

CIVIL WRIT

Before D. K. Mahajan, J.

COMRADE MOTA SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 750 of 1959.

Punjab Instruments (Control of Noises) Act (XXXVI of 1956)—Object of—Sections 3 and 4—Permission granted by the District Magistrate on condition that no provocative speeches or slogans are to be made—Whether legal—Permission granted after the date of the meeting—Whether misuse of the power—Procedure for making enquiries—Whether can be objected to.

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Held, that the object of the Punjab Instruments (Control of Noises) Act, 1956, is to prevent noise, which causes disturbance to educational institutions, hospitals and the public in general. The object of the Act is not to prevent violent or provocative speeches. There are enough enactments in this country to deal with such speeches. Moreover, if there is a political party which is inconvenient it can be banned and such a course by the party in power is not unknown. In any case, a speech which is either violent or provocative and is delivered without the use of a loudspeaker or an amplifier, it certainly does not come within the ambit of the Act. It is only the pitch or volume of the speech which becomes audible beyond the precincts of the premises where it is being made with the aid of loudspeakers or other amplifying devices that is made an offence under the Act, if it is delivered without the permission of the District Magistrate. Therefore, it cannot be said that it is the nature of the speech, which is made penal under the Act. It is its volume or the pitch for it produces noise, which verges on nuisance. Judged in this light, it cannot with any reasonableness be said that the condition imposed by the District Magistrate that no provocative speeches or slogans are to be made is justified. It is wholly extraneous to the purpose of the Act and its imposition clearly indicates how the authorities are apt to misuse its provisions.

Held, that there is no doubt that some reasonable time has to be allowed to the District Magistrate to make any enquiry he deems necessary as to the locale of the meeting *vis-a-vis* the schools, hospitals, etc. But if such time has been allowed, it will be a misuse of the Act if the application is not dealt with before the time of the proposed meeting.

Held, that for the purpose of imposing conditions, the District Magistrate can have resort to his private enquiries, but then the responsibility for imposing those conditions is entirely his, and the way how he makes the enquiries cannot be made the subject-matter of an objection.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari or mandamus be issued quashing the order of respondent No. 2 dated the 6th July, 1959.

ANAND SWAROOP, for Petitioner.

H. S. DOABIA, for Respondents.

ORDER

Mahajan, J.

MAHAJAN, J.—The present writ petition is directed against the order of the District Magistrate, Amritsar, refusing to grant permission for use of loudspeakers in political conferences to be held in number of villages specified in the application filed by the Secretary, District Council, Amritsar, Communist Party of India, under section 3 of the Punjab Instruments (Control of Noises) Act (36 of 1956), to be referred hereinafter as the Act.

The application has addressed to the District Magistrate and permission has sought for the use of loudspeakers in the meetings scheduled to be held from the 4th of July to the 26th of July, 1959, in different villages set out in the application annexure "A". The District Magistrate marked this application to the Senior Superintendent of Police, who

in turn sent copies of the same to the Station House Officers of the Police Stations in which these villages are situate. It seems that after the receipt of the reports from the Station House Officers, an order (Annexure 'B') was passed on the 6th of July, 1959, by the District Magistrate refusing the requisite permission in four villages and granting permission in eleven villages on the following conditions:—

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- (i) That no provocative speeches or slogans are made.
- (ii) That the loudspeaker is not used within a radius of one furlong from a school, college and hospital.

Mr. Anand Swaroop, learned counsel for the petitioner, does not object to condition No. 2 and rightly so far it is in conformity with the object and the purpose of the Act, but he raises serious objection to condition No. 1. He further contends that the order refusing permission in four villages is also bad for no grounds whatever are assigned for this refusal and the refusal is otherwise un-called for.

The position taken by the State is disclosed in its reply to the present petition wherein it is stated that the permission to use loudspeakers was not given in respect of the four villages on the reports of the police officers. These reports were that "the use of loudspeakers was likely to disturb peaces". With regard to the conditions imposed in the villages, where permission had been granted it is stated that "it also cannot be denied that the use of loudspeaker makes the hostile group listen per force even at their houses to the unpalatable expression of views of the opposite party, which they want to avoid by not attending the conference.

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There is always a likelihood of a danger of breach of peace in such circumstances.”

Before dealing with the merits of the petition, it would be proper to set out *in extenso* the objects and the relevant provisions of the Act.

The objects and reasons of the Act are published in the Punjab Gazette extraordinary, dated the 5th of March, 1956, and are as follows:—

“The indiscriminate use of loudspeakers, amplifiers and such other apparatus emitting and transmitting sound is a great source of nuisance causing obstruction in streets and lanes, annoyance and injury to neighbours—especially student community; endangering health of aged and infirm who cannot enjoy sound sleep. In order to control this nuisance the present bill has been framed.”

Next comes the preamble of the Act, which runs as under:—

“An Act to control the use and play of instruments such as loudspeakers, microphones and amplifiers.”

The other relevant sections of the Act are:—

“(3) No person shall use or operate any instrument in or upon any premises at such pitch or volume as to be audible beyond the precincts thereof except under the written permission of the District Magistrate or any officer authorised by him in this behalf and under such conditions as may be attached to it.”

