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Jackson and Company Vs. Union of India (Uoi) and anr.

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Court : Delhi

Decided On : Apr-07-2005

Reported in : AIR2005Delhi334; 121(2005)DLT674; 2005(82)DRJ298

Judge : B.C. Patel, C.J. and; Sanjay Kishan Kaul, J.

Acts : Environment (Protection) Act, 1986 - Sections 2, 3, 3(2), 6, 6(1), 6(2), 7, 25 and 25(2); Consumer Protection Act, 1986; Indian Contract Act; Constitution of India - Articles 14, 19, 19(1), 21, 48A and 51A; Environment (Protection) (Amendment) Rules, 2002 - Rules 2, 3 and 89; Environment (Protection) Rules, 1986

Appeal No. : W.P.(C) Nos. 18450/2004 and 3436/2005

Appellant : Jackson and Company;manoj Gupta

Respondent : Union of India (Uoi) and anr.;central Pollution Control Board and anr.

Advocate for Def. : Rajive Mehra and ; Alpana Poddar, Advs.

Advocate for Pet/Ap. : Shanti Bhushan, Sr. Adv.,; Anurag Dubey,; D.P. Pande,;

Disposition : Petition dismissed

Judgement :

B.C. Patel, C.J.

1. The petitioners, engaged in the business of manufacturing Diesel Generators (hereinafter referred to as DG Set) which are being sold and used in India, have prayed for issuance of a writ, order or direction in the nature of certiorari, inter alia, to quash Rule 2(c) of the Environment (Protection) Second Amendment Rules, 2002 contained in the notification dated 17.5.2002 published in Extra Ordinary Gazette Part-II.

2. The Competent Authority in exercise of powers conferred by Sections 6 and 25 of the Environment (Protection) Act, 1986 (hereinafter referred to as the Act) made the rules known as The Environment (Protection) Rules, 1986 (hereinafter referred to as the Rules). By the aforesaid notification in exercise of the powers conferred under Sections 6 and 25 of the Act the Rule making authority, made the rules, known as The Environment (Protection) Second Amendment Rules, 2002 (hereinafter referred to as the Amended Rules). By the said amendment, noise limit of generator sets run with diesel came to be re-determined or fixed. Relevant part of Clause (1) of Entry 94 as inserted by the aforesaid Amended Rules reads as under:-

'Noise limit for diesel generator sets (up to 1000 KVA) manufactured on or after the 1st July, 2003.

The maximum permissible sound pressure level for new diesel generator (DG) sets with rated capacity up to 1000 KVA, manufactured on or after the 1st July, 2003 shall be 75 dB(A) at 1 metre from the enclosure surface.

The diesel generator sets should be provided with integral acoustic enclosure at the manufacturing stage itself.

The implementation of noise limit for these diesel generator sets shall be regulated as given in paragraph 3 below.'

3. Reading the Amended Rules, it is clear that the noise from diesel generator set must be controlled by providing an acoustic enclosure or by treating acoustically at the manufacturing stage. The limits are to be regulated by the State Pollution Control Boards and the State Pollution Control Committees. Amended Rule 3.1

refers to diesel generator sets up to 1000 KVA rated out put, manufactured or imported in India on or after 1st July, 2003. Rule 3.2 mandates every manufacturer to have a valid certificate. Agencies for certification are also appointed by Rule 3.6.

4. Learned counsel for the petitioners submitted that rules are vocative of the provisions contained in Articles 14, 19 and 21 of the Constitution of India in so far as it fixes standard noise limit of 75 dB(A) for all diesel generator sets up to 1000 KVA irrespective of location for use and capacity. The duty to provide integral acoustic enclosure for these generator sets upon the manufacturers is also vocative of the fundamental rights, as aforesaid. It was further submitted that Section 7 of the Act prohibits emission or discharge of environmental pollutants in excess of the standards. Section 7 of the Act reads as under:-

'No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.'

