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

PUBLIC INTEREST LITIGATION NO.173 OF 2010

WITH

CIVIL APPLICATION NO.124 OF 2014

IN

PUBLIC INTEREST LITIGATION NO.173 OF 2010

Dr. Mahesh Vijay Bedekar

... Petitioner

Versus

1. The State of Maharashtra,
through
 - (a) The Principal Secretary, Mumbai
 - (b) The Collector, Thane
 - (c) The Commissioner of Police, Thane
 - (d) The Joint Commissioner of Police, Thane
 - (e) Member, Secretary,
Maharashtra Pollution Control Board,
Mumbai
2. The Municipal Corporation of Thane,
3. Union of India,
4. The Advocate General

WITH

CIVIL APPLICATION NO.226 OF 2013

IN

PUBLIC INTEREST LITIGATION NO.173 OF 2010

Dr. Mahesh Vijay Bedekar

... Petitioner

Versus

1. The State of Maharashtra,
through
 - (a) The Principal Secretary, Mumbai
 - (b) The Collector, Thane
 - (c) The Commissioner of Police, Thane
 - (d) The Joint Commissioner of Police, Thane
 - (e) Member, Secretary,
Maharashtra Pollution Control Board,
Mumbai
2. The Municipal Corporation of Thane,
3. Union of India,

4. The Advocate General,
5. Senior Inspector More, Thane,
6. The Police Sub-Inspector Shirtode, Thane ... Respondents

Mr. Sanjeev Mukund Gorwadkar, for the Petitioner.
Mr. N.R. Bubna, for the Respondent No.1.
Mr. V.S. Gokhale, for Respondent Nos.1-A to 1-D.
Mr. D.A. Dube, for Respondent No.3.

CORAM : A.S. OKA & A.S. GADKARI, JJ.

ORDER RESERVED ON : 23rd DECEMBER, 2014

ORDER PRONOUNCED ON : 13th MARCH, 2015

ORAL ORDER (PER A.S. OKA, J.):-

We had extensively heard the submissions of the learned counsel appearing for the Petitioner, the learned counsel appearing for the first Respondent, the learned AGP appearing for the Respondent No.1-A to 1-D and the learned counsel appearing for the third Respondent on the main Petition as well as on Civil Application No.124 of 2014. The issue raised in this Petition concerns the nuisance created in various cities by organization of various festivals such as Ganesh Utsav, Navaratri Utsav, Dahi Handi, etc. The issue raised relates to various illegalities in connection with the said festivals as well as in connection with the processions and gatherings associated with the aforesaid festivals. The attention of the Court is invited to breaches of law committed during such festivals and in particular the breaches of the Environment (Protection) Act, 1986 (for short "the said Act of

1986”), the Environment (Protection) Rules, 1986 (for short “the said Rules of 1986”) and the Noise Pollution (Regulation and Control) Rules, 2000 (for short “the Noise Pollution Rules”). Another issue is of validity of Section 234 of the Maharashtra Municipal Corporations Act, 1949. Considering the issues raised, we issue Rule. We issue Rule on interim relief, returnable on 10th June, 2015. The learned AGP waives service for Respondent Nos.1-A to 1-D. The learned counsel appearing for the second Respondent waives service. The learned counsel appearing for the third Respondent waives service. The learned counsel appearing for the fifth Respondent waives service. The name of the fourth Respondent (the Advocate General of Maharashtra) is deleted as the said Respondent is neither a necessary nor a proper party. However, as the constitutional validity of Sections 227 and 234 of the Maharashtra Municipal Corporations Act, 1949 is challenged, we issue notice to the learned Advocate General. The learned AGP takes notice on behalf of the learned Advocate General.

2. One of the grievances made in the Petition is in respect of the permissions granted by the local authorities including Respondents – Municipal Corporations to erect temporary structures of booths/platforms both on public streets and footpaths. Platforms/booths are erected on public streets and footpaths for holding of festivals of

Ganesh Utsav, Navaratri and Dahi Handi etc thereby blocking public streets and footpaths. In this Petition we are concerned with the provisions of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”). We are referring to the provisions of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act of 1888”) as well. The definition of “street” in both the Acts is similar. Under Sub-Section (63) of Section 2 the said Act of 1949, a “street” is defined thus:

“(63) “street” includes any highway, and any causeway, bridge, viaduct, arch, road, lane, footway, sub-way, court, alley or riding path or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterrupted for a period of twenty years, and, when there is a footway as well as a carriage way in any street, the said term includes both.”

3. A public street is defined under Sub-Section (52) of Section 2 the said Act of 1949 which reads thus:

“(52) “public street” means any street, -

- (a) heretofore levelled, paved, metalled, channelled, sewerred or repaired out of municipal or other public fund, or
- (b) which under the provisions of section 224 is declared to be, or under any other provision of this Act becomes, a public street.”

4. Thus, on conjoint reading of both the definitions, even a footpath or a footway is included in the definition of a public street.

5. Under both the enactments, it is the mandatory duty of the Municipal Corporations to maintain and improve public streets. The public streets are essentially provided for people to walk and ply vehicles. They are provided to facilitate transport. The footpaths or foot ways are meant for people to walk. They have a right to use footpaths or footways. Therefore, both the aforesaid enactments provide that it is the mandatory duty of the Municipal Corporations to construct, maintain and improve public streets. There is power conferred under both the statutes on the Municipal Corporations/ Commissioners to remove the structures, fixtures or projections on public streets (see chapter XIV of the said Act of 1949 and Chapter XI of the said Act of 1888).