“(4) No person shall use or operate any instrument between ten o'clock in the night and six o'clock in the morning except with the written permission of the District Magistrate or any officer authorised by him in this behalf and under such conditions as may be attached to it.”

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It is no doubt true that indiscriminate use of the modern devices to amplify sound causes not only lot of inconvenience to the public in general but is a positive menace and a great nuisance. It cannot be disputed that the object of this legislation is most laudable. But then the Act has to be made use of for the purpose for which it is enacted. The powers conferred under it cannot be made use of for extraneous purposes. In a democratic country like ours where different political parties having different ideologies are allowed to function, and where the Constitution guarantees the right to freedom of speech and expression under Article 19, it will be wholly unwarranted to make use of the provisions of the Act to put an embargo on the right of free speech and expression of opinion by a party not in power under the guise of controlling noises and even in the matter of that making a discrimination in favour of the party in power, as has been done in the present case.

From the scheme of the Act and its object, it is abundantly clear that the object is to prevent noise, which causes disturbance to educational institutions, hospitals and the public in general. The object of the Act is not to prevent violent or provocative speeches. There are enough enactments in this country to deal with such speeches. Moreover, if there is a political party which is inconvenient it can be banned and such a course by the party in power is not unknown. In any case,

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a speech which is either violent or provocative and is delivered without the use of a loudspeaker or an amplifier, it certainly does not come within the ambit of the Act. It is only the pitch or volume of the speech which becomes audible beyond the precincts of the premises where it is being made with the aid of loudspeakers or other amplifying devices that is made an offence under the Act, if it is delivered without the permission of the District Magistrate. Therefore, it cannot be said that it is the nature of the speech, which is made penal under the Act. It is its volume or the pitch for it produces noise, which verges on nuisance. Judged in this light, it cannot with any reasonableness be said that condition No. 1 imposed by the District Magistrate is justified. It is wholly extraneous to the purpose of the Act and its imposition clearly indicates how the authorities are apt to misuse its provisions.

In the present case, it is also proved how the same authority, i.e., the District Magistrate, Amritsar, has discriminated in the matter of granting permission with regard to the different political parties. This also illustrates the misuse to which the Act is being put. There are number of orders on the file where permission under section 4 of the Act has been granted to the Communist Party on the conditions already set out in the earlier part of this judgment (Annexures B, E, F, G), while so far as the Congress party is concerned, the permission has been granted (Annexure J) without any condition whatever. Even the most reasonable condition as to the use of amplifying devices near a hospital or a school is lacking.

It will not be out of place to mention here that the application of the petitioner was not in conformity with section 3 of the Act. Section 3 requires that whenever an application is made; one

has to specify the premises, where such instrument is to be used and also the pitch and volume of the instrument so as not to be audible beyond the precincts of those premises. No such premises were specified and the District Magistrate would have been within his right to refuse permission on this ground but this is not the ground on which he has refused permission. As a matter of fact, on such a vague and indefinite application, he has allowed permission for the use of loudspeaker in eleven villages and absolutely refused the same in four villages. There is no reason assigned for this discrimination in this selection of village.

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It is further maintained by Mr. Anand Swaroop that the permission should have been refused or granted before the date of the meetings. This should have been so. In the present case, the date of the two of the meetings had expired before the permission was granted. This furnishes another illustration of the misuse of the Act. The District Magistrate can keep the application pending and pass an order after the date specified for the meeting has expired. It is no doubt true that some reasonable time has to be allowed to the District Magistrate to make any enquiry he deems necessary as to the locale of the meeting *vis-a-vis* the schools, hospitals, etc. But if such time has been allowed, it will be a misuse of the Act if the application is not dealt with before the time of the proposed meeting. In the instant case the application (Annexure 'A') was made on the 25th of June, 1959. The first proposed meeting was fixed for the 4th of July, 1959, and the application was disposed of on the 6th of July, 1959. In these circumstances, it cannot be said that this delay on the part of the District Magistrate was at all justified.

It is further contended that the procedure followed by the District Magistrate is not warranted

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by the Act. It is no doubt true that no procedure is prescribed in the Act for an enquiry by the police. The only power given to him is to impose conditions on which he would grant permission having regard to the provisions of the Act. For the purpose of imposing conditions, he can, no doubt, have resort to his private enquiries, but then the responsibility for imposing those conditions is entirely his, and the way how he makes the enquiries cannot be made the subject matter of an objection.

After giving the entire matter my careful consideration, I am of the view that the order of the learned District Magistrate was totally beyond the powers conferred on him by the Act. As a matter of fact, he has clearly misused his powers under the Act in this case. I would accordingly quash that order. It will now be open to the petitioner to make a fresh application in accordance with law and it will be for the District Magistrate to consider that application in the light of the observations made above and the provisions and the purposes of the Act. The petitioner will have his costs in this Court, which I assess at Rs. 100.

B. R. T.

REVISIONAL CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

SHRI GURDWARA SAHIB KOTHI BEGOWAL, AND
ANOTHER,—*Petitioners.*

versus

HARNAM SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 100(P) of 1956.

*Code of Civil Procedure (V of 1908)—Order 33—
“Person”—Meaning of—Whether includes a juristic
person—Suit brought on behalf of a juristic person in forma
pauperis by a representative—Personal property of the*

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