5. According to learned counsel for the petitioners, this section would come into play only when diesel generator sets are put to use and not before that. It is open, according to learned counsel for the petitioners, for a consumer to purchase a generator set and it is for him to use the same in such a way which may not exceed the noise level prescribed. He may purchase the accessories from the market or may prepare himself and use the same so as to reduce the noise level so as to bring the same as per standard. If the consumer is not providing acoustic enclosure or such other device to the D.G. Set so as to bring the noise level within the permissible limits, then its use by a consumer is prohibited. According to the submission made by learned counsel for the petitioners, possession of diesel generator set without acoustic enclosure is not prohibited. What is prohibited is the use of diesel generator set causing the noise pollution which is not within the prescribed norms. He further submitted that there is no obligation cast on the manufacturer to provide acoustic enclosure or a safety device so as to reduce the noise level. Learned counsel for the petitioners further submitted that Rule 3 of the Rules refers to standards for emission or discharge of environmental pollutants. The word environmental pollutants means any solid, liquid or gaseous substance

present in such concentration as may be, or tend to be injurious to environment. Environmental Pollution means the presence in the environment of any environmental pollutant. According to learned counsel for the petitioners, the rule making authority is not empowered to make rule, calling upon the manufacturer to provide a device to control the noise pollution. According to the submission, it is for the Parliament to amend the Act so as to bring the noise pollution within the limits that may be prescribed. In the Environment Act, as it stands, according to learned counsel for the petitioners, there is no power to make rules as amended.

6. It was further submitted that reading Section 6 of the Act, the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas are required to be prescribed. According to learned counsel for the petitioners, in view of Section 6 of the Act, it is difficult to understand the act of the State in compelling the manufacturer to provide acoustic enclosure on all the DG Sets, as there may not be need of such a rigorous control if the farmer is using a diesel generator set in his farm for the purpose of drawing water or other purpose. While in the case of a city, according to learned counsel for the petitioners, it may be felt absolutely necessary. It is in view of this that a submission is made that the restriction should be at the user end and not with the supplier. The Government has utterly failed in examining these aspects. It was submitted that a loud speaker used in a thickly populated locality may be a nuisance to every one, but use of a loud speaker in an open space where a public meeting is held, may not be harmful to the people living in a different area. In view of Section 6, it was submitted that the standards are required to be fixed for different places and, thereforee, it is incumbent upon the Government to impose restriction or to lay down conditions at the time of the use, but, it cannot direct the manufacturer to supply the D.G. Sets with acoustic enclosure. Section 25 of the Act was read in toto and it was submitted that in the said section, there is nothing to indicate that a rule making authority is empowered to issue or make rules so as to oblige the manufacturer to provide acoustic enclosure on a diesel generator set.

7. It was also submitted that sub-section (2) of Section 3 of the Act permits to take such measures to prevent pollution but it must be with respect to the matters indicated in sub-section (2). Standards can be laid down for the quality of

environment and its various aspects. Standards can be laid down for emission or discharge of environmental pollutants. There can be restriction in certain areas on industries, operations or processes as also prohibition or the same would be allowed subject to certain safeguards. Sub-section (2) of Section 3 of the Act nowhere authorizes to make a provision directing the manufacturer to provide acoustic enclosure on the diesel generating set as argued by the learned counsel for the petitioners.

8. On behalf of the respondent - Union of India, our attention was invited to a notification dated 19.5.1993 whereby at the manufacturing stage, the manufacturers were duty bound to maintain the standards prescribed, namely, of noise limits for automobiles, i.e. (a) motor cycle, scooters and three wheelers; (b) passenger cars; (c) passenger or commercial vehicles up to 4 MT; (d) passenger or commercial vehicles above 4 MT and up to 12 MT and (e) passenger or commercial vehicles exceeding 12 MT. Similarly, for domestic appliances, the manufacturers were expected to see that the domestic appliances are manufactured in such a way that it does not create noise more than the prescribed limits. The article refers to window air conditioners of 1 ton to 1.5 ton; air coolers; refrigerators; diesel generators for domestic purposes; compactors (rollers); front loaders etc. These rules were issued in view of the power conferred under Sections 6 and 25 of the Act.