6. The Apex Court in the case of Sodan Singh v. New Delhi Municipal Committee¹, held thus:

“14. The primary object of building roads is undoubtedly to facilitate people to travel from one point to another. Quoting several authorities Byron K. Elliott and William F. Elliott in their treatise on the *Law of Roads and Streets* have defined a street as a road or public way in a city, town or village. A way over land set apart for public travel in a town or city is a street, no matter by what name it may be called. If a way is free to all people it is a highway. P. Duraiswami Aiyangar in his book dealing with the *Law of Municipal Corporations in British India* (1914 Edn.) has observed that the primary and paramount use of the street is public travel for man, beast and carriage for goods. On behalf of the

¹ (1989) 4 SCC 155

respondents reliance has been placed on the oft-repeated adage that public have a right of passing and re-passing through a street but have no right “to be on it”, which Shri Aiyangar also has mentioned at p. 542 of his book. *Halsbury*, relied upon by both sides, has stated (Vol. 21 para 107) that the right of the public is a right to pass along a highway for the purpose of legitimate travel, not to be on it, except so far as the public’s presence is attributable to a reasonable and proper user of the highway as such. These statements certainly do not mean that a traveller has to be in perpetual motion when he is in a public street. It may be essential for him to stop some time for various reasons — he may have to alight from a vehicle or pick up a friend, collect certain articles or unload goods or have to take some rest after a long and strenuous journey. **What is required of him is that he should not create an unreasonable obstruction which may inconvenience other persons having similar right to pass; he should not make excessive use of the road to the prejudice of the others.** Liberty of an individual comes to an end where the liberty of another commences. Subject to this, a member of the public is entitled to legitimate user of the road other than actually passing or re-passing through it.”

(emphasis added)

7. It is in the context of the object of providing public streets that the Power conferred on the Commissioner under Section 234 of the said Act of 1949 to permit booths etc. to be erected on streets on the occasion of festivals will have to be interpreted. Section 234 of the said Act of 1949 reads thus:

“234. Commissioner may permit booths, etc. to be erected on streets on festivals.-

[With the concurrence, in any area for which a Commissioner of Police has been appointed, of the Commissioner of Police or any officer nominated by him

and elsewhere, of the District magistrate or any officer nominated by him,] the Commissioner may grant a written permission for the temporary erection of a booth and any other such structure on any street on occasions of ceremonies and festivals.”

Identical provision under the said Act of 1888 is Section 317. The provisions are merely enabling provisions.

8. The Section 234 does not confer absolute power. The power conferred on the Commissioner is discretionary. The power cannot be exercised without the concurrence of the Commissioner of Police or the Superintendent of Police, as the case may be. The exercise of power without their concurrence will be bad in law. It is obvious that a permission under the provision cannot be granted if the temporary erection of booths or similar structures is likely to affect free movement of vehicular traffic. Permission to erect booths on the footpaths or footway cannot be granted if the same is likely to obstruct free movement of the pedestrians. It is obvious that the discretion cannot be exercised by granting permissions to erect booths or like structures on a very busy public streets having a large vehicular traffic. It cannot be exercised in relation to footpaths in localities having a large population and in respect of footpaths in the localities which are very crowded. The power cannot be used in relation to public streets including footpaths or footways near Railway stations/public bus

stands/major auto rickshaw or taxi stands. It follows that such permissions cannot be granted if the grant of such permissions is likely to result into a major traffic congestion or is likely to cause obstruction to large number of pedestrians in the use of footway. Such permissions cannot be granted on streets or footways in the vicinity of major hospitals and educational institutions. These cases are set out only by way of illustrations. This is not the exhaustive list of footpaths and streets in relation to which the discretionary power should not be exercised. While exercising the discretion under the said section, the Commissioner of the Municipal Corporations shall consider all such relevant factors.

Ad-interim relief in PIL

9. Therefore, by way of ad-interim relief, we direct that the discretionary power under the Section 234 to grant permission to erect temporary booths or similar structures on streets on account of festivals shall be exercised by the Commissioners subject to aforesaid constraints set out in paragraph 8 above. We also direct the Municipal Corporations to frame a policy for dealing with grant of such permissions in the light of what we have held above. The Policy shall be framed in two months from today. We also direct the Municipal Corporations to take immediate action of demolition in respect of the temporary booths/platforms or similar structures erected on public

streets without obtaining the requisite permission under Section 234. Such action shall be taken before the religious festivals/functions are over. We also direct that whenever such permissions are granted, a condition shall be incorporated therein of prominently displaying the particulars of such permissions on the temporary booths or similar structures covered by Section 234 of the said Act of 1949.

10. Several photographs have been annexed to the Petition showing that for celebration of Navratri Festivals, important roads in the City of Thane were completely blocked. This affects the fundamental rights of the citizens. This also affects traffic of emergency vehicles and ambulances plying on public streets apart from the fact that such activities involve public nuisance covered by Section 133 of the Criminal Procedure Code, 1973 (for short "Cr.P.C."). There is no reply filed by the State Government on this aspect. We direct the State Government and all the Municipal Corporations to file a reply even on this aspect. Appropriate directions will have to be issued on this aspect after reply is filed.

Consideration of Civil Application No.124 of 2014

11. Civil Application No.124 of 2014 is filed seeking various interim reliefs as regards implementation of the Noise Pollution Rules.

This Application was argued extensively. It will be necessary to make a reference to various decisions of the Apex Court. One of the most important decisions of the Apex Court is in the case of *Noise Pollution (V), In Re*². The Apex Court reiterated in the said decision that the right to life enshrined under Article 21 is not of mere survival or existence, but it guarantees a right to live with human dignity. Anyone who wishes to live in peace, comfort and quiet within his house has a right to prevent noise as a pollutant reaching him. It will be necessary to make a reference to what is observed by the Apex Court in paragraph 10 on the aspect of Article 21. It is held in paragraph 10 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."**

(emphasis added)

2 (2005) 5 SCC 733

The Apex Court observed that those who make noise often take shelter behind Article 19(1)(a) of the Constitution of India. In paragraph 11, the Apex Court has dealt with the said contention.

“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 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 Sujan Chand Aggarwal v. Govt. of NCT of Delhi*¹ and *PA. Jacob v. Supdt. of Police*². 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)

As far as noise as a nuisance and health hazard is concerned, in paragraphs 15 to 19, the Apex Court has held thus :-

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 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.

