Bombay High Court
Shri. Ajay Marathe vs Union Of India And Ors on 1 September, 2017
Bench: A.S. Oka

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION STAMP NO.24110 OF 2017

Shri. Ajay Marathe ...Petitioner
V/s.
Union of India & Ors. ...Respondents

WITH
WRIT PETITION NO.9508 OF 2017

Dr. Mahesh Vijay Bedekar ...Petitioner
Versus
The Union of India & Ors. ...Respondents

Mr.A.V. Anturkar, Senior Advocate i/b. Ms.Kalyani Tulankar for the Petitioner in PIL (St.) No.24110 of 2017.
Mr.S.M. Gorwadkar, Senior Advocate, with Mrs. Sana Yusuf Baugwala and Mr.Ravi Shinde i/b. Mr.Niranjan A.Mogre for the Petitioner in W.P. No.9508/2017.
Dr.Birendra Saraf with Mr.Rohaan Cama, Mr.Huzefa Khokhawala, Mr.Shanay Shah and Mrs.Gauri Memon i/b. M/s.Nankani and Associates for the Applicants (Intervenors) in CAI (ST) No.24725/2017.
Mr.Anil C.Singh, ASG, with Mr.Sandesh D.Patil, Mr.Amogh Singh, Mr.Aditya Thakkar and Mr.D.P. Singh, Mr.C.S. Zavier and Mr.V.T. Kalyan for Union of India.
Mr. A.B. Vagyani, GP with Mr. Manish M. Pabale, AGP, with Ms.K.N. Solakhe, AGP, Ms.G.R. Golatkar, Assistant G.P. and Mr.Rohan Sawant, Assistant G.P. for State.

CORAM:A.S. OKA,ANOOP V. MOHTA &
RIYAZ I. CHAGLA, JJ.

DATE: 1st SEPTEMBER, 2017

- 2 - PIL No.24110/17@WP 9508/17 ORAL ORDER (PER A.S.OKA,J) As per the administrative order passed by the Hon'ble Chief Justice by exercising powers under Rule 7 of the Bombay High Court Appellate Side Rules, 1960, these two petitions have been placed for disposal before this

Bench and accordingly, as per the directions of the Hon'ble the Chief Justice issued on 27th August 2017, these petitions were listed before this Bench on 28th August 2017. On 29th August 2017 and today, we have heard the submissions of the learned Counsel appearing for the parties.

2. The challenge in these two petitions is to the validity of the notification dated 10th August 2017. By the said notification, the Noise Pollution (Regulation and Control) Amendment Rules, 2017 (hereinafter referred to as the "impugned Rules") were brought into force by which the Noise Pollution (Regulation and Control) Rules 2000 (for short, "the Principal Rules") have been amended. Considering the various contentions raised across the bar, we find that many important questions arise which are required to be finally decided.

- 3 - PIL No.24110/17@WP 9508/17 Hence, we issue Rule. The concerned Respondents waive service. Issue notice to the learned Attorney General of India, returnable on 6th October 2017, when these petitions will be fixed before this Bench for fixing a date for hearing.

3. We have heard the learned Counsel representing the rival parties at considerable length on the question of grant of interim reliefs. Civil Application (Stamp) No.2472 of 2015 has been taken out by the applicants for intervention in P.I.L No.24110 of 2017. The learned Counsel appearing for the applicants submitted that instead of filing a separate petition for challenging the impugned Rules, the applicants be ordered to be added as respondents. No party has challenged the locus of the applicants to make such an application. Accordingly, we allow the application in terms of prayer clause (a) and direct the petitioners in P.I.L to carry out amendment within a period of one week from the date on which this order is uploaded.

OVERVIEW AND BACKGROUND

- 4 - PIL No.24110/17@WP 9508/17

4. Before making a brief reference to the submissions canvassed across the Bar, we must indicate the nature of the challenge. The Principal Rules were brought into force with effect from 14th February 2000. For framing the Principal Rules, a power has been exercised by the Central Government under Clause (ii) of Sub-Section (2) of Section 3, Sub-Section (1) and clause (b) of Sub-Section (2) of Section 6 and Section 25 of the Environment (Protection) Act, 1986 (for short, "1986 Act") read with Rule 5 of the Environment (Protection) Rules 1986 (in short, "1986 Rules"). The relevant provisions of the unamended Principal Rules and the Schedule read thus:

> "3. Ambient air quality standards in respect of noise for different areas/ zones.--

(1) The ambient air quality standards in respect of noise for different areas/zones shall be such as specified in the Schedule annexed to these rules.

(2) The State Government1 [shall categorize] the areas into industrial, commercial, residential or silence areas/zones for the purpose of implementation of noise standards for different areas.

(3) The State Government shall take measures for abatement of noise including noise emanating from vehicular movements and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.

(4) All development authorities, local bodies and other authorities concerned while planning developmental activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menace and to achieve the objective of maintaining the ambient air quality standards in respect of noise. (5) An area comprising not less than 100 metres around hospitals, educational institutions and courts may

- 5 - PIL No.24110/17@WP 9508/17 be declared as silence area/zone for the purpose of these rules.

4. Responsibility as to enforcement of noise pollution control measures.--

(1) The noise levels in any area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule.

(2) The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.

(3) The respective State Pollution Control Boards or Pollution Control Committees in consultation with the Central Pollution Control Board shall collect, compile and publish technical and statistical data relating to noise pollution and measures devised for its effective prevention, control and abatement."

5. Restrictions on the use of loudspeakers/ public address system.--

(1) A loudspeaker or a public address system shall not be used except after obtaining written permission from the authority.

(2) A loud speaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall not be used at night time except in closed premises for communication within, like auditoria, conference rooms,

community halls, banquet halls or during a public emergency.

(3) Notwithstanding anything contained in sub- rule (2), the State Government may, subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or [public address system and the like during night hours] (between 10.00 p.m to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year.] [The concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption would be operative.] (4) The noise level at the boundary of the public place, where loud-speakers or public address system or

- 6 - PIL No.24110/17@WP 9508/17 any other noise source is being used shall not exceed 10 dB (A) above the ambient noise standards for the area or 75 dB (A) whichever is lower;] (5) The peripheral noise level of a privately owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5 dB (A) the ambient noise standards specified for the area in which it is used.] [5A. Restrictions on the use of horns, sound emitting construction equipments and bursting of fire crackers.-

(1) No horn shall be used in silence zones or during night time in residential areas except during a public emergency.

(2) Sound emitting fire crackers shall not be burst in silence zone or during night time.

(3) Sound emitting construction equipments shall not be used or operated during night time in residential areas and silence zones.]

6. Consequences of any violation in silence zone/area - Whoever, in any place covered under the silence zone/area commits any of the following offence, he shall be liable for penalty under the provisions of the Act:-

(i) whoever, plays any music or uses any sound amplifiers,

(ii) whoever, beats a drum or tom-tom or blows a horn either musical or pressure, or trumpet or beats or sounds any instrument, or

(iii) whoever, exhibits any mimetic, musical or other performance of a nature to attract crowds.

(iv) whoever, bursts sound emitting fire crackers;

or
(v) Whoever, uses a loud speaker or a public

address system.]

7. Complaints to be made to the authority.-
(1) A person may, if the noise level exceeds the

ambient noise standards by 10 dB (A) or more given in the corresponding columns against any area/zone [or, if there is a violation of any provision of these rules

- 7 - PIL No.24110/17@WP 9508/17 regarding restrictions imposed during night time], make a complaint to the authority.

(2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.

8. Power to prohibit etc continuance of music sound or noise -

(1) If the authority is satisfied from the report of an officer in charge of a police station or other information received by him [including from the complainant] that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of annoyance, disturbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating :-

(a) the incidence or continuance in or upon any premises of -

(i)any vocal or instrumental music,

(ii)sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, [public address systems, horn, construction equipment, appliance or apparatus] or contrivance which is capable of producing or re-producing sound, or

(iii)Sound caused by bursting of sound emitting fire crackers, or,]

(b) the carrying on in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.