9. It was further submitted that so far as the diesel generator sets are concerned, it is not for the first time rules have been made. Apart from the diesel generators for domestic purposes in the year 1998, subsequently notification was issued and in Entry 83 the standards were prescribed as under:-

'Standards/Guidelines for control of Noise Pollution from Stationary Diesel Generator (DG) sets.

(A) Noise Standards for DG sets (15-500 KVA)

The total sound power level, Lw. of a DG set should be less than 94+10 log10 (KVA), dB(A), at the manufacturing stage, where, KVA is the nominal power rating of a DG set.

This level should fall by 5 dB(A) every five years, till 2007, i.e. in 2002 and then in 2007.

(B) Mandatory acoustic enclosure/ acoustic treatment of room for stationary DG sets (5 KVA and above).

Noise from DG set should be controlled by providing an acoustic enclosure or by treating the room acoustically.

The acoustic enclosure/acoustic treatment of the room should be designed for minimum 25 dB(A) Insertion Loss or for meeting the ambient noise standards, whichever is on the higher side (if the actual ambient noise is on the higher side, it may not be possible to check the performance of the acoustic enclosure/acoustic treatment. Under such circumstances the performance may be checked for noise reduction up to actual ambient noise level, preferably, in the night time). The measurement for Insertion Loss may be done at different points at 0.5m from the acoustic enclosure/room, and then averaged.

The DG set should also be provided with proper exhaust muffler with Insertion Loss of minimum 25 dB(A).

(C) Guidelines for the manufacturers/ users of DG sets (5 KVA and above).

01 The manufacturer should offer to the user a standard acoustic enclosure of 25 dB(A) Insertion Loss and also a suitable exhaust muffler with Insertion Loss of 25 dB(A).

02 The user should make efforts to bring down the noise levels due to the DG set, outside his premises, within the ambient noise requirements by proper sitting and control measures.

03 The manufacturer should furnish noise power levels of the unsilenced DG sets as per standards prescribed under (A).

04 The total sound power level of a DG set, at the user(tm)s end, shall be within 2 dB(A) of the total sound power level of the DG set, at the manufacturing stage, as prescribed under (A).

05 Installation of a DG set must be strictly in compliance with the recommendations of the DG set manufacturer.

06 A proper routine and preventive maintenance procedure for the DG set should be set and followed in consultation with the DG set manufacturer which would help prevent noise levels of the DG set from deteriorating with use.

10. After a long time, looking to the requirement of the day, the Legislature made provisions by enacting and/or amending the provisions to protect the environment. People since ages have given due importance to water, reservoir and greenery. Since ages it is known that air, water, sky, earth and fire are the five elements which are the key elements for the composition of human body. Forests and wild life protection had a special place in Indian culture. The care was taken during the period of Rig Veda till British period for environment. Various Acts came to be enacted to take care of nature and to punish the wrong doers.

11. In view of various inventions, the situation is complex now a days, thereforee, the Legislature was required to enact the laws. The problems are so serious that at international level conferences were held and are being held. Various countries participated so as to protect and improve the environment. That being a major issue for the well being of the people as also for economic development through out the world, the proper course of actions were considered. It must be noted that on account of attack on the environment knowingly or unknowingly, scientists, economists, policy makers and administrators have given serious thoughts on the subject. Article 48A of the Constitution of India mandates that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51A of the Constitution of India imposes as one of the fundamental duties on every citizen, the duty to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The United Nations Conference on the Human Environment, held at Stockholm on 16th June, 1972, sought to build upon it, with the goal of establishing a new and equitable global partnership through the creation of new levels of co-operation among States, Key sectors of societies and people, working towards international agreements which respect the interests of all

and protect the integrity of the global environmental and developmental system, recognizing the internal and interdependent nature of the Earth, our home. The decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful Chemicals in the ambient atmosphere and in the food grains. There are growing risks of environmental accidents and threats to life and existing laws dealing directly and indirectly with environmental matters were not sufficient. All aspects were not covered and to eliminate the uncovered gaps, in the year 1986 the Act came into force. So far as pollution is concerned, Halsbury(tm)s Laws of England, Fourth Edition, Vol. 38 states as under:-

'The direct or indirect discharge by man of substances or energy into the aquatic environment resulting in hazard to human health, harm to living resources and aquatic ecosystems, damage to amenities or interference with other legitimate uses of water. The above definition relates to pollution of water, and has not covered pollution in general. As regards noise pollution, it simply connotes unwanted sound in the atmosphere. It is unwanted because it lacks the agreeable amicable quality. Noise is, thereforee, sound, but it is pollution when the effects of sound become undesirable.'