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.⁸ 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. –

(emphasis added)

12. The Apex Court observed that nuisance of noise can cause hearing loss and disturbance in sleep. In paragraphs 26 and 27, the Apex Court observed that noise can have adverse physiological effect on human body. The Apex Court observed that noise has adverse effect on unborn and children. The Apex Court also considered the aspect of noise pollution created by use of crackers and fireworks.

13. The Apex Court also affirmed the law laid down by a Division Bench of Kerala High Court in the case of P.A. Jacob vs. Superintendent of Police³. In paragraph 112, the Apex Court has observed thus :-

“**112.** In *P.A. Jacob v. Supdt. of Police*² it was said: (AIR p. 1)

³ AIR 1993 Ker 1

“The right to speech implies, the right to silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehends freedom to be free from what one desires to be free from. Free speech is not to be treated as a promise to everyone with opinions and beliefs, to gather at any place and at any time and express their views in any manner. The right is subordinate to peace and order. A person can decline to read a publication, or switch off a radio or a television set. But, he cannot prevent the sound from a loudspeaker reaching him. He could be forced to hear what, he wishes not, to hear. That will be an invasion of his right to be let alone, to hear what he wants to hear, or not to hear, what he does not wish to hear. One may put his mind or hearing to his own uses, but not that of another. No one has a right to trespass on the mind or ear of another and commit auricular or visual aggression. A loudspeaker is a mechanical device, and it has no mind or thought process in it. Recognition of the right of speech or expression is recognition accorded to a human faculty. A right belongs to human personality, and not to a mechanical device. One may put his faculties to reasonable uses. But, he cannot put his machines to any use he likes. He cannot use his machines to injure others. Intervention with a machine, is not intervention with, or invasion of a human faculty or right. No mechanical device can be upgraded to a human faculty. A computer or a robot cannot be conceded the rights under Article 19 (though they may be useful to man to express his faculties). No more, a loudspeaker. **The use of a loudspeaker may be incidental to the exercise of the right. But, its use is not a matter of right, or part of the right.”**

(emphasis added)

14. The Apex Court also quoted with approval another decision of the Delhi High Court in the case of Free Legal Aid Cell vs. Government of *NCT of Delhi and others*⁴. In paragraph 113, the Apex Court held thus :-

4 AIR 2001 Delhi 455

“113. In *Free Legal Aid Cell Shri Sujan Chand Aggarwal v. Govt. of NCT of Delhi*¹ it was said that: (AIR p. 462, para 24)

“Pollution being wrongful contamination of the environment which causes material injury to the right of an individual, noise can well be regarded as a pollutant because it contaminates environment, causes nuisance and affects the health of a person and would, therefore, offend Article 21, if it exceeds a reasonable limit.”

15. In the paragraph 117, the Apex Court categorically held thus :-

“117. We have referred to a few, not all available judgments. **Suffice it to observe that Indian judicial opinion has been uniform in recognising the right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution, and noise pollution beyond permissible limits as an inroad into that right. We agree with and record our approval of the view taken and the opinion expressed by the several High Courts in the decisions referred to hereinabove.**”

(emphasis added)

16. The Apex Court directed that there shall be a complete ban on bursting sound emitting fire crackers between 10.00 pm to 6.00 am.

17. In the case of *Farhd K. Wadia vs. Union of India and others*⁵, in paragraph 22, the Apex Court held thus :-

“22. Interference by the court in respect of noise pollution is premised on the basis that a citizen has certain rights being “necessity of silence”, “necessity of sleep”,

5 (2009) 2 SCC 442

“process during sleep” and “rest”, which are biological necessities and essential for health. Silence is considered to be golden. It is considered to be one of the human rights as noise is injurious to human health which is required to be preserved at any cost. (See *Noise Pollution, Laws & Remedies* by Justice Bhagabati Prosad Banerjee.)”

18. Thus, the Apex Court held that silence is considered to be one of the human rights as noise is injurious to human health. The right of silence is required to be preserved at any cost.

19. Thus, those who organize religious and other festivals cannot take away the fundamental right of citizens to silence. Citizens cannot be forced to listen. By organizing such festivals, the organizers cannot infringe fundamental right of citizens to live in peace and comfort.

20. It will be necessary to make a reference to the Noise Pollution Rules which have been framed in exercise of powers conferred under the said Act of 1986 and the said Rules of 1986. Rules 3 to 6 of the Noise Pollution Rules 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 Government (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, (blowing of horns, bursting of sound emitting fire crackers, use of loud speakers or public address system and sound producing instruments) 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 concerned authorities 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 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.]⁸

5. Restrictions on the use of loud speakers/public address system (and sound producing instruments).

- (1) A loud speaker of 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 or during a public emergency.]¹¹

[(3) Notwithstanding anything contained in sub-rule (2), the State Government may subject to such items and conditions as are necessary to reduce noise pollution permit use of loudspeakers 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 loudspeaker or public address system or 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 on which it is used.]¹⁴

[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.]¹⁵

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 performances 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.]¹⁶

21. Thus, Noise Pollution Rules mandate that the ambient air quality standards in respect of noise for different areas/ zones shall be such as specified in the Schedule annexed. The Schedule reads thus :-

“ SCHEDULE

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

AMBIENT AIR QUALITY STANDARDS IN RESPECT OF NOISE

Area Code	Category of Area/Zone	Limits in dB(A) Leq*	
		Day Time	Night Time
(A)	Industrial area	75	70
(B)	Commercial area	65	55
(C)	Residential area	55	45
(D)	Silence Zone	50	40

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. ¹ [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 abovementioned 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.”