(2) The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under sub-rule (1), either rescind, modify or alter any such order: Provided that before any such application is disposed of, the said authority shall afford to the applicant [and to the original complainant, as the case may be,] an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for

such rejection."

SCHEDULE
[See Rules 3(1) and 4(1)]

AMBIENT AIR QUALITY STANDARDS IN RESPECT OF NOISE Area Category of Area Limits in dB(A) Leq* Code / Zone Day Time Night Time Note:--

1. Day time shall mean from 6.00 a.m. to 10.00 p.m.

2. Night time shall mean from 10.00 p.m. to 6.00 a.m.

3. Silence zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority.

4. Mixed categories of areas may be declared as one of the four above mentioned categories by the competent authority. * dB(A) Leq denotes the time weighted average of the level of sound in decibels on scale A which is relatable to human hearing.

A "decibel" is a unit in which noise is measured. "A", in dB(A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear.

Leq: It is an energy mean of the noise level over a specified period."

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5. The impugned Rules read thus:

"MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE NOTIFICATION New Delhi, the 10th August, 2017 S.O. 2555(E).--Whereas, according to clause (a) of sub-rule (3) of rule 5 of the Environment Protection Rules, 1986, whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on the processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so;

And whereas, every notification under clause (a) of said sub-rule shall give a brief description of the

area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area;

And whereas, any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette;

And whereas, clause (d) of the said sub-rule provides that the Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the

- 10 - PIL No.24110/17@WP 9508/17 objections received against such notification and may within five hundred and forty five days from such date of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area;

And whereas, sub-rule (4) of rule 5 of the said rules provide that, notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3) of rule 5.

Now, therefore, in exercise of the powers conferred by sections 3, 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), read with rule 5 of the Environment (Protection) Rules 1986, the Central Government hereby make the following rules further to amend the Noise Pollution (Regulation and Control) Rules, 2000, namely: -

1. (1) These rules may be called the Noise Pollution (Regulation and Control) Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Noise Pollution (Regulation and Control) Rules, 2000 (hereinafter referred to as the principal rules), in rule 3, in sub-rule (5), -

(a) after the word "maybe declared", the words "by the State Government" shall be inserted;

(b) the following proviso shall be inserted, namely: - "Provided that, an area shall not fall under silence area or zone category, unless notified by the State Government in accordance with sub-rule (2).".

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3. In the Principal rules, in rule 5, for sub-rule (3), the following shall be substituted, namely: -

'(3) Notwithstanding anything contained in sub-rule (2), the State Government may subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems and the like during night hours (between 10.00 p.m. to 12.00 midnight) on or during any cultural, religious or festive occasion of a limited duration not exceeding fifteen days in all during a calendar year and the concerned State Government or District Authority in respect of its jurisdiction as authorised by the concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption should be operative.

Explanation. - For the purposes of this sub-rule, the expressions-

(i) "festive occasion" shall include any National function or State function as notified by the Central Government or State Government; and

(ii) "National function or State function "shall include"-

(A) Republic Day;

(B) Independence Day;

(C) State Day; or (D) such other day as notified by the Central Government or the State Government.'.

4. In the Schedule to the principal rules, in the Note, paragraph 3 shall be omitted.

[F. No. Q-15022/01/2017-CPA]

- 12 - PIL No.24110/17@WP 9508/17 ARUN KUMAR MEHTA, Addl. Secy.

Footnote: The principal rules were published in the Gazette of India, vide No. S.O. 123 (E,) dated the 14th February, 2000 and were last amended vide S.O. 50 (E), dated the 11th January, 2011."

(emphasis added)

6. As a submission of the Central Government and State Government is that the impugned Rules have been enacted with a view to take away the basis of the Judgment and Order of this Court dated 10/11/12 and 16th August 2016 in P.I.L No.173 of 2010 and other connected petitions (Dr. Mahesh Bedekar vs. State of Maharashtra and others) 1, we must also make a note of what is held in the said decision. The said decision has attained finality as a Special Leave Petition filed by the State of Maharashtra against the said decision has been dismissed. Clauses (xii) to (xvi) of paragraph 101 (paragraph 93 as per the Judgment on High Court website) of the said judgment are relevant, which read thus:-

"101. Now we summarise our important main conclusions as under:

(i) .....

1 2016 SCC OnLine BOM 9422

(xii) In view of Sub-Rule (5) of Rule 3, silence zone

comprises of an area within the distance of 100 meters around hospitals, educational institutions, and Courts. As educational institutions, hospitals and courts have been defined in Rule 2, for applicability of Sub-Rule (5) of Rule 3, it is not necessary to have a specific declaration issued in respect of the silence zone around hospitals, educational institutions and Courts. As it is clear from clause 3 of the Schedule, only in the event any other area or additional area (over and above 100 meters) is to be declared as a silence zone, a specific declaration will be necessary. On plain reading of Sub-Rule (5) of Rule 3, a silence zone means an area of 100 meters on all sides of precincts of educational institutions, hospitals, religious places and courts and not the area within the precincts of the said institutions.

(xiii) In view of the clause (v) of Rule 6 of the Noise Pollution Rules, using loud-speaker or public address system is an offence and therefore, a permission under Sub-Rule (1) of Rule 5 to use loud-speaker or public address system in the open spaces in silence zone cannot be granted. Apart from prohibition on grant of license to use loud-speakers or public address systems in silence zones, in except in completely covered and enclosed places in silence zone, there is a complete ban on beating a drum or tom-tom or on blowing a horn, either musical or pressure, or trumpet or beats or sounds any instrument playing of any music, using any sound amplifiers, holding of mimetic musical or other performances of a nature.

(xiv) On plain reading of clauses (i) to (v) of Rule 6, the prohibition provided therein is applicable to the open spaces in the silence zone. In view of the clause (iv) of Rule 6, there is a complete ban on blasting of sound on firecrackers in silence zone. There is a complete ban on bursting sound emitting crackers between 10.00 pm and 6.00 am.

(xv) Even if a loud-speaker or public address system (as distinguished from privately owned sound system) is used within

- 14 - PIL No.24110/17@WP 9508/17 the precincts of the hospitals, educational institutions and Courts, wherever permission under Sub-Rule (1) of Rule 5 is needed, the same shall be mandatory and condition precedent for its use. Needless to add that even if a permission is granted and if such instruments are used in the precincts of hospitals, educational institutions and courts, the same are subject to all other provisions of the Noise Pollution Rules and, therefore, noise levels at the boundary shall be as provided in Sub-Rules (4) and (5) of Rule 5 which are applicable to the silence

zones. The prohibition in clauses (i) to (iv) of Rule 6 will not apply to completely covered and closed premises within silence zone, but the said premises will be governed by all the Rules incorporated in the Noise Pollution Rules including Sub-Rules (4) and (5) of Rule 5. (xvi) Needless to add that if an open area forming part of the precincts of the hospitals, educational institutions and courts, etc. is covered by silence zone of other hospitals or educational institutions or courts, the prohibition provided in Rule 6 will also apply to open areas forming a part of the precincts of such hospitals, educational institutions and courts."

(emphasis added)

7. We may note here that in Writ Petition No. 2053 of 2003 which is one of the petitions decided by the aforesaid Judgment, by an interim order dated 25 th September 2003, this Court in substance held that it is not necessary to specifically issue a notification to declare any area falling in silence zone as defined and discussed in the Principal Rules and in such area, a permission to use a loud speaker shall not be granted. The said order reads thus:

> "(1) Pending hearing and final disposal of this petition i.e. Writ Petition No. 2053 of 2003, no loudspeaker permission be granted in respect of 'silence zone' as defined and discussed in the Noise Pollution
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> - 15 - PIL No.24110/17@WP 9508/17 (Regulation and Control) Rules, 2000, as amended from time to time. (2) Pending hearing and final disposal of the petition, the respondents are directed to issue loudspeaker permission verifying and certifying before granting permission that the loudspeaker will not be used in a designated silence zone.
>
> (3) The authorities will also ensure implementation and observance of the conditions mentioned in the permission.
>
> (4) It is also clarified that in case the petitioners point out that there is violation at any place, the authorities will take appropriate action in accordance with law."
>
> (emphasis added) The State Government applied for the review of the said order. On the said Review Petition, it was held thus:
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> "7. So far as the first point is concerned, in our opinion, direction issued by us on 25-9-2003 is clear. Prima facie, it appears to us that the provisions of the Rules would apply to 'an area comprising not less than hundred metres around' hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority. In our view, this would be in consonance with the phraseology used in clause (i) of Rule 6 which totally prohibits playing of 'any music' or using of 'any sound amplifiers'. Had it been the intention of the rule- making authority, it would not have used the expression 'an area comprising not less than 100 metres around' hospitals, educational institutions, court, religious places, etc.

