

K.V. Pavithran Vs. the District Superintendent of Police and ors.

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Court : Kerala

Decided On : Jan-17-2005

Reported in : AIR2005Ker177

Judge : K.M. Joseph, J.

Acts : [Constitution of India](#) - Article 226; Noise Pollution (Regulation and Control) Rules, 2000 - Rules 5, 5(1) and 5(3)

Appeal No. : W.P. (C) No. 1062 of 2005 (B)

Appellant : K.V. Pavithran

Respondent : The District Superintendent of Police and ors.

Advocate for Def. : George Mecheril, Govt. Pleader

Advocate for Pet/Ap. : C.P. Peethambaran and; R. Dyana, Advs.

Judgement :
ORDER

K.M. Joseph, J.

1. The prayer in the writ petition is to quash part of the order in Ext. P2 rejecting the request for use of loudspeaker from 6 p.m. on 29-1-2005 to 6 a.m. on 1-2-2005 on the occasion of the annual Theyyam Festival. The further prayer is for directing

the second respondent to grant permission for using loudspeakers from 6 p.m. on 29-1-2005 to 6 a.m. of 1-2-2005.

2. The complaint of the petitioner is that Theyyam is performed in a remote village area and all the people who are the devotees without any objection wanted the loudspeaker to be used for conveniently enjoying the cultural programmes apart from hearing the Thottampattu and Drum beating. It is stated that this year programmes are consisting of Mimics, Ganamela and Opera of Adhimuthachan to be performed by Thiruvithankoor Nadakavethy, Kottayam. Ext. P1 is the programme notice. Learned counsel for the petitioner submits that Ext. P2 application was made for permission only for three days to the second respondent through the third respondent and the third respondent rejected the application. Learned counsel for the petitioner relies on the decision reported in Forum for the Prevention of Environmental and Sound Pollution v. Union of India (2004(1) Ker LT 134) to contend that the Government has ample power to grant permit for using loudspeaker during night hours for a limited period and purposes. Learned counsel for the petitioner would further contend that the order is non-speaking and he would also rely on Rule 5(1) and (3) of the Noise Pollution (Regulation and Control) Rules, 2000. Learned counsel contends that the Government has power under sub-rule (3) to permit the use of loud-speakers in the night hours on or during any cultural or religious occasion of a limited duration not exceeding 15 days in all during a calender year. A perusal of Rule 5 of the Rules will show that the contention of the petitioner cannot be accepted. Sub-rule (1) of Rule 5 makes it clear that the loudspeaker or a public address system shall not be used except after obtaining written permission from the authority. Sub-rule (2) casts an embargo against the use of loudspeaker during night, which is shown in the statute itself as 10 p.m. to 6 a.m. except in the cases of closed premises for communication. Examples are given, namely, auditorium, conference rooms, community halls and banquet halls. Sub-rule (3). no doubt acts as a proviso to sub-rule (2). This is for the reason that despite the embargo against the use of loudspeaker during night, that is, between 10 p.m. and 6 a.m., power is vested with the State Government to permit ' use of loudspeakers during night hours which is confined to 10 p.m. to 12 midnight on or during any cultural or religious occasion of a limited duration not exceeding fifteen days. The contention of the

learned counsel for the petitioner would appear to be that since the word 'or' is used in sub-rule (3), it means that night hours as defined as 10 p.m. to 12 midnight need not necessarily limit the power in respect of a cultural or a religious occasion. This argument has only to be rejected, for, it is clear that the power to relax the rigour of sub-rule (2) is available to the State Government only in respect of a cultural or religious occasion of a limited duration not exceeding 15 days and it is in respect of such a cultural or religious occasion that Government has power to relax the limitation embedded in sub-rule (2) against the use of loudspeaker or public address system during night. In other words, the relaxation of the embargo in sub-rule (2) is limited to 10 p.m. and 12 midnight and that too for a period of 15 days in a calendar year. To put it differently, the right to use loudspeaker or a public address system cannot be given under the Rules for use beyond 12' O clock in the night even on a religious or cultural occasion. If that be so, the contention of the petitioner that the petitioner is entitled to use the loudspeaker beyond 12'0 clock in the night has necessarily to be rejected. Learned counsel further contended that notwithstanding the Rules, this Court has power under Article 226 to permit use of loudspeakers having regard to all facts and particularly since no injury is caused to anyone and all persons in the locality are looking forward to the items which are to be performed after 12'O clock and nobody has any objection. I am of the view that such a contention will be in the teeth of a statutory prohibition. It is trite law that powers under Article 226 of the Constitution be they extraordinary are not meant to overwhelm the mandate of the statute. On the other hand the power under Article 226 of the Constitution, wide as it may be, it cannot be used to issue a direction to a statutory authority to act against the statute. Learned Government Pleader on instructions submits that Government of Kerala has issued G.O. (Ms) No. 11/2005/ Home, dated 7-1-2005 wherein the Government has been pleased to permit the use of loudspeaker till 12'O clock in the night. The judgment of the Division Bench reported in Forum for the Prevention of Environmental and Sound Pollution's case also does not support the contention of the petitioner that permission can be granted to use loudspeakers beyond 12'O clock in the night. In view of this order even though the request of the petitioner for use of the loudspeaker beyond 12'0 clock in the night cannot be granted, at the same time the petitioner can be granted permission till 12'0 clock.

3. Learned counsel for the petitioner submits that after the filing of the writ petition, the petitioner has filed an application and a challan is also received.

Accordingly there will be a direction to the second respondent to consider and pass appropriate orders on the application filed by the petitioner in accordance with law subject to the observations made in this judgment and in the light of the Government Order, a copy of which shall be-produced by the petitioner, within a period of two days from the date of receipt of a copy of this judgment.

Writ Petition if disposed of as above.

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