

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

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**Original Application No. 42/2016**

**IN THE MATTER OF:**

**RAJEEV RAI**

S/o Late Shri Bajrangi Rai,  
R/o House No. 200,  
Sector-29, Noida  
Uttar Pradesh-201303

...Applicant

**VERSUS**

**1. UNION OF INDIA**

Through the Secretary  
Ministry of Environment, Forest and Climate Change  
Paryavaran Bhawan, CGO Complex,  
Lodhi Road, New Delhi-110003

**2. STATE OF UTTAR PRADESH**

Through Chief Secretary,  
UP Sachivalaya  
Lucknow

**3. DISTRICT MAGISTRATE**

Through D M Office,  
Gautam Budh Nagar  
Surajpur, Greater Noida,  
UP-201306

**4. UTTAR PRADESH POLLUTION CONTROL BOARD**

Through Chairman  
Vibhuti Khand, Gomti Nagar,  
Lucknow-226010

**5. Punjabi Club**

Through Punjabi Association  
RE-1C, Noida Sector-29  
Opp. Ganga Shopping Complex,  
Noida-201303

Gautam Budh Nagar,  
Uttar Pradesh

**6. Senior Superintendent of Police**

Gautam Budh Nagar,  
Noida-201301  
Uttar Pradesh

...Respondents

**Counsel for Applicant:**

Mr. Keshav Mohan, Mr. Rishi K. Awasthi, Advs.

**Counsel for Respondents:**

Ms. Divya Prakash Pande, Adv. for Respondent No. 1

Mr. Syed Hussain Adil Taqvi, Mr. Dhirendera Yadav, Advs. for Respondent No. 2, 3 & 6

Mr. Pradeep Misra and Mr. Daleep Dhyani, Advs. for Respondent No. 4

Mr. Rakesh K. Khanna, Sr. Adv. and Mr. Vinod Kumar, Adv. for Respondent No. 5

Mr. Vishwendra Verma and Mr. Pranav Verma, Advs.

**JUDGMENT**

**PRESENT:**

**Hon'ble Dr. Justice Jawad Rahim (Judicial Member)**

**Hon'ble Mr. Ranjan Chatterjee (Expert Member)**

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**Reserved on: 4<sup>th</sup> November 2016**  
**Pronounced on: 26<sup>th</sup> May 2017**

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- 1. Whether the judgment is allowed to be published on the net?**
- 2. Whether the judgment is allowed to be published in the NGT Reporter?**

**Mr. Ranjan Chatterjee, (Expert Member)**

1. This is a case involving a Punjabi Club, Respondent No. 5, run by Punjabi Association which is the principal offending party as regards noise level exceeding the prescribed standards. The applicant who is the resident of the area has prayed for issue

of appropriate directions for closure of the said Punjabi Club and similar nature clubs, situated within 100 mts. radii of any hospital in order to enforce the ‘silence zone’ as stipulated in the Noise Pollution (Regulation and Control) Rules, 2000 and the comprehensive guidelines framed by the UPPCB. The other prayers are incidental to this main prayer seeking appropriate direction against the said club for violating the Noise Pollution Regulation.

2. The Respondent No. 5 i.e. Punjabi Association places some preliminary objection on the maintainability of this application. He states that the Applicant has not come to the Tribunal with clean hands and that he is attempting to mislead the Tribunal and harass Respondent No. 5 for extraneous considerations. The Respondent No. 5 further states that the application seeks closure of Respondent No. 5 as also similar other clubs, without even impleading other similar clubs as parties. The Respondent states that the allegations are vague, making the provision of limitation under Section 14 and 15 redundant.
3. The Uttar Pradesh Pollution Control Board, Respondent No. 4 states that they have monitored the noise pollution of Punjabi club, Respondent No. 5 and nearby premises. The inspection report dated 04.03.2016 and 06.03.2016 along with the results have been placed on record. Further, a notice dated 08.03.2016 has been issued to Respondent No. 5 to keep the noise within the prescribed standards so that nearby residents

are not inconvenienced. The inspection report dated 08.03.2016 clearly indicates that the NOIDA Authority had allotted the premises to M/s Punjabi Association, a society. This association has rented out the premise to M/s Top & Town Caterers for the said activities. The premises consists of three major parts, namely, a lawn for banquet purpose, a restaurant-cum-bar namely Top & Town Restaurant and a kitchen. The restaurant-cum-bar has seating capacity of 50 people. The lawn can accommodate about 250 people. There is a diesel generator set of 65 KVA installed in the premise, which is being used during power cut. It is found during inspection that the DG set is acoustically enclosed. The adjacent buildings to this premise is a 40 bedded Bharadwaj Hospital and a Church. Shri Rajeev Rai, the Applicant resides about 50 meters away from backside boundary of the boundary hall.