22. Sub-Rule (3) of Rule 3 enjoins the State Government to take measures for abatement of noise emanating from bursting of sound emitting from crackers, use of loud speakers or public address systems and sound producing instruments. Thus, it is the duty of the State Government to ensure that the noise level or sound created due to use of sound producing systems or sound emanating from bursting of sound emitting crackers does not exceed the ambient air quality standards specified under the Sound Pollution Rules. Thus, if the noise level created by sound producing systems even without use of loud speakers exceeds ambient air quality standards, the State Government is under an obligation to take measures for abatement of the noise. Thus, the Noise Pollution Rules not only deal with restrictions on the use of loud speakers/public address system but it lay down mandatory requirement of maintaining ambient air quality standards in respect of noise in different areas as specified in the Schedule. Whether public address system or loud speaker is used or not, ambient air quality standards as prescribed are required to be maintained.

23. Rule 4 deals with the responsibility as to enforcement of noise pollution control measures. The “authority” which is responsible for enforcement of noise pollution control measures and due compliance of the ambient air quality standards is defined in Clause (c) of Rule 2 which reads thus :-

“(c) “authority” means = [and includes] any authority or officer authorised by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer,² [not below the rank of the Deputy Superintendent of Police] designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force;”

24. As we have pointed out earlier, a sound producing instrument used without involving use of loud speakers or public address systems has to also maintain ambient air quality standards. Sub-Rule (2) of Rule 5 imposes a complete ban on use of sound producing instruments at night time except in a closed premises like auditoria, conference rooms or community halls. “Night time” is defined by Clause (j) of Sub-Rule (2) to mean the period between 10.00 pm to 6.00 am. The exception carved out in Sub-Rule (3) of Rule 5 during the limited night hours specified in Sub-Rule (3) is for a period not exceeding fifteen specified days in every year. The exception is to the Rule which bans use of sound producing instruments during

night time. However, the ambient air quality standards have to be maintained even during the period of exemption.

25. Thus, analysis of the provisions of the sound Pollution Rules show that whether loud speaker or public address system is used or not, the State Government is under an obligation to take measures for abatement of noise pollution to ensure that the existing noise level will not exceed the ambient air quality standards specified in the schedule. Requirement of maintaining ambient air quality standards will apply to bursting of sound emitting fire crackers and playing of sound producing systems. Rule 4 reiterates that noise levels in any area/zone shall not exceed ambient air quality standards prescribed in the Schedule. Sub-Rule (2) of Rule 4 makes the authority responsible for the enforcement of noise pollution control measures and due compliance of the ambient air quality standards in respect of noise. Sub-Rule (1) of Rule 5 imposes ban on use of loud speaker or public address system except after obtaining written permission from the authority. Under Sub-Rule (2) of Rule 5, there is a complete ban on using a loud speaker or a public address system or sound producing instrument or a musical instrument or a sound amplifier at night time (between 10.00 pm to 6.00 am) except in closed premises as indicated in the said Rule. The exception created to Sub-Rule (2) by virtue of

Sub-Rule (3) is applicable to use of loud speaker or public address system or the like during the night hours between 10.00 pm to 12 midnight on fifteen days notified by the State Government in one calendar year. Sub-Rule (5) of Rule 5 imposes restriction on maintaining peripheral noise level of a privately owned sound system or a sound producing instrument at the boundary of the private place. Sub-Rule (4) prescribes the noise level at the boundary of the public place where loud speaker or public address system or any other noise source is being used.

26. As per Rule 5A, there is a complete ban on bursting sound emitting fire crackers in silence zone/area during night time. There is no relaxation for this ban under Sub-Rule (3) of Rule 5. As far as silence zone/area is concerned, the requirements of Noise Pollution Rules are very stringent as specified in Rule 6. It shows that use of loud speaker or public address system is prohibited in the silence zone/ area.

27. Rules 7 and 8 of the Noise Pollution Rules read thus:

“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 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 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.”

Rule 7 provides for a grievance redress mechanism. Rule 8 gives power to the authority to issue direction for prohibiting the incidence or continuance in or upon any premises of any vocal or instrumental music or other sounds caused by instruments as specified in sub-clause (ii) of Clause (a) Sub-Rule (1). Sub-Rule 2 gives power to rescind such an order on the application made by any aggrieved person. Proviso to Sub-Rule 2 contemplates that before finally disposing of such application, the complainant is required to be given hearing.

28. Under the Clause (c) of Rule 2, a District Magistrate under the provisions of Cr.P.C., Police Commissioner or any other officer not below the rank of the Deputy Superintendent of Police are the authorities. Any officer not below the rank of Deputy Superintendent of Police is an authority provided he is designated for the maintenance of ambient air quality standards in respect of noise. As stated above, the authority is responsible for enforcement of noise pollution control measures and due compliance of the ambient air quality standards in respect of the noise. The authority is competent to grant written permission for use of a loud speaker or a public address system. The authority is empowered to entertain complaints as contemplated by

Sub-Rule (1) of Rule 7 and the authority has power of issuing written order preventing or prohibiting use of loud speaker or a public address system etc.

License under the provisions of the Bombay Police Act, 1951

29. It will be necessary to make a reference to Section 33 and Section 37 of the Bombay Police Act, 1951 (for short “the said Act of 1951”) which reads thus :-

- “33. Power to make rules or regulation of traffic and for presentation of order in public place, etc. 3[The Commissioner with respect to any of the matters specified in this sub-section, the District Magistrate with respect to any of the said matters (except those falling under [clauses (a), (b), (d). (db), (e), (g), (r), (t) and (u) thereof] and the Superintendent of Police with respect to the matters falling under the clauses aforementioned read with clause (y) to this sub-section], in areas under their respective charges or any part thereof, may make, alter or rescind rules or orders not inconsistent with this Act for-
- (a) licensing and controlling persons offering themselves for employment at quays, wharves and landing places, and outside Railway stations for the carriage of passenger's baggages and fixing and providing for the enforcement of a scale of charges for the labour of such persons so employed;
 - (b) regulating traffic of all kinds in streets and public places, and the use of streets and public places by persons riding, driving, Cycling, walking or leading or accompanying cattle, so as to prevent danger, obstruction or inconvenience to the public;
 - (c) regulating the conditions under which vehicles may remain standing in streets and public places, and the use of streets as halting places for vehicles or cattle;
 - (d) prescribing the number and position of lights to be used on vehicles in streets and the hours between such lights shall be used;