Moreover, such interpretation would also permit activities within those institutions in accordance with law.

8. At the same time, however, the apprehension voiced by the learned counsel for the petitioners has also been taken care of. It cannot be considered that with regard to such organisations, institutions, etc. there is neither any standard nor limit whatsoever. In respect of such institutions also, the general provisions laid down in Rule 5 which place restriction on the use of loudspeaker/public address system would apply."

In fact, the Apex Court in its decision in the case of Farad K. Wadia vs Union of India 2, virtually approved the said view taken by interim order dated 25th September 2003 which prohibited grant of permission to use loud-speaker in silence zones as "defined and discussed" in the Principal Rules though there was no declaration of silence zones made by the 2 (2009)2 SCC 442

- 16 - PIL No.24110/17@WP 9508/17 State Government. In the said decision, the Apex Court held in paragraphs 10, 21 and 26 as under :-

"10. Mr. S. Ganesh, learned Senior Counsel appearing on behalf of the appellant, drawing our attention to the relevant Rules, would contend that as no silence zone has been notified in terms of the statutory rules, the High Court committed a serious error in passing the impugned judgment. It was urged that, in any event, an exemption should be granted in respect of Rang Bhavan having regard to the fact that it is not possible to hold a musical event at any other place in the city of Mumbai at such cheap rates. The State of Maharashtra, the learned Senior Counsel pointed out, has also been supporting the cause of the appellant."

21. Contention that the State Government has not declared the said zone as a silence zone, in our opinion, is besides the point. The High Court, while passing its interim order dated 25-9-2003, did not state that silence zone was required to be declared, but passed the order of restraint in respect of silence zone, as "defined and discussed in the Rules". The parties thereto and particularly the State of Maharashtra understood the said order in that light.

26. The State Government is bound also by the order of this Court besides the order passed by the High Court. ...."

(emphasis added) The State Government challenged the final Judgment confined to the declaration in clause (xii) quoted above, and the Special Leave Petition has been dismissed.

8. As the name suggests, the Principal Rules have been enacted for controlling and regulating noise pollution. Noise pollution is an air pollution within the meaning of Air (Prevention and Control of

Pollution) Act, 1981. While we are dealing with the amendment carried out to the Principal Rules

- 17 - PIL No.24110/17@WP 9508/17 by the impugned Rules, the law laid down by the Apex Court in case of Noise Pollution (V), IN RE3 will have to be borne in mind. In paragraph Nos.10 and 11 of the said decision, the Apex Court has held thus:

> "10. Article 21 of the Constitution guarantees life and personal liberty to all persons. It is well settled by repeated pronouncements of this Court as also the High Courts that the right to life enshrined in Article 21 is not of mere survival or existence. It guarantees a right of persons to life with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living. Human life has its charm and there is no reason why life should not be enjoyed along with all permissible pleasures. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent noise as pollutant reaching him. None can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours or others. Any noise which has the effect of materially interfering with the ordinary comforts of life judged by the standard of a reasonable man is nuisance. How and when a nuisance created by noise becomes actionable has to be answered by reference to its degree and the surrounding circumstances, the place and the time.
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> 11. Those who make noise often take shelter behind Article 19(1)(a) pleading freedom of speech and right to expression. Undoubtedly, the freedom of speech and right to expression are fundamental rights but the rights are not absolute. Nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. While one has a right to speech, others have a right to listen or decline to listen. Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others.

Nobody can indulge in aural aggression. If anyone increases his 3 (2005) 5 SCC 733

- 18 - PIL No.24110/17@WP 9508/17 volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. Article 19(1)(a) cannot be pressed into service for defeating the fundamental right guaranteed by Article 21. We need not further dwell on this aspect. Two decisions in this regard delivered by the High Courts have been brought to our notice wherein the right to live in an atmosphere free from noise pollution has been upheld as the one guaranteed by Article 21 of the Constitution. These decisions are Free Legal Aid Cell Shri Sugan Chand Aggarwalv. Govt. of NCT of Delhi [AIR 2001 Del 455 : (2001) 93 DLT 28 (DB)] and P.A. Jacobv. Supdt. of Police [AIR 1993 Ker 1] . We have carefully gone through the reasoning adopted in the two decisions and the principle of law laid down therein, in particular, the exposition of Article 21 of the Constitution. We find ourselves in entire agreement therewith.

(emphasis added) In paragraph Nos.15 to 18, the Apex Court held thus: " II. Noise as nuisance and health hazard

15. Noise is more than just a nuisance. It constitutes a real and present danger to people's health. Day and night, at home, at work, and at play, noise can produce serious physical and psychological stress. No one is immune to this stress. Though we seem to adjust to noise by ignoring it, the ear, in fact, never closes and the body still responds -- sometimes with extreme tension, as to a strange sound in the night.

16. Noise is a type of atmospheric pollution. It is a shadowy public enemy whose growing menace has increased in the modern age of industrialisation and technological advancement. Although a soft rhythmic sound in the form of music and dance

- 19 - PIL No.24110/17@WP 9508/17 stimulates brain activities, removes boredom and fatigue, but its excessiveness may prove detrimental to living things. Research has proved that a loud noise during peak marketing hours creates tiredness, irritation and impairs brain activities so as to reduce thinking and working abilities. Noise pollution was previously confined to a few special areas like the factory or the mill, but today it engulfs every nook and corner of the globe, reaching its peak in urban areas. Industries, automobiles, rail engines, aeroplanes, radios, loudspeakers, tape recorders, lottery ticket sellers, hawkers, pop singers, etc., are the main ear contaminators of the city area and its marketplace. The regular rattling of engines and intermittent blowing of horns emanating from the caravan of automobiles do not allow us to have any respite from irritant noise even in suburban zones [Ranbir Singh, Noise Pollution: Environment and the Law, as printed in Indian Bar Review, Vol. 23 (3 & 4), 1996, p. 86.] .

17. In the modern day noise has become one of the major pollutants and it has serious effects on human health. Effects of noise depend upon the sound's pitch, its frequency and time pattern and length of exposure. Noise has both auditory and non-auditory effects depending upon the intensity and the duration of the noise level. [P.S. Jaswal and Nistha Jaswal -- Environmental Law, Second Edn., p.

331.] It affects sleep, hearing, communication, mental and physical health. It may even lead to madness in people.

18. However, noises, which are melodious, whether natural or man-made, cannot always be considered as factors leading to pollution.

19. Noise can disturb our work, rest, sleep, and communication. It can damage our hearing and evoke other psychological, and possibly pathological reactions. However, because of the complexity, variability and the interaction of noise with other environmental factors, the adverse health effects of noise do not lend themselves to a straightforward analysis [Parivesh Newsletter: Central Pollution Control Board, December

- 20 - PIL No.24110/17@WP 9508/17 1996 at p. 4.] ."

