although Article 8(1) recognises' the right to respect for (everyone's) private and family life, his home.....', this is qualified by Article 8 (2) which permits such 'interference by a public 'authority with the exercise of this right..... as is..... necessary..... in the interest of the economic well-being of the country'. The history of night flight restrictions at Heathrow Airport was there since 1962.

61. Exercise noise is certainly a pollution in the society. In India, no effective and elaborate law has been made for controlling the noise creator. But under Article 19(1)(a), read with Article 21 of the Constitution of India, the citizens have a right of a decent environment and they have a right to live peacefully, right to sleep at night and to have a right to leisure which are all necessary ingredients of the right to life guaranteed under Article 21 of the Constitution. There are various other sources where the noise is created or generated but which offend citizens' right guaranteed under Articles 19(1)(a) and 21 of the Constitution.

62. Whatever may be the conditions elsewhere and whatever may be their approach with regard to the use of fire works and their decibel limits all the authorities including International Authorities and/or the Central Pollution Control Board had approached it only on the question of pollution vis-a-vis the deafness and the loss of hearing but not on Article 19(1)(a). Article 51A of the Constitution has to be kept in mind. A citizen of this country cannot be made a captive listener or captive audience to hear the tremendous sounds which had admittedly other health hazards apart from mere deafness and/or hearing loss.

63. The war of decibels have started all over the world. In India there are two weapons for fighting against the decibel. One weapon is pollution and the other weapon is provided in our Constitution in Article 19(1)(a). In other countries excepting in United States they have no such constitutional arms to end the wrong except by specific legislation. In such a war all concern, including this court have their respective role to play.

64. Under our Constitution, people has a right to sleep and leisure. Disruption or disturbance in sleeps creates mental stress, deficient in working efficiency and other things.

65. Interference with rest or sleep and the factor associated with it -- lack of concentration, irritability reduced efficiency -- is one of the most obvious and annoying effects of noise. Sleep is a psysiological necessity and therefore, health may be adversely affected by insufficient sleep. Apart from health, apart from deafness it affects the digestive sysem, cardiovascular disturbance in cardiovascular system (circular) etc. So this is the only views of all the authorities on the subject including Christopher N. Phenn and other Medical Journals.

66. As pursuant to the order passed by this Court on 30th Sept. 1996, the West Bengal Pollution Control Board had no occasion to take a formal decision after applying its mind on the problem as required by them. The. Pollution Control Board in our view have acted in a manner which is highly illegal. It was duty on the part of the Pollution Control Board to take a decision regarding the sound level of the fire works to be used in the state of West Bengal as a whole.

67. Accordingly, we direct the West Bengal Pollution Control Boai'd with the expert committee already appointed, to take a decision on this question after considering all the aspects of the matter including the suggestions and recommendations made by National Committee on Noise Level Control and after giving hearing to the applicants namely, Mohan Fire Works and the Burrabazar Fire Works Dealers Association and also after considering the view of the experts and the views of Dr. Abirlal Mukherjee, shall pass an order fixing the sound level of the fire works in the State of West Bengal and in view of territorial jurisdiction of this Court neither this Court can direct the order effective to the outside West Bengal and accordingly, the Pollution Control Board's decision shall only confine to the State of West Bengal.

68. As a matter of fact is a very urgent and Durga Puja and Deepawali are knocking at the door, we direct the Pollution Control Board to hear the matter on 30th Sept. 1997 at 12.00 noon and after hearing shall take a decision which must be taken on/before 3rd Oct. 1997.

69. These dates are notified so that no party can complain that he has not given notice of such hearing that is why this court is fixing the dates so that all parties may know of it and on the basis of these dates the matter may be considered and disposed of.

70. The decision taken by West Bengal Pollution Control Board should be circulated to all concerned through Television, Radio and other Mass Media and/or Newspapers and by all other means possible respectedly for one month.

71. Police and all other authorities shall thereupon act on the basis of such decisions and orders that may be passed by the Pollution Control Board. This order is passed not in derogation but in addition to the powers, if any, conferred on any other authorities under any other law for the time being enforce.

72. Until the decision is taken and published, by the Pollution Control Board the present state of affair shall be allowed to continue in the interest of the public at large.

73. The Writ Application filed by Burrabazar Fire Works Dealers Association and application filed by Mohan Fire Works are disposed of.

Asish Baran Mukherjee, J.

74. I agree.