- [(da) licensing, controlling or prohibiting the display of any pictures, advertisements, news boards or public notices upon a vessel or boat in territorial waters or on inland waterways other than national waterways;
- [(db) licensing, controlling or prohibiting the erection, exhibition, fixation or retention of any sign, device or representation for the purpose of advertisement, which is visible against the sky from some point in any street and is hoisted or held aloft over any land, building or structure at such height as (regard being had to the traffic in the vicinity, and the likelihood of such sign, device or representation at that height being a distraction or causing obstruction to such traffic) may be specified in the rule or order ;]
- (e) prescribing certain hours of the day during which cattle shall not be driven along the streets, or along certain specified streets, except subject to such regulations as he may prescribe in that behalf;
- (f) regulating the leading, driving, conducting or conveying of any elephant or wild or dangerous animal through or in any street;
- (g) regulating and controlling the manner and mode of conveying timber, scaffold poles, ladders, iron girders, beams or bars, boilers or other unwieldy articles through the streets, and the route and hours for such conveyance;
- (h) licensing, controlling or, in order to prevent the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers in the vicinity, prohibiting the carrying in streets and public places of gunpowder or any other explosive substances;
- (i) prohibiting, except along certain specified streets and during specified hours and subject to such regulations as he may prescribe in that behalf, the exposure or movement in any street of persons or animals suffering from contagious or infectious diseases and the carcasses of animals or part thereof and the corpses of persons deceased;
- (j) prescribing certain hours of the day during which odour or offensive matter or objects shall not be taken from or into houses or buildings in certain streets or conveyed through such streets except subject to such rules as he may make in that behalf;
- (k) setting apart places for the slaughtering of animals, the

- cleaning of carcasses or hides, the deposit of noxious or offensive matter and for obeying calls of nature ;
- (l) in cases of existing or apprehended epidemic or infectious disease of men or animals, the cleanliness and disinfection of premises by the occupier thereof and resident therein and the segregation and management of the persons or animals diseased or supposed to be diseased, as may have been directed or approved by the State Government, with a view to prevent the disease or to check the spreading thereof;
 - (m) directing the closing or disuse, wholly or for certain purposes, or limiting to certain purposes only the use of any source, supply or receptacle of water and providing against pollution of the same or of the water therein;
 - (n) licensing, controlling or, in order to prevent the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers in the vicinity, prohibiting the playing of music, the beating of drums, tom-toms of other instruments and the blowing or sounding of horns or other noisy instruments in or near streets or public places;
 - (o) regulating the conduct of and behaviour or action of persons constituting assemblies and processions on or along the streets and prescribing in the case of processions, the routes by which, the order in which and the times at which the same may pass;
 - (p) prohibiting the banging or placing of any cord or pole across a street or part thereof, or the making of a projection or structure so as to obstruct traffic or the free access of light and air;
 - (q) prohibiting, except under such reasonable rules as he may make, the placing of building materials or other articles or the fastening or detention of any horse or other animals in any street or public places.
 - (r) licensing, controlling or, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers in the vicinity, prohibiting-
 - (i) the illumination of streets and public places and the exteriors of building abutting thereon by persons other than servants of Government or Municipal officers duly authorized in that behalf;
 - (ii) the blasting of rock or making excavations in or near streets or public places;
 - (iii) the using of a loudspeaker in 1[or near any public place

- or in any] place of public entertainment;
- (s) closing certain streets or places temporarily, in cases of danger from ruinous buildings or other cause, with such exceptions as shall appear reasonable;
 - (t) guarding against injury to person and property, in the construction, repair and demolition of building, platforms and other structures from which danger may arise to passengers, neighbours or the public;
 - (u) prohibiting the setting fire to or burning any straw or other matter, or lighting a bonfire or wantonly discharging a fire, arm or airgun, or letting off or throwing a fire-work or, sending up a fire balloon or rocket in or upon or within fifty feet of a street or building or the putting up of any post or other thing on the side of or across a street for the purpose of affixing thereto lamps or other contrivances for illumination, except subject to such reasonable rules, as he may make in that behalf;
 - (v) regulating the hours during which and the manner in which any place for the disposal of the dead, any dharamshala, village-gate or other place of public resort may be used, so as to secure the equal and appropriate application of its advantages and accommodation and to maintain orderly conduct amongst those who resort thereto;
 - (w)(i) licensing or controlling places of public amusement or entertainment;
 - (ii) prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity;
 - (iii) regulating the means of entrance and exit at places of public amusement or entertainment or assembly, and providing for the maintenance of public safety and the prevention of disturbance thereat;
 - [(wa)
 - (i) licensing or controlling [in the interest of public order decency or morality or in the interest of the general public with such exceptions as may be specified, the musical, dancing, mimetic or the atrical or other performances for public amusement, including melas and tamashas ;
 - (ii) regulating in the interest of public order, decency or morality or in the interest of the general public, the

- employment of artists and the conduct of the artists and the audience at such performances;
- (iii) prior scrutiny of such performances 2[and of the scripts in respect thereof, if any, and granting of suitability certificate therefore subject to conditions, if any], 3[by the Board appointed by the State Government for the purpose, either for the whole State or the area concerned,] [the members of the Board being persons who in the opinion of the State Government possess knowledge of, or experience in literature, the theatre and other matters relevant to such scrutiny, or by an Advisory Committee appointed by the Commissioner, or the District Magistrate in this behalf; [Provision for appeal against the order or decision of the Board to the prescribed authority, its appointment or constitution, its procedure and other matters ancillary thereto, and the fees (whether in the form of court-fee stamp or otherwise) to be charged for the scrutiny of such performances or scripts for applications for obtaining such certificates and for issuing duplicates thereof and in respect of such appeals;]
- (iv) regulating the hours during which and the places at which such performances may be given;
[(wb) licensing or controlling (with such exceptions as may be specified) in the interest of public order, decency or morality or in the interest of the general public places as dancing schools;]
- (x) regulating or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place of public amusement;
- [(xa) registration of eating-houses, included granting a certificate of registration in each case, which shall be deemed to be written permission required and obtained under this Act for keeping the eating-house, and annual renewal of such registration within prescribed period;
- (y) prescribing the procedure in accordance with which any licence or permission sought to be obtained or required under this Act should be applied for and fixing the fees to be charged for any such licence or permission:

Provided that nothing in this section and no licence [or certificate of registration] granted under any rule made thereunder shall authorize any person to import, export, transport, manufacture, sell or possess

any liquor, or intoxicating drug, in respect of which a licence, permit, pass or authorization is required under the Bombay Prohibition Act, 1949. or under any other law for the time being in force (relating to the Abkari revenue or to the prohibition of the manufacture, sale and consumption of liquor) or shall affect the liability of any person under any such law or shall in any way affect the provisions of the Arms Act, 1878 (XI of 1878), or of the Explosives Act, 1884 (IV of 1884), or of any rules made under either of those enactments, or the liability of any person thereunder:

Provided further that any action taken under the rules or orders made under this sub-section or the grant of a licence [or certificate of registration] made under such rules or orders shall be subject to the control and supervision of the State Government:

[Provided also that, against any order granting or refusing to grant or renew or revoking 5[or refusing to grant or renew or revoking any certificate of registration for any eating- house] an appeal shall lie to the State Government itself or to such officer as the State Government may by general or special order specify, within thirty days from the date of receipt of such order by the aggrieved person).

[(1(A) The power to make rules or order under clauses (w), (wa) and (x) of sub-section (1) shall in the first instance have effect only in relation to 7[the Bombay area of the state of Maharashtra], but the State Government may by notification in the Official Gazette provide that such power under any or all of those clauses, shall also have effect. from such date as may be specified in the notification, in any other area of the State.]

[(1B) The power to make rules, orders or appointment under clauses (w), (wa). (x) and (xa) in so far as it relates to a licence or permission under any of these clauses, under clauses (y) of sub-section (1), may subject to the provisions of sub- section (1A) also be exercised by Revenue Commissioner in the revenue division under his charge.]

(2) (i) The power of making, altering or rescinding rules under clauses (a), (b) and (c) of sub-section (1) shall be subject to the control of the State Government.

(ii) The power of making, altering, or rescinding rules under the remaining clauses of sub- section (1) shall be subject

- to the previous sanction of that Government.
- (3) Every rule made under clause (v) of sub-section (1) with respect to the use of a place for the disposal of the dead shall be framed with due regard to ordinary and established usages and to the necessities of prompt disposal of the dead in individual cases.
 - (4) Every rule promulgated under the authority of Cl. (f) of sub-section (1) shall, if made in relation to 1[any area which is not under the charge of a Commissioner] be forthwith [reported to the Revenue Commissioner and the State Government].
 - (5) If any rule or order made or promulgated under this section relates to any matter with respect to which there is a provision in any law, rule or bye-law of any municipal or local authority in relation to the public health, convenience or safety of the locality, such rule or order shall be subject to such law, rule or bye-law of the municipal or local authority, as the case may be.
 - (6) The power of making, altering or rescinding rules under this section shall be subject to the condition of the rules being made, altered or rescinded after previous publication, and every rule made or alteration or rescission of a rule made under this section shall be published in the Official Gazette and in the locality affected thereby by affixing copies thereof in conspicuous places near to the building, structure, work or place, as the case may be, to which the same specially relates or by proclaiming the same by the beating of drum or by advertising the same in such local newspapers in English or in the local language, as the authority making, altering or rescinding the rule may deem fit or by any two or more of these means or by any other means it may think suitable:
 Provided that any such rules may be made, altered or rescinded without previous publication of the [Revenue Commissioner, the Commissioner], [the District Magistrate or the Superintendent,] as the case may be, is satisfied that circumstances exist which renders it necessary that such rules or alterations therein or rescission thereof should be brought into force at once.
 - (7) Notwithstanding anything hereinbefore contained in this section or which may be contained in any rule made thereunder, it shall always be lawful for the competent

authority to refuse a licence for, or to prohibit the keeping of any place of public amusement or entertainment [or to refuse a certificate of registration for or to prohibit the keeping of any eating- house, as the case may be] by a person of notoriously bad character.

- (8) It shall be the duty of all persons concerned to conform to any order duly made as aforesaid so long as the same shall be in operation.”

30. As far as the Municipal Corporation of the City of Thane is concerned, the Rule making power under Clauses (n), (r)(Sub-clause [iii]) and (y) of Sub-Section (1) of Section 33 of the said Act of 1951 has been exercised by the Commissioner. For the sake of convenience, the said Rules framed by the Commissioner are hereinafter referred to as the “Loud Speaker Rules”. The said Rules have been published in Government Gazette dated 1st August, 1991, a copy of which is placed on record by the learned AGP. The Loud Speaker Rules provide for a complete ban on use of loud speakers at public places by an organizer of an event or by a contractor without obtaining a license. The said prohibition is in Rule 3. Various procedural aspects of grant of license to organizers and contractors have been incorporated in the Loud Speaker Rules including fees payable for grant of licences. It is provided that the license will be personal. Rule 13 is very important. Rule 13 confers discretion on the licensing authority to grant a license. It is provided therein that the licensing authority shall have discretion not to grant license in the event it is found that the applicant is not a