(emphasis added)

9. The law laid down by the Apex Court in the aforesaid decision stands even as of today. In a recent decision in the case of Anirudh Kumar vs MCD3A, the Apex Court reiterated the law laid down earlier. The position can be summarized as under:-

(a) Article 21 of the Constitution guarantees life and personal liberty to all persons. It guarantees a right of persons to live with human dignity. Therein are included, all the aspects of life which go to make a person's life meaningful, complete and worth living;

(b) Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent the noise as a pollutant reaching him;

(c) Nobody can be compelled to listen and nobody can claim that he has a right to make his voice trespass into the ears or mind of others;

(d) If anyone increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant or obnoxious levels then the person speaking is violating the right of others to a peaceful, comfortable and pollution-free life guaranteed by Article 21. The right to live in an atmosphere free from noise pollution is a part of Article 21;

3A (2015) 7 SCC 779

and

(e) The Apex Court recognized the noise as a pollutant which pollutes the environment. In the same

decision, the Apex Court accepted that noise is a major health hazard. The Apex Court has set out eight instances of adverse impact of noise on the health of human beings including its impact even on the unborn.

10. The argument advanced on behalf of Central Government and State Government is that the very basis of the Judgment of this Court in the case of Dr. Mahesh Bedekar is taken away by the impugned Rules and now in view of the amendment to Rule 3 of the Principal Rules and the deletion of clause 3 from the Schedule, no area which is falling within a distance of 100 meters from educational institutions, hospitals and Courts in the State of Maharashtra is a silence zone. The contention is that now by virtue of the impugned Rules, only the State Government can declare an area as a silence zone and in fact, the State Government has not exercised the power of declaring any

area in the State as a silence zone till today. In short, the submission is that in view of the impugned Rules, now no area in the State is a silence zone.

SUBMISSIONS

11. We have heard the submissions of Mr.A.V. Anturkar, learned Senior Counsel representing the Petitioner in PIL (St.) No.24110 of 2017 and Mr.S.M. Gorwadkar, learned Senior

- 22 - PIL No.24110/17@WP 9508/17 Counsel appearing for the Petitioner in W.P. No.9508/2017. We have heard Dr. Birendraa Saraf, learned Counsel who is appearing for the Applicants (Intervenors) in CAI (ST) No.24725/2017. The submissions made across the bar by the petitioners are overlapping. As far as the Central Government is concerned, we have heard Shri A.C.Singh, the learned Additional Solicitor General of India. The learned Government Pleader Mr. A.B. Vagyani has made submissions on behalf of the State of Maharashtra.

12. From the side of petitioners and intervenors, our attention has been invited to the impugned Rules which are promulgated in the form of impugned notification dated 10 th August 2017. It is contended that on the plain reading of recitals of the impugned Rules, it is crystal clear that Central Government has purported to exercise the power under Rule 5 of 1986 Rules which is a power to impose prohibition or restrictions on the location of an industry or carrying on the processes and operations in an area. It is submitted that the object of the impugned Rules appears to be to impose the restrictions and prohibition as contemplated by Sub-Rule 1 of Rule 5 of 1986 Rules. While doing so, major amendments have been made to Rule 3 of the Principal Rules and to the Schedule of the Principal Rules. The submission is that the purpose sought to be achieved by the impugned Rules is very clear from the first five recitals. It is of imposing restrictions or prohibition

- 23 - PIL No.24110/17@WP 9508/17 as contemplated by Rule 5 of 1986 Rules. But the amendments, which are made by the impugned Rules to the Principal Rules, have no nexus with the object sought to be achieved under Rule 5 of the 1986 Rules. Secondly, it is pointed out that from the recitals, it is apparent that power under Sub-Rule 1 of Rule 5 of 1986 Rules is exercised by taking recourse to the Rule making power under 1986 Act and in particular Sections 3, 6 and 25. The submission of the learned Counsel appearing for the petitioners is that though second last recital in the impugned Rules refers to Sub-Rule 4 of Rule 5 of 1986 Rules which confers a power on the Central Government to dispense with requirement of publishing a prior notice under Sub-Rule 3 of Rule 5 and inviting objections and suggestions, there is no recital that any such power of dispensing with requirement of Rule 3 has been exercised under the Sub-Rule 4 of Rule 5. It is thus contended that the impugned Rules violate fundamental rights under Article 21 and the Article 14 of the Constitution of India as the same suffer from arbitrariness. Our attention is also invited to the proviso added to Sub-Rule 5 of Rule 3. The contention is that proviso refers to a notification issued in accordance with Sub-Rule 2 of Rule 3 though Sub- Rule 5 contemplates a declaration of silence zone for the purpose of the Principal Rules. It is pointed out that Sub-Rule 2 of Rule 3, which is referred in proviso added to Sub-Rule 5 refers to categorization of an area into industrial, residential and silence zones. It is contended that the proviso to Sub-Rule

- 24 - PIL No.24110/17@WP 9508/17 (5) which refers to Sub-Rule 2 of Rule 3 uses the word 'notified' though Sub-Rule 2 of Rule 3 talks about categorization and not a notification. The submission is that the conjoint reading of Sub-Rule 5 of Rule 3 along with the proviso would show that as area falling within the distance of 100 meters around the hospitals, educational institutions and Courts is already declared as silence zone under the unamended Principal Rules, the said areas will continue to be so even after coming into force of the impugned Rules. The proviso added by way of the impugned Rules will apply only if some other area is to be declared as a silence zone. The contention is that as the object of the Principal Rules and 1986 Act is to save citizens from noise pollution, such classification which is made does not have any intelligible differentia and does not establish any rational nexus with the object sought to be achieved. Therefore, it violates Article 14 of Constitution of India.

13. It is urged that the impugned Rules also violate the fundamental rights guaranteed by Article 21 of the Constitution of India. Our attention was invited to the decision of Larger Bench of the Apex Court consisting of 9 Hon'ble Judges in the case of Justice K.S. Puttaswamy (Retd.), and Anr vs Union of India and Ors . It is contended that the procedure established by law as contemplated by Article 21 has to be tested by referring Article 14 of the Constitution of India. It is submitted that even if 4 2017 SCC OnLine SC 996

- 25 - PIL No.24110/17@WP 9508/17 restricted meaning is given to the procedure established by law, as the requirement of clause (a) of Sub-Rule 3 of Rule 5 of 1986 Rules of prior publication of Rules for inviting objections and suggestions from the citizens has not been followed, the procedure established by law has not been followed. It is submitted that if interpretation of the State Government that no silence zone is in existence after coming into force of the impugned Rules is accepted, it amounts to violation of Article 21 of the Constitution of India. One of the contentions raised by Mr. Anturkar without prejudice to his contention that the impugned Rules are unconstitutional, is that in view of the stand taken by the State Government, there is a vacuum created in the sense that there is no silence zone in existence. His contention is that as held by the Apex Court in case of Lalit Kumar Modi versus Board of Control for Cricket in India and Others5, the Court always has a power to ensure that directions are issued so that the vacuum does not remain. He also relied upon a decision of this Court in the case of Shaikh Yusuf Bhai Chawala and others vs. State of Maharashtra and others 6. He urged that power to fill in the gap or the vacuum has been exercised by this Court under Section 151 of the Code of Civil Procedure 1908 in the case of Sangeeta Balkrishna Kadam v. Balkrishna Ramchandra Kadam7.

5 (2011)10 SCC 106
6 2011(6)Mh.L.J 691
7 AIR 1994 BOM 1

14. The intervenors have also made detailed submissions. The main submission is that the impugned Rules do not affect the findings recorded in the decision of this Court in the case of Dr. Mahesh Bedekar on the existence of silence zones. The impugned Rules do not affect the position of law which was on 10th August 2017 and it does not affect what is held by this Court in Clause (xii) of the judgment in the case of Dr. Mahesh Bedekar. Without prejudice to the said contention, he urged that the impugned Rules are unconstitutional being contrary to the provisions of 1986 Act and 1986 Rules. He urged that it is a colourable exercise of powers. Secondly, it is submitted that the impugned Rules are violative of fundamental rights of the citizens under Article 21 of the Constitution of India. He urged that the impugned Rules lead to manifest absurdity, absurd inconvenience and anomaly. He invited the attention of the Court to the fact that there is a non-compliance with the requirements of clause (a) of Sub-Rule 3 of Rule 5 of 1986 Rules. The submission is that the requirement of prior publication under clause (a) of Sub-Rule 3 of Rule 5 of 1986 Rules has not been dispensed with and in any event it can be dispensed with only when it appears to the Central Government that it is necessary in public interest to do so. The submission is that instead of imposing restrictions and prohibition, by the impugned Rules, the prohibition is sought to be taken away and therefore, the proposed amendment is not at all in public interest. The submission is that the exercise of