12.The Encyclopedia Britannica (Vol.16, 1968, p.558) states about Noise as under:-

'In acoustics noise is defined as any undesired sound. According to this definition, a sound of church bells may be music to others. Usually, noise is a mixture of many tones combined in a non-musical manner.'

13.The Encyclopedia Americana states about Noise as under:-

'Noise by definition is unwanted sound. What is pleasant to some ears may be extremely unpleasant to other, depending on a number of psychological factors. The sweetest music, if it disturbs a person who is trying to concentrate or to sleep, is noise to him, just as the sound of a pneumatic riveting hammer is noise to nearly everyone. In other words, any sound may be noise if circumstances cause it to be disturbing.'

14. The root cause of pollution lies in the sort of world we have chosen to build for ourselves, and in our thoughtless worship of progress at any cost. Industrialization, urbanization and modernization has invited noise pollution and resultantly, its evil effects. This causes several problems. It disturbs sleep, concentration of work, increases blood pressure in some cases or it causes depression or mental stress or annoyance. It is known to human beings that noise pollution affects not only human beings but also animals and nature. Music, which is loved by people, is nothing but a systematic noise created by instrument. However, when it exceeds its level, it causes annoyance and it has evil effects on others. It is also required to be noted that the sound is not static. Waves move which causes vibrations. Everyone felt that it is necessary to impose restriction so as to see that human being lives his life with peace and there is no breach of Article 21 of the Constitution of India. Considering the aforesaid aspects and other aspects, the rules came to be amended from time to time.

15. Section 7 of the Act is not applicable only to the person who engages himself in any industry, operation or process but is also applicable to one who permits, discharge or emission of any environmental pollutant in excess of such standards as may be prescribed. If diesel generating set is manufactured without providing acoustic enclosure, would mean knowingly allowing others to commit breach of the norms by selling the same in the market either by himself or through agents/dealers. It appears that the same person will be equally responsible. Manufacturing and selling of Diesel generating set, knowing full well that it does not meet with the noise emission standards without providing acoustic enclosure, will be a violation of the provisions of the Act and Rules. In such case, the manufacturer and seller are jointly and severally liable for the violation of the provisions of the Act. Modeling a machine to achieve a prescribed standard of emission is a process related to its manufacture, and that can never be a user(tm)s responsibility, but is always the manufacturer(tm)s responsibility. To achieve that standard, if an acoustic enclosure is essential, it must, and should be at the manufacturing level, and not at the user level. Not providing such an acoustic enclosure will amount to offering for sale a machine that do not meet with a standard having considerable public important, and thus constraining others to commit a breach of the norms. An end-user is always not supposed to know the

emission standards prescribed for a machine, and, thereforee, it ought have to be fixed at the manufacturing stage. It can be said to be a responsibility of the end-user to ensure that the equipment is well kept so as to ensure that emission is maintained. A manufacturer cannot be heard to say that acoustic enclosures are available in the market, and the purchaser may use it to reduce the noise pollution.

