

Malayath Vs. State of Kerala

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Court : Kerala

Decided On : Apr-06-2005

Reported in : III(2005)ACC617; 2005(3)KLT190

Judge : K.S. Radhakrishnan, Ag. C.J. and; Thottathil B. Radhakrishnan, J.

Acts : Environment (Protection) Act, 1986 - Sections 120(2); [Motor Vehicles Act, 1988](#) - Sections 208; [Bureau of Indian Standards Act, 1986](#); Noise Pollution (Regulation and Control) Rules, 2000 - Rule 3 and 3(1); Central Motor Vehicles Rules, 1989 - Rules 119 and 120(2); Central Motor Vehicles (Amendment) Rules, 1999 - Rule 120; [Constitution of India](#) - Article 19(1); Environmental Protection Law; Environmental Protection Rule; Environmental Protection Regulation

Appeal No. : W.A. Nos. 2062/03 and 76/04 and W.P.(C) Nos. 27842 and 35877 of 20

Appellant : Malayath

Respondent : State of Kerala

Advocate for Def. : K. Lakshmi Narayanan, Government Pleader,; Babu Joseph Kuruvathazha and;

Advocate for Pet/Ap. : P. Chandrasekhar, Adv.

Judgement :

K.S. Radhakrishnan, Ag. C.J.

1. The necessity of enforcing the provisions of the Noise Pollution (Regulation and Control) Rules, 2000 issued under the Environment (Protection) Act, 1986 was highlighted by the Apex Court in *Church of God v. K.K.R. Majestic Colony Welfare Association*, 2000 (3) KLT 651 (SC). Rule 3(1) of the Noise Pollution (Regulation and Control) Rules, 2000 provides for the ambient air quality standards in respect of noise for different areas/zones as specified in the Schedule annexed to the Rules. Responsibility as to the enforcement of noise pollution control measures has been narrated therein. So also, its consequences. The principle laid down by the Apex Court was followed by a Bench of this Court in W.A.3125 of 2001 and the following directions were issued.

'We, therefore, dispose of the Writ Appeal and the Original Petition by directing the State of Kerala, the first respondent, to take necessary steps to identify the zones and generally to fulfil all the requirements of Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000 within six months from this date. The defined authority under the Rules will, thereafter, be entitled to consider the application for use of loud speakers and permit them strictly in terms of the said Rules and the identification of the zones. The State and the authorities under it, including the Pollution Control Board, will continue to enforce the directions issued by the Deputy Inspector General of Police in the Circular dated 22.7.2000 until the required exercise under the Noise Pollution (Regulation and Control) Rules, 2000 is undertaken by the State Government.

It is a matter of serious concern that Environmental Protection laws are not properly implemented and/or enforced by the various authorities and officers of the State including the Pollution Control Board. The State Government is directed to ensure that its officers, the Local Authorities and the Pollution Control Board strictly implement the Environmental Protection Laws, Rules, Regulations and notifications and to take strong action against those who do not implement them strictly and in consonance with the spirit of such laws'.

World Health Organisation in its report on human health has stated as follows:

'Prolonged or excessive exposure to noise, whether in the community or at work, can cause serious permanent medical conditions like hypertension and ischemic heart disease. Noise can adversely affect performance, for instance reading, attentiveness, problem solving and memory'.

Motor vehicles fitted with horn is always a menace to the travelling public as well as pedestrians and people residing on either side of the roads. Driver may be enjoying the use of air horns. Vehicles fitted with air horn would get the pedestrians off the road, at times caused danger to the life of the pedestrians. Use of air horn may cause severe physiological and psychological impacts on the pedestrians: Deafness is the last stop of noise and can damage the eardrum. Legislature has thought of illeffects of such use of air horns and has introduced Rule 119 to Central Motor Vehicles Rules, 1989 which is extracted below for easy reference.

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

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

(2) No motor vehicle including agricultural tractor shall be fitted with any multi-toned horn giving a succession of different notices or with any other sound-producing device giving an unduly harsh, shrill, loud or alarming noise.

(3) Nothing contained in Sub-rule (2) shall prevent the use on vehicles used as ambulance or for fire-fighting or salvage purposes or on vehicles used by police officers or operators of construction equipment vehicles or officers of the Motor Vehicles Department in the course of their duties or on construction equipment

vehicles of such sound signals as may be approved by the registering authority in whose jurisdiction such vehicles are kept'.

Rule 120 of the Rules says that every motor vehicle shall be fitted with a device so as to reduce as far as practicable, the noise that would otherwise be made by the escape of exhaust gases from engine. Section 120(2) deals with noise standards which reads as follows:

'(2) Noise standards:-- Every motor vehicle shall be constructed and maintained as so to conform to noise standards specified in Part E of the Schedule VI to the Environment (Protection) Rules, 1986, when tested as per IS: 3028-1998, as amended from time to time'.

To give effect to those statutory provisions the Transport Commissioner issued Circular No. 19/2003 which reads as follows:

'Sub: M.Vs.-- Banning of digital airhorns - enforcement of Rule 120(2) of CMV Rules -

Ref: This office letter No. C1-10293/TC/98 dated 28.9.1998 and (2) C1-15752/TC/2002 dated 3.9.2002.