- 27 - PIL No.24110/17@WP 9508/17 the Rule making power is far from being in public interest. The action of doing away with silence zones is the violation of the rights under Article 21. The submission is that impugned Rules offend fundamental right to live peacefully and free from noise pollution. The submission is that the amendment brought out is manifestly arbitrary and unreasonable. Another submission of the intervenors is that the amendment made by the impugned Rules will have to be read in such a manner which would advance the scheme and purpose of the Principal Rules and not to defeat the same and lead to absurdity. Reliance was placed on the decision of the Apex Court in case of Mandal Revenue Office Versus Goundla Venkaiah and Another 8 . Reliance is also placed on another decision of the Apex Court in case of H.S. Vankani and Others versus State of Gujarat and Other9. The submission is that the amended Rules will have to be interpreted in a manner so as to do justice to all the parties and a construction of the provisions leading to confusion and absurdity must be avoided. In that behalf, reliance was placed on the decision of State of Madhya Pradesh Versus Narmada Bachao Andolan and Another 10. The learned counsel for the intervenors pointed out that on the basis of the notification dated 21st April 2009 issued by the State Government, the power to declare silence zones was 8 (2010) 2 SCC 461 9 (2010)4 SCC 301 10 (2011)7 SCC 639

- 28 - PIL No.24110/17@WP 9508/17 purportedly delegated to the local authorities. It is contended that the Mumbai Municipal Corporation had demarcated and identified 1537 silence zones in the city of Mumbai which fact was confirmed by the Affidavit dated 7th May 2009 filed by the State Government in P.I.L No.85 of 2007 in which the State Government affirmed that the power to declare silence zones has been delegated to the local bodies. He submitted that in any event, the said silence zones which have been identified on the basis of the authority conferred by the State

Government are not affected by the impugned Rules. He relied upon some other decisions to which we have made a reference in the subsequent part of this order.

15. The learned Counsel appearing for the petitioners in writ petition No.9508 of 2018 apart from arguing that the impugned Rules are ultra-vires the provisions of 1986 Act and 1986 Rules urged that the impugned Rules violate Article 14 as well as 21 of the Constitution of India. He submitted that as per the decision of this Court in the case of Dr. Mahesh Bedekar which is confirmed by the Apex Court, the area falling within the distance of 100 meters surrounding hospitals, educational institutions, Courts and religious places has been held to be a silence zone and therefore, the modification made to the Principal Rules by the Impugned Rules on 10th August 2017 will apply prospectively. The submission is that the the silence zones in existence as of 10 th August 2017 will continue to exist

- 29 - PIL No.24110/17@WP 9508/17 as the Impugned Rules will operate prospectively.

16. The learned Additional Solicitor General of India at the outset stated that there is no specific order passed under Sub-Rule 4 of Rule 5 of 1986 Rules by which the Central Government has dispensed with the requirement of prior notice under clause (a) of Sub-Rule 3 of Rule 5 of 1986 Rules. He tendered across the bar a letter dated 1 st September 2017 addressed to him by Dr. Shruti Rai Bhardwaj, Joint Director in the Ministry of Environment, Forest and Climate Change, Government of India. The said letter is taken on record and marked as "L-1" for identification. He submitted that there may be material on record to show that the issue of dispensing with requirement of publication of prior notice was discussed and that material can be placed on record by filing an affidavit- in-reply. However, on a specific query made by the Court, he stated that there is no such express order passed by any authority under Sub-Rule 4 of Rule 5 of 1986 Rules. Relying on the various decisions of the Apex Court, including the decision in Special Reference No.1 of 199111, he submitted that the legislature can always change the basis on which a decision is given by the Court. He submitted that relying upon the decision in case of State of Himachal Pradesh and Others v. Satpal Saini12, he urged that a Court cannot issue a direction to the legislature to act in a particular manner. For dealing 11 AIR 1992 SC 522 12 2017 SCC OnLine SC 171

- 30 - PIL No.24110/17@WP 9508/17 with the prayer for stay of the impugned Rules, he placed reliance on a decision of the Apex Court in case of Health for Millions Vs. Union of India (UOI) and Ors 13. He submitted that the law is very well settled that there is always a presumption in favour of the constitutional validity of any legislation. He submitted that in view of this presumption, the Court should be slow in granting any such interim relief. He submitted that the Court should be extremely slow while passing an order of stay in such cases. He submitted that when a legislation is challenged on the ground violation of the the fundamental rights under Article 14 of the Constitution of India, a specific allegation must be made in that behalf in the petition. He relied upon the decision of the Apex Court through Shri V.S. Rice & Oil Mills vs. State of Andhra Pradesh. Turning to the impugned Rules, he submitted that though first five recitals of the Rules refer to Rule 5 of 1986 Rules, the last recital shows that the power is exercised under Sections 3, 6 and 25 of 1986 Act read with Rule 5 of 1986 Rules. He urged that the amendment to the Rules dealing with silence zones could have been always made by taking recourse to the general Rule making power under

Section 25 of the 1986 Act. He submitted that though recitals may have referred to Rule 5 of 1986 Rules, the exercise of rule making power is not confined to Rule 5, but it is a composite exercise of power of making rules both Sections 3, 6, and 25 of the 1986 Act and 13 (2014) 14 SCC 496

- 31 - PIL No.24110/17@WP 9508/17 Rule 5 of the 1986 Rules. He relied upon a decision of the Apex Court in case of Peerless General Finance and Investment vs Reserve Bank of India15 and submitted that the question to be decided by the Court is whether there existed a power to legislate and therefore, the Court cannot go by recitals in the Rules. He submitted that though the recitals may not specifically refer to actual action of dispensing with the requirement of a publication under clause (a) of Sub-Rule 3 of Rule 5 of 1986 Rules, there is a material on record in the form of minutes to show that the issue was discussed. Though there is no specific order of the authority empowered to take a decision after recording a satisfaction that it is in public interest to dispense with prior publication under clause (a) of Sub-Rule 3 of Rule 5 of 1986 Rules, he submitted that for exercising the rule making power under 1986 Act, there is no requirement of prior publication. He also relied on the observations made by the Apex Court in case of H.S. Vankani and Others versus State of Gujarat and Other (supra). He submitted that considering the very wide definitions of Court and hospital in the Principal Rules, the provisions regarding silence zone as interpreted by this Court were leading to unreasonable results. He pointed out that if the Rules as existed in relation to silence zones were implemented, considering the wide definitions therein, very few areas in the city of Mumbai will not be silence zones. He submitted that the Court has to avoid a construction 15 AIR 1992 SC1033

- 32 - PIL No.24110/17@WP 9508/17 of an enactment that leads to an unworkable, inconsistent and impracticable results. He submitted that if this Court accepts interpretation that notwithstanding the impugned Rules, the directions issued in the P.I.L stand, it will create unworkable and inconsistent situation. He submitted that the Rules cannot be interpreted in this fashion. He submitted that it is for the State Government to categorize and notify an area as silence zone and only because the State has not declared any area as a silence zone in the entire State, the impugned Rules do not become invalid. While submitting that he is not disputing the powers of the Court to issue appropriate directions where there is a vacuum, he submitted that in the present case, the exercise of such power is not warranted at all. The basis of this judgment is taken away by the impugned Rules.