16. One cannot ask a consumer to go from one place to other place to buy and fit the accessories before the use so as to see that use of it is not an offence. It is a duty of a manufacturer to deliver the article manufactured in a condition whereby use of it is not an offence. In a motor car the manufacturers are providing a silencer or a muffler. The manufacturers cannot say to the consumers to get it from the market and fit in the car. When the goods are delivered by the manufacturer, it must be delivered in such a state so as to see that the use of the same is not offensive to any one much less is not an offence. Goods are to be supplied to a consumer without any defect. The legislature by enacting the Consumer Protection Act,1986 has provided an Act for better protection of the interests of consumers. Defect is defined in sub-clause (f) of Section 2 of the said Act, which reads as under:-

'2 (f) defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods;'

If the article manufactured has any fault, imperfection or shortcoming in the quality etc, then it would be considered as defective goods. Considering the provisions contained in the Constitution of India and the provisions contained in other Act, namely, the Indian Contract Act, it is not open to a person to supply a defective machine. If a D.G.Set is creating noise, then it can be said that there is a shortcoming in the quality or the standard which is required to be maintained. A D.G. Set may run perfectly and there many not be any fault at the time of running the machine. However, while operating the machine it is creating more noise than the prescribed level, it can be said that there is a defect in the manufacture. The norms which are prescribed under the Act and the amended Rules are required to

be maintained. Consumer is not expected to have a detailed knowledge about the noise level or noise being created by the use of a machine which is beyond the norms prescribed. The consumer would be interested in buying a machine so as to see that the use of it is not creating any nuisance or annoyance including by making noise. That is the reason why a provision is made by the Legislature with regard to providing appropriate device and maintaining standards at the time of manufacturing itself.

17. Section 6 of the Act has been brought into force with effect from November, 1986. Section 3 of this Act confers power on the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. oEnvironment includes water, air and land and the inter-relationship which exists among and between water, air and land and human being, other living creatures, plants, micro-organism and property. It is in this back ground that Section 6 is enacted. We have to consider sub-section (1) of Section 6 of the Act, which provides the Central Government to make rules in respect of all or any of the matters referred to in Section 3. Section 3 has two parts, namely, sub-section (1) and sub-section (2). Maximum allowable limits of concentration of various environmental pollutants including noise can be prescribed. The short dispute, if we may say so is the restriction imposed by the Amended Rules. Entry referring to noise limit for diesel generating sets run by diesel states othe diesel generator sets should be provided with integral acoustic enclosure at the manufacturing stage itself. The objection raised by learned counsel for the petitioners is that if instead of oat the manufacturing it is stated oat the time of use, the petitioners would not be in a position to make any grievance. According to learned counsel for the petitioners, the use of generator set which is creating noise beyond the prescribed limits is an offense. It is required to be noted that the Legislature has provided Section 3(1) which reads as under:-

Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

18. By virtue of this section, the government is empowered to take all such measures as it deems necessary, not only for the purpose of protecting and improving the quality of the environment but also for preventing, controlling and abating environmental pollution. It is under this provision that, for the purpose of preventing the excessive noise or controlling the noise level so as to prevent, control and abate environmental pollution, the rules have been made.

19. It is required to be borne in mind that the buyers are going to pay the cost for acoustic enclosure. It is not that the manufacturers are compelled to supply free of cost and on that account the petitioners cannot make any grievance by stating that it violates fundamental rights to carry on business or manufacturing activities. His manufacturing activities are not prohibited but the product which he is manufacturing is regulated so as to prevent and control environmental pollutant. Rules are made keeping in mind Sections 6 and 25 of the Act. The standards are prescribed for environmental pollutants under sub-clause (a) of sub-section (2) of Section 25. Section 6 read with Section 3 makes it abundantly clear that not only the maximum allowable limits of concentration of various environmental pollutants can be fixed but in view of Section 3, the State has power to take all such measures including of preventing, controlling and abating environmental pollution. It is this provision which authorizes the rule making authority to call upon the manufacturers to provide controlling devices before the manufactured goods are delivered for its actual use and to control the noise pollution so as to see that the same is within the prescribed norms when machine is used. Manufacturers are not prohibited from manufacturing, but are asked to provide a device to control the noise pollution which is in the interest of public at large. The said rule can not be said to be in any way contravening the provision of the parent Act or violates any fundamental rights. Unless the amended rules contravenes the parent Act or fundamental rights, there can not be any question of quashing the rule.