fit person for grant of license or that he does not have sufficient experience or that it is found that he has committed breach of any Rules. Clause (b) of Rule 13 provides that if it is found that the place for which license is applied for is likely to create obstruction, nuisance or inconvenience to the residents or to the pedestrians, the prayer for grant of license can be refused. This is very relevant in the context of an affidavit filed by Shri P.V. Mathadhikari, the Assistant Commissioner of Police, Special Branch, Thane which is affirmed on 4th December, 2014 in which in paragraph 4, a stand has been taken that there is no provision in law to disqualify any organization/applicant from obtaining loud speaker license if he has committed breaches of the terms and conditions of the license granted earlier. The said statement in the affidavit is factually incorrect being expressly contrary to Rule 13. Moreover, Rule 14 provides that the licensing authority has power to stay the license or to cancel the same in the event the licensing authority finds that use of loud speaker is likely to obstruct the local residents or pedestrians or is likely to cause inconvenience, nuisance or danger to the residents or to the pedestrians. Proviso to Rule 14 lays down that on hearing the license holder, the licensing authority can again restore the license. Thus, as far as Loud Speaker Rules framed by the Commissioner of Police at Thane are concerned, there are abundant powers vesting in the licensing authority to refuse the grant

of license, to stay a license which is already granted or to cancel the license granted to use loud speakers or public address system. Under Section 33 of the said Act of 1951, the power is vesting in the Commissioner of Police or District Magistrate or the Superintendent of Police to issue license for the use of loud speakers in public place. Thus, as far as the said Act of 1951 and Noise Pollution Rules are concerned, the District Magistrate and the Police Commissioner are the authorities empowered to grant license for use of loud speakers and public address system.

The nature of Power to grant License to use loudspeakers and public address system

31. As stated earlier, the stand taken by the State Government is that the licensing authority empowered to grant license to use loud speaker or public address system has no power to deny license on the ground that the applicant has committed breaches of the terms and conditions on which the license was granted in the past or that the applicant has committed breach of any Rules. Neither the Pollution Control Rules nor the Loud Speaker Rules framed by the Police Commissioner contain a provision that a license to use loud speaker or public address system is available as a matter of right subject to payment of fees. The object of incorporating the provision for grant of license to use loud speaker or public address system in the Noise

Pollution Rules is to ensure that noise pollution is not caused and ambient air quality standards are maintained. Looking to the provisions of Section 33 of the said Act of 1951, the licensing power has been conferred on the concerned authorities in order to prevent obstruction, inconvenience, annoyance, risk or danger to the residents or pedestrians. Therefore, licensing authorities are not powerless to reject the application for grant of license to use loud speaker or public address system in the event it is found that in the past, there have been complaints against the applicant of committing breaches of the provisions of the relevant rules or the license conditions or of causing nuisance and annoyance to the residents and others. Considering the object for which the Rules governing grant of license have been made, the power conferred on the concerned authorities to grant license includes power to reject the application for grant of license. Such a power is implicit in the power to grant license considering the object of the Rules. Moreover, if the licensing authority finds that the license is being misused or that the licensee is committing breaches of the terms and conditions on which license has been granted, the action of suspension of license or cancellation of license can be always taken by the licensing authority. Such power is also implicit in the relevant licensing Rules and has been expressly provided in the "Loud Speaker Rules". Whenever it is noticed that the license is being misused or the

licensee is committing breaches, in fact the licensing authority is under an obligation to suspend the license subject to right of the licensee of making an application for restoration of the license. If it is brought to the notice of the licensing authority that breaches have been committed of the terms and conditions of license, the licensing authority will be under an obligation to immediately suspend the license.

Grievance Redress/Implementation mechanism and setting criminal law in motion

32. In case of various festivals like Dahi Handi, Ganesh Utsav and Navratri, very often influential local politicians or local political groups are associated with the organization of the festivals. It is often alleged that in the organization of some such festivals, even anti-social elements are also associated. Therefore, a common man is reluctant to make complaints though there is a violation of the Noise Pollution Rules and though the use of loud speakers or musical instruments is creating nuisance. The experience is that the citizens tolerate such nuisance even during night time. The police authorities are reluctant to take action as influential persons are involved in the organization of such events. If some activists show courage of making complaints, they are either ill-treated or not entertained by the police authorities as reflected from the allegations made in the Civil Application No.226 of

2013. Therefore, a proper mechanism will have to be evolved enabling the citizens to lodge complaints including even anonymous complaints. A mechanism will have to be evolved under which the authorities are under an obligation to look into the complaints and take immediate action. Normally such religious festivals are for a limited period or for few days. Therefore, immediate action on complaints is mandatory. No purpose would be served by taking action after the festival is over. There are penal provisions under the said Act of 1986 and the said Rules of 1986 as well as under the said Act of 1951. Very rarely that a recourse is being taken to the said penal provisions. To those citizens who show courage of openly filing complaints by disclosing their identity, adequate police protection will have to be provided by the police officers to ensure that such whistle blowers are not harassed or targeted by anyone.

33. We have perused the affidavits of Shri P.V. Mathadhikari to Civil Application No.124 of 2014. The Police Commissioner of Thane has issued directions on 19th August, 2014 in relation to Dahi Handi festival to be conducted on 18th August, 2014. There is an elaborate procedure prescribed in the said directions which is required to be followed before registration of an offence punishable under the said Act of 1986 and the said Rules of 1986. As per the said notice, the

procedure takes more than 60 days. Once, the violation is noticed, the Police Authorities will have to set the Criminal Law in motion immediately. Once the authorities notice breach of law, complaints as contemplated under Sections 15 and 19 of the said Act of 1986 will have to be immediately filed. In every case, it is not necessary to issue the show cause notice before filing of the complaint.

34. As stated earlier, there are Rules framed under the said Act of 1951 by taking recourse to Section 33 thereof which provide for a grant of license. The permission contemplated by Sub-Rule (1) of Rule 5 of Noise Pollution Rules is different from the license under the said Act of 1951. Therefore, wherever Rules are framed under the said Act of 1951 requiring a license for use of loudspeakers, a license as well as a permission under 5(1) of the Noise Pollution Rules will have to be obtained for the use of loudspeaker/public address system. In the light of the discussion made above, we issue following interim directions in the Civil Application.