17. The learned Government Pleader submitted that while amending the Principal Rules by the Noise Pollution (Regulation and Control) Amendment Rules 2000, the requirement of prior publication of the draft Rules as contemplated by sub-clause (a) of Sub-Rule 3 of Rule 5 of 1986 Rules was dispensed with. He submitted that in terms of directions issued by the First Court in PIL No.85 of 2007, on 26th February 2009, the State of Government issued a notification dated 21st April 2009 authorizing various local authorities to identify and declare silence zones. He submitted that accordingly, in some cities, silence zones have been

- 33 - PIL No.24110/17@WP 9508/17 notified. He submitted that the declaration of silence zones in terms of notification dated 21st April 2009 will be taken as guiding factor. However, on a query made by this Court, he stated that it is not possible for him to make a statement that the silence

zones notified on the basis of notification dated 21 st April 2009 will be treated as silence zones. He reiterated that the silence zones declared as per the said notification will be taken as guidelines, but the same will not be treated as silence zones. He relied upon the decisions relied upon by the learned Additional Solicitor General of India. In addition, he urged that a legislation can be always retrospective. He relied upon a decision of the Apex Court in the case of Utkal Contractors and Joinary (P) Limited and others vs State of Orissa 16 in support of his submissions. He submitted that the impugned Rules have been brought on the statute book to ensure that the operation of the provisions regarding silence zone in the Principal Rules do not lead to absurd results. He reiterated the stand that in view of the impugned Rules, now no area in the State is a silence zone.

CONSIDERATION OF SUBMISSIONS AND CONCLUSIONS POWER OF THIS COURT TO GRANT STAY OF OPERATION OF THE IMPUGNED RULES 18 We have given a careful consideration to the submissions made on the issue of grant of interim relief. Firstly, we deal with the contention raised by the learned 16 1987(Supp) SCC 751

- 34 - PIL No.24110/17@WP 9508/17 Additional Solicitor General of India on the power of this Court to grant stay of operation of statutory provisions. He relied upon a decision of the Apex Court in the case of Health for Millions Vs. Union of India (UOI) and Ors (supra). He relied upon paragraphs 13 and 14 of the said decision which read thus:-

> "13. We have considered the respective arguments and submissions and carefully perused the record. Since the matter is pending adjudication before the High Court, we do not want to express any opinion on the merits and demerits of the writ petitioner's challenge to the constitutional validity of the 2003 Act and the 2004 Rules as amended in 2005 but have no hesitation in holding that the High Court was not at all justified in passing the impugned orders ignoring the well-settled proposition of law that in matters involving challenge to the constitutionality of any legislation enacted by the legislature and the rules framed thereunder the courts should be extremely loath to pass an interim order. At the time of final adjudication, the court can strike down the statute if it is found to be ultra vires the Constitution. Likewise, the rules can be quashed if the same are found to be unconstitutional or ultra vires the provisions of the Act. However, the operation of the statutory provisions cannot be stultified by granting an interim order except when the court is fully convinced that the particular enactment or the rules are ex facie unconstitutional and the factors, like balance of convenience, irreparable injury and public interest are in favour of passing an interim order."
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> 14. In Bhavesh D. Parish v. Union of India [(2000) 5 SCC 471], this Court considered a somewhat similar question in the context of prayer made for stay of Section 45-S of the Reserve Bank of India Act, 1934 and observed: (SCC p. 487, paras 30-31)
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> - 35 - PIL No.24110/17@WP 9508/17 "30. Before we conclude there is another matter which we must advert to. It has been brought to our notice that Section 45-S of the Act has been challenged in various High Courts and a few of them have granted

the stay of provisions of Section 45-S. When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change, then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the applicability of the same. Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.

31. While the courts should not abrogate (sic abdicate) their duty of granting interim injunctions where necessary, equally important is the need to ensure that the judicial discretion does not abrogate from the function of weighing the overwhelming public interest in favour of the continuing operation of a fiscal statute or a piece of economic reform legislation, till on a mature consideration at the final hearing, it is found to be unconstitutional. It is, therefore, necessary to sound a word of caution against intervening at the interlocutory stage in matters of economic reforms and fiscal statutes."

(emphasis added)

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20. It is true that there is a presumption of constitutionality in favour of a legislation. However, in paragraph 13 of the decision in the case of Health for Millions Vs. Union of India (UOI) and Ors, the Apex Court has held that in a case where the Court is fully satisfied that a particular enactment or the Rules are ex facie unconstitutional and the factors like, balance of convenience, irreparable injury and public interest are in favour of passing an interim order, the Court could exercise the power of granting stay of operation of Rules.

21. There is one more relevant decision on this aspect. It is in the case of State of Tamil Nadu and another Versus P. Krishnamurthy and others17 . In paragraph 15 and 16 of the said decision, the Apex Court held thus:-

"Whether the rule is valid in its entirety?

"15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is

also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

17 (2006) 4 SCC 517

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16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."

22. Thereafter in paragraph 17, the Apex Court quoted with approval its well known decision in the case of Indian Express Newspapers (Bombay) Pvt. Limited versus Union of India18. The relevant part of paragraph 17 reads thus:-

"17. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121], this Court referred to several grounds on which a subordinate legislation can be challenged as follows: (SCC p. 689, para 75) '75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made . It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation . It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is

manifestly arbitrary.'"

(emphasis added)

23. Therefore, the Apex Court held that a piece of subordinate legislation does not carry the same degree of 18 (1985)1 SCC 641

- 38 - PIL No.24110/17@WP 9508/17 immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be also questioned on the ground that it does not conform with the statute under which it is made.

CONSIDERATION OF SUBMISSIONS ON MERITS

24. In the context of the law laid down by the Apex Court, now we must consider the issue of the grant of interim relief. We have already quoted the impugned Rules. For the sake of convenience, we are reproducing the recitals therein which read thus:

"Whereas, according to clause (a) of sub-rule (3) of rule 5 of the Environment Projection Rules, 1986, whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on the processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so;

And whereas, every notification under clause (a) of said sub-rule shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area;

And whereas, any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official

- 39 - PIL No.24110/17@WP 9508/17 Gazette;

And whereas, clause (d) of the said sub-rule provides that the Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within five hundred and forty five days from such date of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area;

> And whereas, sub-rule (4) of rule 5 of the said rules provide that, notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3) of rule 5."
>
> Now, therefore, in exercise of the powers conferred by sections 3, 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), read with rule 5 of the Environment (Protection) Rules 1986, the Central Government hereby make the following rules further to amend the Noise Pollution (Regulation and Control) Rules, 2000, namely: - ...."

25 There are six recitals in the Impugned Rules which are quoted above. The first recital records that according to clause

(a) of the Sub-Rule (3) of Rule 5 of 1986 Rules, whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on of processes and operations in an area, it may by a notification in the Official Gazette and in such other manner as the Central government may deem necessary from time to time, give notice of its intention to do so. The second

- 40 - PIL No.24110/17@WP 9508/17 recital refers to the manner in which notice is to be issued. The third recital refers to grant of an opportunity of filing of objections on the basis of the notice within the time specified therein. The fourth recital refers to clause (d) of the Sub-Rule 3 of Rule 5 which provides that the Central Government shall within a period of 120 days from the date of publication of the notification in the official gazette, consider all such objections received against the Notification and within 545 days specified from such publication, impose such prohibitions or restrictions on location of industries and carrying on any process or operations in any area. What is material is fifth recital which shows that the Central Government intended to rely upon Sub- Rule (4) of Rule 5 of the 1986 Rules. It provides that, whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of publication of a notice under clause (a) of sub-rule (3) of rule 5 of 1986 Rules. However, there is no recital that such a power was in fact exercised by the Central Government. Admittedly, there was no prior publication of the impugned Rules. The last recital shows that the Central Government for exercising the powers under Rule 5 of the 1986 Rules, took recourse to the Rule making power under the 1986 Act. Thus, first five recitals, on its plain reading, in no uncertain terms indicate that the Central Government intended to exercise its power under the Rule 5 of 1986 Rules of imposing prohibition and restrictions on the location of an industry or the carrying

- 41 - PIL No.24110/17@WP 9508/17 on the processes and operations in a particular area. The recitals show that the Central Government was intending to impose such prohibition and restrictions. The use of the words "Now, therefore, ..." in the last recital shows that for imposing the prohibition or restrictions as provided in Rule 5 of 1986 Rules, a recourse was taken by the Central Government to the provision of 1986 Act empowering the Central Government to frame Rules.