20. In the year 1999 in exercise of the powers conferred by Sections 6 and 25 of the Act, entry relating to noise standards for fire crackers was brought into force even at the manufacturing stage. The relevant Entry 89 reads as under:-

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

(ii) For individual fire-cracker constituting the series (joined fire-cracker), the above mentioned limit be reduced by 5 log10(N) dB, where N= number of crackers joined together.'

21. In the case of Sagun Kaushik v. Lieutenant Governor of Delhi and Ors. 2000 7 AD (Del) 225, the petitioners approached the court in view of the restriction with regard to fire crackers. The Division Bench of this Court pointed out for the strict compliance of the notification with certain directions. The manufacturers were directed to specify and record the noise level on the cracker itself. The Apex Court in Writ Petition (C) No. 72/1998 had an occasion to examine the same question. The Court was concerned with the control of noise pollution caused by fire crackers and to control noise pollution arising out of bursting of fire crackers. Interim directions were also issued. The Apex Court directed strict compliance with Rule 89. Thus even manufacturers were directed not to manufacture fire crackers which, on bursting, would breach the noise pollution norms. Before the Apex Court in a petition In re: Noise Pollution Implementation of the Laws for Restricting Use of Loudspeakers and High Volume Producing Sound Systems, being Writ Petition (C) No. 72/1998, on 10.9.2003 in response to submission that certain local festivals and celebrations are accompanied customarily by bursting of fire crackers which is at times at such hours as is not permissible under the order of the Court dated 27.9.2001 and that the industry of fire works may face serious difficulty, even partial closure, on account of the directions issued by the Court, the Apex Court pointed out that owe have grave doubts if the above said considerations can come in the way of the enforcement of fundamental rights guaranteed by the Constitution for the citizens and people of India to live in peace and comfort and in an atmosphere free from pollution of any kind, such as one caused by noise and foul/poisonous gases. However, parties were allowed to make representations to the Government. Learned counsel for the respondents pointed out that much earlier the Government indicated the measures to be adopted for preventing and controlling the noise pollution.

22. It was submitted that diesel generating sets used in city or field would not make any difference so far as noise pollution is concerned. If the arguments of learned counsel for the petitioners is accepted, then one may not require a muffler or a silencer in a vehicle used in the areas where it is not thickly populated, and, thereforee, such vehicles need not have controlling device for preventing the noise pollution in rural areas. In our opinion, if such submission is accepted, then the manufacturers manufacturing vehicles will say that the vehicle will create noise pollution at the time of its use and while using it in thickly populated area, muffler would be required to be used by the user of the vehicle. thereforee, it is for the persons using the vehicles to provide controlling system if the vehicle is used in city or towns. Distant places where there is not much habitation, one may think that it is not required. thereforee, the manufacturers should be free to manufacture the vehicles without device for controlling the noise pollution. A manufacturer cannot be heard to take such a plea.

23. In our opinion, by calling upon the manufacturers to provide acoustic enclosure, the right to manufacture is not taken away but the same right continues to see that the D.G. Set, when put to use, is not causing any noise pollution. In the opinion of the Court, this is not a case of restriction of any type whatsoever, but considering the need of the day, for the general health of the public at large and to protect the environment as it was found absolutely necessary, the rules have been made to provide a controlling device so as to see that the noise pollution is within the norms prescribed. Article 21 of the Constitution of India mandates that State shall take every step to protect the life and liberty. The scope has been expanded, and to allow the citizen to live a peaceful life, these rules have been made. Rules have been amended as in the opinion of the Court the rule making authority is obliged to protect the citizens(tm) rights, their fundamental rights and by amending the rules, citizens(tm) right under Article 21 is protected and at the same time, there is no violation of the rights of the manufacturer, as the manufacturer is not prohibited from manufacturing but a restraint is put to provide a device to control the noise pollution.

24. Right to life, enshrined in Article 21 means something more than survival or animal existence. Every citizen has a right to live with human dignity. It includes all

those aspects of life, which go to make a man's life meaningful, complete and worth living and this article includes right to a decent environment. Citizens have a right to an environment free from pollution. This right refers to the quality of life which is inherent in the guarantee offered by Article 21. Obligation is cast upon the state to preserve the right of citizens.