Interim Direction in Civil Application

- 35.(i) All concerned authorities shall ensure that a loud speaker or a public address system shall not be used except after obtaining written permission from the authority contemplated by the Noise Pollution Rules in

accordance with Sub-Rule (1) of Rule 5 in addition to the license required to be obtained under Rules, if any, framed under the said Act of 1951;

- (ii) Appropriate redress mechanism shall be created by all concerned for receiving complaints in accordance with Rule 7 of the Noise Pollution Rules and also for reporting breach of other Rules. For the reasons which we have recorded above, the authority under the Noise Pollution Rules and the licensing authorities under the said Act of 1951 are under an obligation to entertain even anonymous complaints. Therefore, toll free number shall be created to enable the authorities to receive complaints in addition to usual and conventional modes. A facility shall be also made available to submit complaint by e-mail and by SMS. A register shall be maintained of the complaints received on toll free number as well as by all other modes and a complaint number shall be provided to the complainant immediately. The complaints register shall also incorporate actions taken on the basis of the complaints. Moreover, action taken report shall be displayed on the website of the District Collector/

Municipal Corporations.

- (iii) On receiving a complaint under Rule 7 in the manner provided as aforesaid, the authority concerned will have to immediately apply its mind on the question of passing an order under Sub-Rule (1) of Rule 8. The authority will have to also consider of immediately issuing an order of suspension of license/permission granted to use loud speaker or public address system. Immediately, on receipt of a complaint in any form, Appropriate police officer shall be deputed to the relevant site with a necessary machine/equipment to test whether noise level exceeds the ambient noise standards. The officer shall immediately report to the authority to enable the authority to take action. If the police officer notices that public address system or loud speaker is being used without license/permission, he shall forthwith stop the use of the loud speaker or public address system. If the officer finds that the loud speaker or public address system is used by the license holder during night hours on any day which is not specified in Sub-Rule (3) of Rule 5 of Noise Pollution Rules, the officer concerned shall immediately stop the

use of loud speaker or public address system. If the officer finds that musical instrument or sound amplifier is being used in night time except in closed premises, he shall forthwith stop the use of such musical instrument or sound amplifier;

(iv) The State Government shall notify the names and addresses and all particulars of the authorities under the Noise Pollution Rules and the Rules under the said Act of 1951 within the limits of the Municipal Corporations which are parties to the PIL. Publicity shall be given to the said particulars in local newspapers, on local cable networks and on the website of the District Collector as well as the concerned Municipal Corporations. The same shall be displayed on the notice Board of all the Ward Offices. We grant time of six weeks to the State to give such publicity;

(v) The State Government shall set up a grievance redress mechanism in the limits of each Corporation in terms of clause (ii) above within a period of two months from today. Wide publicity shall be given to the said mechanism in the manner provided in clause (iv)

above;

- (vi) Till such mechanism is in place, a citizen shall be entitled to lodge oral complaint about the breach of Noise Pollution Rules or Loud Speaker Rules framed in exercise of powers under Section 33 of the said Act of 1951 on telephone number 100. Immediate action shall be taken by the Police on the basis of such oral complaints. The State Government shall direct that the identity of complainants shall not be disclosed to the wrong doers or any other person even if the identity could be established from the telephone number from which complaint is received. We make it clear that anonymous complaints shall be entertained on the telephone number 100 till a proper grievance redress machinery as directed above comes into existence. On receiving complaints, a police officer shall immediately visit the spot and shall forthwith stop illegal use of public address system or loudspeaker or a musical instrument. On receipt of a complaint in any form, Appropriate police officer shall be deputed to the relevant site with a necessary machine/equipment to test whether noise level exceeds the ambient noise

standards. The officer shall immediately report to enable the authority under the Noise Pollution Rules to take prompt action. If the police officer notices that public address system or loud speaker is being used without license, he shall forthwith stop the user of the loud speaker or public address system. If the officer finds that the loud speaker or public address system is being used by the license holder during night hours on any day which is not specified in Sub-Rule (3) of Rule 5 of Noise Rules, the police officer concerned shall immediately stop use of loud speaker or public address system. If the officer finds that musical instrument or sound amplifier is being used in night time except in closed premises, he shall forthwith stop the user of such musical instrument or sound amplifier. He shall forthwith report a breach of license condition to the Licensing Authorities which in turn shall forthwith take action of suspension or cancellation of license in accordance with law. Adequate number of Machines/ equipment to measure noise level shall be made available by the State within a period of six weeks from today;

(vii) Well in advance before the commencement of festivals such as Ganesh Utsav, Navratri and Dahi Handi, the Police Commissioners/District Magistrates shall call meeting of all major organizations holding such functions and appraise them of the provisions of law and the consequences of breach of the provisions of law;

(viii) We direct that the authorities under the Noise Pollution Rules and the authorities under the Rules relating grant of licenses framed under the said Act of 1951 shall verify before the grant of license/permission to use loudspeakers or public address system whether the applicant has made any breach of any Rules or license conditions when license/permission was granted to such Applicant to the particular festival at a particular place earlier. If it is found that the applicant has made any breach of any Rules or license conditions when license was granted earlier, the authority shall be entitled to refuse the license;

(ix) The State Government shall issue a direction to the authorities under the Noise Pollution Rules that they

shall take all possible steps to ensure due compliance with the Noise Pollution Rules. The directions of this Court shall be communicated to all such authorities and all police stations within Municipal Corporation limits. Compliance with these directions shall be made within six weeks.

36. Compliance report shall be filed by the State Government on or before 6th June, 2015.

37. In addition to the above directions, it is obvious that all concerned authorities shall take all necessary action for abatement of nuisance created by Noise Pollution including bursting of sound emitting fire crackers in silence zone and during night time.

38. Place the PIL on 10th June, 2015 for hearing as to interim relief. Civil Application No.124 of 2014 shall be kept for passing further orders on that day.

(A.S. GADKARI, J)

(A.S. OKA, J)