26. At this juncture, we may make a reference to Rule 5 of 1986 Rules. Rule 5 reads thus:-

"5. Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas (1) The Central government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas-

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) [or an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any

- 42 - PIL No.24110/17@WP 9508/17 treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international confcrcnce1 association or other body.

(ix) Proximity to human settlements.
(x) Any other factor as may be considered by the

Central Government to De relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations Of an industry or the carrying on of

processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may [within one hundred and [eighty] days from such day of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under Cl. (a) of sub-rule (3). "

27. Thus, a power is conferred under Sub-rule(1) on the Central Government to prohibit or restrict the location of an industry or the carrying on the processes and operations in different areas after considering the factors which are

- 43 - PIL No.24110/17@WP 9508/17 enumerated in Sub-rule (1) after following the procedure under sub-Rule (3). It is provided in clause (a) of the Sub-Rule (3) of Rule 5 of 1986 Rules that whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by a notification in the Official Gazette and in such other manner as the Central government may deem necessary from time to time, give notice of its intention to do so. Contents of the notice have been specified in clause (b) of Sub-rule (3). Clause (c) thereof contains the requirement of calling for filing of objections against the proposed imposition and prohibition and restrictions within a period of 60 days from the date of the publication in the official gazette. Clause (d) mandates the Central Government to consider all the objections within a period of 120 days and it confers the power to impose such prohibition or restrictions within specified 365 days from the date of the publication of the notification in official Gazzette. In the present case, it is explicitly clear that by the impugned Rules, the Central Government purported to exercise the power of imposing prohibition or restrictions under Rule 5 of 1986 Rules by taking recourse to the Rule making power under 1985 Act. The decision of the Apex Court in the case of Peerless(supra) will have no application to this case as the Apex Court was not dealing with the rule making power.

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28. The provisions of clauses (a), (b) and (c) of Sub-rule (3) of Rule 5 of 1986 Rules are mandatory in nature, in as much as, whenever it is intended to impose prohibition or restrictions as contemplated by Rule 5, the Central Government is under a mandate to notify its intention to do so in official gazette and in such other manner as it may deem fit. Only when the Central Government is satisfied that it is in public interest to do so, it may dispense with the requirement of prior publication of notice under clause (a) of Sub-Rule 3. As noted earlier, the learned Additional Solicitor General of India candidly stated that in this case, there is no specific order passed by any authority of the Central Government dispensing with the requirement of notice by exercising power under Sub- rule 4 of Rule 5 of 1986 Rules. He tendered on record a copy of the communication dated 1st September 2017 (L-1 for identification) issued by the Joint Director in the Ministry of Environment, Forest and Climate Change, Government of India. The contents of the letter show that there is no specific decision taken by the Central Government to the effect that it is in public interest to dispense with the requirement of a notice under clause (a) of Sub-Rule (3). In fact, the admitted position which is revealed from the statement of the learned Additional Solicitor General of India is that there is no specific order passed by any competent authority recording its satisfaction in terms sub-rule (4) of Rule 5 of 1986 Rules. Thus, there was a mandatory requirement of prior publication permitting the

- 45 - PIL No.24110/17@WP 9508/17 members of the public to submit objections and suggestions, but the same has not been complied with in this case. Thus, the exercise is ex-facie illegal being contrary to Sub-Rule (3) of Rule 5 of the 1986 Rules.

29. We may note here that if the interpretation put by the State Government as well as Central Government to the impugned Rules is correct, the effect of the amendment will be that as of today, no silence zone exists in the State of Maharashtra as the State Government has not declared any area as a silence zone acting upon the impugned Rules. Thus, the use of loud-speakers and other prohibited activities as specified in Rule 6 of the Principal Rules can be permitted within a distance of 100 meters from Courts, Hospitals, and schools/colleges. If such permissions are granted, the same will violate fundamental rights under Article 21 of the Constitution of India as spelt out in the decision of the Apex Court in case of Noise Pollution (V), IN RE (supra). Thus, even assuming that there was an exercise of powers under Sub-Rule (4) of Rule 5 of 1986 of dispensing with prior publication under Sub-Rule (3) thereof, the said exercise of powers is ex-facie against Public interest especially when the case of both the Governments is that the silence zones under the unamended Principal Rules in terms of the decision of this Court in the case of Dr. Mahesh Bedekar now no longer exist. In view of the fact that the right to lead a noise pollution free life is a part of

- 46 - PIL No.24110/17@WP 9508/17 Article 21, the impugned Rules which purport to abolish all existing silence zones cannot be said to have been framed in public interest. Surely, dispensing with the requirement of prior publication is not at all in public interest.

30. We may note one more factual aspect here. As noted earlier, even the Principal Rules show that the same were enacted under Clause (ii) of Sub-Section 2 of Section 3, Sub-Section 1 and Clause (b)

of Sub-Section 2 of Section 6 and Section 25 of the 1986 Act read with Rule 5 of 1986 Rules. Since Rule 5 of 1986 Rules was invoked, prior publication of the Principal Rules was made by the Central Government in accordance with clause (a) of sub- Rule (3) of Rule 5 of 1986 Rules. In fact, whenever the Principal Rules were modified, such prior publication was made by the Central Government. In fact, while making all the subsequent amendments thereto, apart from other provisions, even Rule 5 of 1986 Rules was invoked. Perhaps in case of only one amendment made in the year 2000, the requirement of prior publication was dispensed with. We may note here that learned Government Pleader placed on record the notification dated 10th June 2006 amending the notification dated 19 th February 1991 regarding Coastal Zone Regulations. As the modification was done by invoking Rule 5 of 1986 Rules, the notification dated 10th June 2006 shows that the power

- 47 - PIL No.24110/17@WP 9508/17 under Sub-Rule (4) of Rule 5 was specifically invoked as there is a recital in that the Central Government is of the opinion that it is in public interest to dispense with the said requirement of notice under clause (a) of Sub-Rule (3) of rule 5 of the 1986 Rules. As stated earlier, in the impugned Rules, there is no recital that the Central Government is of the opinion that it is in the public interest to dispense with the requirement of notice under Sub-Rule (3) of Rule 5 of the 1986 Rules. The fifth recital in the impugned Rules merely refers to the power which is conferred under Sub-Rule (4) of Rule 5 of 1986 Rules without recording that the said power was in fact exercised. Had the prior publication been made, the citizens could have pointed out the ill effects of the proposed amendments and the fact that the same violate their fundamental rights under Article 21. In fact in the light of the rights guaranteed under Article 21, no one is entitled to use loud-speaker as a matter of right. From the submissions made across the Bar on behalf of the State Government it appears to us that the State is under a misconception that in certain cases, by not allowing the use of loud-speakers within a distance of 100 meters from a Hospital, School/college or Court, as the case may be, rights of handful of citizens will be affected.

31 There is another important aspect of the matter.

- 48 - PIL No.24110/17@WP 9508/17 Recitals in the impugned Rules show that the power of imposing restrictions and prohibition under Sub-Rule (1) of Rule 5 was sought to be invoked by taking recourse to the rule making powers under 1986 Act. Thus, the object of impugned Rules seems to be to impose restrictions as contemplated under Sub-Rule (1) of Rule 5 of 1986 Rules. We have noted the contents of the impugned Rules which do not impose any such restrictions or prohibition contemplated by Sub-Rule 1 of Rule 5 of 1986 Rules and on the contrary, the impugned Rules purport to amend the provisions in the Principal Rules regarding the silence zones. The impugned Rules intend to remove the prohibition or relax the same which existed in the Principal Rules. Thus, there is no nexus between the impugned Rules and the object sought to be achieved under Rule 5 of 1986 Rules.