25. The Supreme Court in case of M.C. Mehta v. Kamal Nath AIR 2000 SC 1997 has held that any disturbance of the basic elements of the environment namely air, water and soil, which are necessary for life would be hazardous to life within the meaning of Article 21.

26. Even assuming for the sake of argument that by calling upon the manufacturer to provide a device at the stage of manufacturing amounts to breach of fundamental rights of a manufacturer, the petitioners have no case, as in the opinion of the Court, allowing the manufacturer to manufacture without providing a controlling device so as to bring the noise pollution within the limits prescribed under the rules would amount to allowing the manufacturer to manufacture a diesel generating set which would cause noise pollution on its use. Even if there is a conflict between fundamental rights of two persons, only that right which would advance public interest would be enforceable. Right to have a healthy life is certainly to be preferred and that is to be enforced.

27. It is required to be noted that there cannot be any such thing as absolute or uncontrolled liberty wholly free from restraint, for that would lead to permit to cause pollution by use of a diesel generating set manufactured by a manufacturer without providing a controlling device to bring the noise pollution within the prescribed norms. The rights are subject to reasonable restrictions as may be necessary and essential to the safety, health, peace, or general order and the morale of the community. Ordinarily every citizen has the liberty to follow any trade, occupation or calling at his pleasure and to do any other thing which he can lawfully do without let or hindrance. One has to strike a balance between individual liberty and interest of public at large. Article 19 of the Constitution refers to the liberties. However, various clauses refer to the restraints that maybe placed upon them by law so that they may not come in conflict with public welfare or general morality.

28. Any restriction upon the citizens right to carry on any occupation, trade or business under Article 19(1)(g) must be held to be void unless it is saved by clause (6) of the said article. It is also to be borne in mind that one cannot claim that his rights should be unfettered by any restriction which the state would otherwise be entitled to impose not only in respect of freedom of others but to safeguard others(tm) rights. It is also required that in order to be reasonable, the restrictions must be reasonable and must have a reasonable relation to the object which is sought to be achieved. With a view to achieve the goal of preventing pollution, which is in the interest of public at large, when the restrictions are necessary to control the noise pollution, it cannot be said that calling upon the manufacturer to provide a device so as to see that the diesel generating set is not causing noise pollution and if it causes, the same is within the prescribed norms is unjust. The Court is required to consider the matter from the point of view of furthering the public interest. The interest of lawmaking authority is to see that public at large may not suffer on account of noise pollution.

29. It is also required to be noted that state has not imposed any restriction on the manufacturer. One is permitted under a license or a permit to manufacture the diesel generating sets. He is only asked to provide a device for prevention of noise pollution. That is with a view to protect health of public. It is in consonance with the directive principles as enshrined in the Constitution. It is also in consonance with the other rights of the citizens. This is provided with a view to safeguard the rights of the citizens flowing from Article 21 of the Constitution of India. One has to remember the need of the day. With a view to achieve the object of some of the provisions contained in the Constitution of India and to safeguard the rights of the citizens, rules have been amended. Thus, even considering the submissions on behalf of the petitioners, the Court is of the opinion that there is direct and proximate nexus or reasonable connection between the so-called restrictions imposed and the object sought to be achieved. In view of what is stated herein above it cannot be said that the provisions contained in amended rules are vocative of any of the fundamental rights of the petitioners or the lawmaking authority had no power to make the rules.

30. In our opinion, in view of what is stated hereinabove, it is not possible to say that the Act is not authorizing the State to make rules calling upon the manufacturers to provide a device for preventing noise pollution i.e. acoustic enclosure, but on the contrary the Act casts duty to frame rules to prevent noise pollution. As indicated above, for vehicles, air conditioners, diesel generating sets for domestic purposes etc. the State has made provision for noise level at the manufacturing stage and in our opinion rightly, in view of Section 3 which specifically authorizes the State to make rules in this behalf.

31. We find no substance and, thereforee, these petitions are required to be dismissed. Ordered accordingly.

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