Inspite of repeated instructions about banning of air horns capable of producing noise exceeding the noise standards prescribed by rules, many complaints are being received from the public regarding the nonimplementation of the provisions contained in Rule 120(2) of CMV Rules, prescribing the noise level from various class of vehicles.

It is laid down in Rule 120(2) of CMV Rules that every motor vehicle shall be constructed and maintained as to conform to noise level indicated in the table appended with the Rules, and their standards shall be tested as per Indian Standards (IS: 3028-1998). According, to the table maximum noise from a motor vehicle is 91 d(B)A.

The permitted level of sound of different classes of vehicles is given below:

(i) Two wheelers 80dB(A)(ii) All Passenger Cars, Petrol driven 3 wheelers and diesel two wheelers 82dB(A)(iii) Passenger or light Commercial Vehicles including 3 wheeled vehicles fitted with diesel engine/gross vehicle weight upto 4000 Kgs. 85dB(A)(iv) Passengers or Commercial Vehicles above 4000 Kgs. and upto 12,000 Kgs. 89dB(A)(v) Passengers or Commercial Vehicles with gross vehicle weight above 12,000 Kgs. 91dB(A) All the concerned officers are once again directed to take stringent action against the vehicle owners, who violate the provisions, the use of multi toned horns exceeding the noise level prescribed by Rule. Action taken report should be sent to Transport Commissioner (quarterly). In doubtful cases the equipment available with the Pollution Control Board regional officers may be used to test the noise level or insist on production of certificate of proof of the noise level of the horn by the manufactures.

The receipt of the circular should be acknowledged.

Sd/-

Transport Commissioner'.

Appellants in W.A.2026/03, W.A.76/04 and petitioner in W.P.(C). 35877/04 are aggrieved by the above mentioned circular and also the action taken by the police. They have sought for a declaration that the prohibition on the user of air horns by stage carriages imposed by the respondents is without jurisdiction, ultra vires and is unreasonable restriction imposed on the fundamental rights guaranteed to the petitioners to carry on their business. They also contend that the procedure laid down under Section 208 of the [Motor Vehicles Act, 1988](#) does not empower the police to issue summons requiring appearance before the Judicial Magistrate.

2. Learned Single Judge repelled those contentions and gave a positive direction to the police and Transport Authorities to ensure that effective and appropriate action is taken forthwith to abate noise pollution. Judgment is reported in Neelakandan Namboodiri v. State of Kerala, 2004

(1) KLT 335 = ILR 2004

(1) Ker.

634. Learned Judge has elaborately considered the various provisions of the Motor Vehicles Act as well as the provisions of the Environment (Protection) Act, 1986 and the Noise Pollution (Regulation and Control) Rules, 2000. We do not propose to reiterate those findings with which we fully concur. We may all the same point out in Rule 119 of Central Motor Vehicles Rules reference is made to IS: 1884-1992. We have called for the Indian Standard Specification published by the Bureau of Indian Standard (Third Revision) and found the Indian Standard Automotive Vehicles - Electrical Horns -- Specification is IS 1884 : 1993. We notice a drafting error in the rule, when it is stated the IS mark as IS 1884: 1992. Once the Court finds that it is drafting error, it is the constitutional duty of the Court to discharge its interpretative function by substituting the words and omit the wrong provision or words. The Legislature and the Court would function in unison to achieve the Legislative intention. Reference may be made to the decision of House of Lords in Inco Europe Ltd. v. First Choice Distribution (a firm) (2002) 2 All ER

109. Before carrying out the exact words, generally the Courts should be sure of three matters:

- (1) the intended purpose of the statute or provision in question,
- (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and
- (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed.

3. The Indian Standard is adopted by the Bureau of Indian Standards, after the draft finalized by the Automotive Electrical Equipment Sectional Committee had been approved by the Transport Engineering Division Council. The use of Standard Mark is governed by the provisions of the [Bureau of Indian Standards Act, 1986](#) and the Rules and Regulations made thereunder. The Standard Mark on products covered by an Indian Standard conveys the assurance that they have been produced to comply with the requirements of that standard under a well

defined system of inspection, testing and quality control which is devised and supervised by Bureau of Indian Standards and operated by the producer. Standard marked products are also continuously checked by Bureau of India Standard for conformity to that standard as a further safeguard.

4. Electric horns and air horns are conceptionally different. Rules enable the manufacturer to install electric horn and not air horn in conformity with the requirements of IS 1884 : 1993. The manufacturer can install only electric horn and other fittings in the vehicle in conformity with the requirements of IS 1884 : 1993. Air horn is therefore not legally permitted by the Motor Vehicles Rules. We are therefore in agreement with the learned Single Judge that there is no infirmity in Rule 119 of the Central Motor Vehicles Rules, 1989.' Petitioners who are private operators have no legal right to use air horns, they have to operate vehicles only fitted with electric horn in strict conformity with IS 1884 - 1993. The Standards prescribed is only regulatory and would not affect the fundamental right guaranteed to the petitioner under Article 19(1)(g) of the [Constitution of India](#) to carry on their trade or business. We also endorse the view of the learned Single Judge that such a provision is in conformity with the provisions of the Environment (Protection) Act, 1986 and the Noise Pollution (Regulation and Control) Rules, 2000.

Writ Appeals and Writ Petitions are disposed of as above.

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