32. At this stage, we may make a useful to a recent decision of Bench of the Apex Court in case of Justice A.N. Puttaswamy and others wherein the Apex Court has dealt with Article 21 of the Constitution of India while examining whether right of privacy is a part of Article 21. In paragraph 165 of the said decision, the Apex Court has held thus:-

"165. The Court, in the exercise of its power of judicial review, is unquestionably vested with the constitutional power to adjudicate upon the validity of a law. When the validity of a law is questioned on the ground that it violates a guarantee contained in Article 21,

- 49 - PIL No.24110/17@WP 9508/17 the scope of the challenge is not confined only to whether the procedure for the deprivation of life or personal liberty is fair, just and reasonable. Substantive challenges to the validity of laws encroaching upon the right to life or personal liberty has been considered and dealt with in varying contexts, such as the death penalty (Bachan Singh) and mandatory death sentence (Mithu), among other cases. A person cannot be deprived of life or personal liberty except in accordance with the procedure established by law. Article 14, as a guarantee against arbitrariness, infuses the entirety of Article 21. The inter-relationship between the guarantee against arbitrariness and the protection of life and personal liberty operates in a multi-faceted plane. First, it ensures that the procedure for deprivation must be fair, just and reasonable. Second, Article 14 impacts both the procedure and the expression "law". A law within the meaning of Article 21 must be consistent with the norms of fairness which originate in Article 14. As a matter of principle, once Article 14 has a connect with Article 21, norms of fairness and reasonableness would apply not only to the procedure but to the law as well."

(emphasis added)

33. We have already spelt out what is the fundamental right of citizens under Article 21 of the Constitution of India, in relation to noise. The impugned Rules purport to withdraw or cancel the existing silence zones. Therefore, the prohibition imposed by Rule 6 on use of loud-speakers in silence zones existing on 10th August 2017 may not apply if the stand of the State is correct. Hence, the rights under Article 21 will be infringed. The procedure followed for purportedly obliterating the existing silence zones without inviting objections and suggestions is thus manifestly arbitrary and violative of Article

- 50 - PIL No.24110/17@WP 9508/17 14 of the Constitution of India.

34. We have made a reference to the decision of the Apex Court in case of Farhd K. Wadia v. Union of India which is extensively considered by the Division Bench of this Court while deciding the case of Dr. Bedekar. We have also referred to an interim order of 25th September 2003 which operated till 16th August 2016 when Dr. Bedekar's case was decided. Thereafter, what is held in clause (xii) of paragraph 93 of the said Judgment is operative. Thus, the silence zones which were in existence at least for 14 years are sought to be taken away by the impugned Rules in a manifestly arbitrary manner. We may note here that clause (xii) of paragraph 93 of the said judgment which is upheld by the Apex Court holds that silence zone comprises of an area within the distance of 100 meters around the hospitals, educational institutions and Courts and it is not necessary for the State to declare any such area as a silence zone. Thus, from the year 2003, the view taken by the Court is that

the area falling within the distance of 100 meters around the hospitals, educational institutions and Courts will be considered as a silence zone though it was not specifically declared to be so by the State Government. In fact, on the very issue, a Special Leave Petition was preferred by the State Government for challenging what is held in clause (xii) of paragraph 93 of the Judgment in Dr.Bedekar case which was summarily dismissed. At this stage, we are not recording any

- 51 - PIL No.24110/17@WP 9508/17 final opinion on the question whether the directions in clause

(xii) of paragraph 93 of the said Judgment as regards silence zones continue to operate notwithstanding the impugned Rules. But, suffice it to say that for considerably long time (at least from 25th September 2003), the judicial decisions/direction holding that the silence zone comprises of an area within the distance of 100 meters around the hospitals, educational institutions and Courts operated with full force till 10th August 2017. Now, the contention of State of Maharashtra as well as Central Government is that no silence zone is in existence from the date of the impugned Rules. If that is the interpretation put by the State Government to the amended Rules, ex-facie, the amended Rules will violate the fundamental rights of the citizens under Article 21 of the Constitution of India. As observed and held earlier, the impugned Rules will not stand the test of Article 14 for two reasons. The first is that there is no nexus between the impugned Rules and object sought to be achieved by the impugned Rules framed in exercise of powers under Rule 5 of 1986 Rules. Secondly, the exercise of power is manifestly unreasonable and arbitrary as there is no prior publication made as required by clause (a) of Sub-Rule 3 of Rule 5 of 1986 Rules.

35. If the interpretation put by the Central Government as well as state Government is taken into consideration, it is now possible to grant a permission to use a loud-speaker or

- 52 - PIL No.24110/17@WP 9508/17 sound amplifier even at a distance of 5 to 10 meters from hospitals, Courts, or schools/colleges. The refusal to grant permission to use a loud-speaker for preventing noise pollution does not offend fundamental rights of any individual. Moreover, the restrictions imposed by Rule 6 of the Principal Rules do not apply within the precincts of Courts, Hospitals, schools etc as held in Dr. Bedekar's case. Thus, a loud-speaker can be used in a function held in open courtyard of this Court or on a ground situated within the precincts of a school/college. Moreover, it has been held that restrictions do not apply to enclosed premises in silence zones in which loud- speakers can be used after obtaining permission.

36. Therefore, we are of the considered view that there is a very strong prima facie case to hold that the impugned rules are unconstitutional. In fact the Rules are ex-facie unconstitutional. As we have held that the impugned Rules will violate fundamental rights guaranteed under Article 21 of the Constitution of India, this is a case where there will be irreparable injury to the citizens especially in the light of the law laid down by the Apex Court that a right to live in noise pollution free atmosphere is guaranteed under Article 21 of the Constitution. Noise is a major health hazard on various aspects set out in its decision. It follows that even the factors of balance of convenience and public interest are strongly in favour of passing an interim order. No one can claim that his

- 53 - PIL No.24110/17@WP 9508/17 rights are affected in any manner if he is denied a permission to use loud-speaker within a close distance from Hospitals/clinics, schools/colleges or Courts. It in public interest that such permissions should not be granted. By denying such permission, rights under Article 19 or 25 are not at all infringed. Use of loud-speakers for celebrating a religious festival is not an essential part of any religion.

37 Even if an interim order is passed, the position regarding silence zones which existed if not from the date on which Principal Rules came into force, but at least from September 2003, will continue to exist. We propose to hear the petitions immediately. Hence, a case is made out to stay the impugned notification. Hence, the following order:-

ORDER

(i) There will be ad-interim relief in terms of prayer clause (c) of Writ Petition No.9508 of 2017. Place the matters for directions on 6th October 2017 at 03.00 p.m for fixing the date of hearing. After filing an affidavit-in-reply, it will be open for the respondents to move this Court for considering the prayer for modifying/vacating ad-interim relief. In view of ad-interim relief granted in Writ Petition No.9508 of 2017, we make it clear that the said ad-interim relief will operate in P.I.L. (Stamp) No.24110 of 2017;

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(ii) We make it clear that as we have granted ad-interim relief in terms of prayer clause (c) of the writ petition, we have not made final adjudication on the question whether the judgment in PIL No.173 of 2010 remains unaffected by the impugned Rules;

(iii) The learned ASG as well as the learned Government Pleader pray for stay of this order, which prayer is opposed by the petitioners. We decline to grant stay. However, we make it clear that for a period of four weeks from today, there will not be any prosecutions for violation of Rule 6 of the Principal Rules on the basis of the incidents taking place from today;

(iv) At this stage, the learned ASG submits that stay may be granted as there may be an issue of law and order situation. During the course of hearing, we made a query to the learned ASG and learned Government Pleader as to whether any law and order situation was created between the years 2003 and 2017 on account of the Rules regarding the silence zone. The learned ASG stated that it is for the Government Pleader to clarify this aspect. The learned Government Pleader stated that there is no material available to show that the applicability of the Rules relating to silence zones created a law and order situation. Moreover, we have clarified that for the violation which may take place from today, for a period of four weeks, prosecutions will not proceed. Secondly, we have made it very clear that what is granted today is only

- 55 - PIL No.24110/17@WP 9508/17 ad-interim relief and the respondents can move the Court for modification or for vacating ad-interim reliefs after filing affidavit-in-reply. We may also note that after the final judgment was delivered in PIL No.173 of 2010 on 10th, 11th, 12th and 16th August, 2016, Ganpati and Navratri festivals have been celebrated and it is not the case of the State Government that any law and order situation was created during the said festivals.

(A.S. OKA, J.) (ANOOP V. MOHTA J.) (RIYAZ I. CHAGLA J.)