4. During inspection of the site, noise levels were recorded at four locations i.e. three locations of Banquet hall and one location at the complainant's residence. It is seen that at the boundary wall towards Bharadwaj Hospital, the observed value was 71.70 decibels whereas the standard decibel value for the commercial area is only 65. Further, near the main gate, the observed value was 68.40 whereas the standard decibel value is 53.50 at the time of inspection, against the requirement of 50 decibels. They have remarked that loudspeakers were being operated for a birthday party at the time of inspection.

It is evident from the report that noise levels are exceeding the standard values prescribed. Further, they have observed that Respondent No. 5 has not obtained Consent to Establish, for short (“CTE”), and Consent to Operate, for short (“CTO”), from the Uttar Pradesh Pollution Control Board, for short (“UPPCB”).

5. The applicant has prayed for maintenance and enforcement of the ‘Silence Zone’ around 100 mts radii of the hospital as stipulated in the Noise Pollution (Regulation and Control) Rules, 2000, issued by the Ministry of Environment, Forest and Climate Change, for short (“MoEF”), and the comprehensive guidelines framed by the UP Pollution Control Board.

The issues for our consideration are:

1. Whether the noise levels of the club of Respondent No. 5 are exceeding the prescribed parameters?
  2. Whether Respondent No. 5 has been operating without obtaining Consent to Establish (CTE) and Consent to Operate (CTO) from the UPPCB?
  3. When did the cause of action first arise?
6. While addressing these issues, we find that the report of UPPCB dated 08.03.2016 as per inspection carried out in 04.03.2016 and 06.03.2016, clearly bears out that the noise levels are exceeding the standard value prescribed under the Noise Pollution (Regulation and Control) Rules, 2000.

7. Further, the Pollution Control Board has observed in its report dated 08.03.2016 that the concerned club has not obtained 'CTE' and 'CTO' from the 'UPPCB'.

8. Subsequently, however the Counsel for Respondent No. 5 produced the CTE and CTO dated 17.08.2016, subject to submission of all pollution control arrangements and the layout plan of the club being presented to the UPPCB within a period of 1 month (Annexure A-8 and A-9).

9. As regards the cause of action, the applicant has stated that the noise pollution has been a recurrent cause of action, as opposed to continuous cause of action. Each time the noise level increases, there is a fresh cause of action. The Respondents challenged the contention of the applicant and said that the limitation angle does not entitle the applicant to approach the Tribunal belatedly.

10. We have dealt with the issue of Recurrent cause of action and its effect vis-a-vis the triggering of the period of limitation in *Forward Foundation vs. State of Karnataka 2015 ALL (1) NGT Reporter (2) (Delhi) 81* case as follows:

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court

clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M. R. Gupta v. Union of India and others*, (1995) 5 SCC 628.

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: *Ex. Sep. Roop Singh v. Union of India and Ors.*, 2006 (91) DRJ 324, 44 M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the ‘cause of action’ satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression ‘cause of action first arose’ as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the ‘cause of action first arose’ would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of

Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.

11. However, considering the factual matrix of this case, we are satisfied the conduct and the action of Respondent Club is such that it creates recurrent cause of action. Hence we reject the contention that there is no cause of action to the applicant and further hold that this petition is maintainable.

12. As it is clear now from the inspection report of UPPCB dated 08.03.2016, the applicant resides about 50 mts away from Respondent No. 5, the Punjabi Club. Further, it is borne out from the said inspection report that there is a 40 bedded Bharadwaj Hospital and a church which are adjacent to the Punjabi Club in Sector-29 Noida. The applicant pleads that the said area falls in the 'Silence Zone' as per the Noise Pollution (Regulation and Control) Rules, 2000 framed by the MoEF. A 'Silence Zone' has been defined as-

*"an area comprising not less than 100 meters around hospitals, educational institutions and courts. The silence zones are zones which are declared as such by competent authority".*

13. We are satisfied that the club in question is in a Silence Zone.

14. In an atmosphere of growing urbanisation, noise pollution needs to be addressed effectively to keep it within permissible limits.

The Hon'ble Delhi High Court has held in Writ Petition “*Free Legal Aid Cell Shri Sugan Chand Aggarwal alias Bhagatji vs. Govt. of NCT of Delhi and Ors.*” AIR 2001 Delhi 455, 93 (2001) DLT 28, 2001 (60) DRJ 297, it was said that 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.”

“Hon'ble Supreme Court in “**Church of God (Full of Gospel) in India vs. K.K.R. Majestic Colony Welfare Association**”, 2000Cri LJ 4022 has held that the court may issue directions in respect of controlling noise pollution even if such noise was a direct result of and was connected with religious activities. It further observed that- “Under the Environment (Protection) Act, 1986, rules for noise pollution level are framed which prescribe permissible limits of noise in residential, commercial, industrial areas or silence zone, The question is- whether the appellant can be permitted to violate the said provisions and add to the noise pollution. In our view, to claim such a right itself would be unjustifiable. In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialisation, urbanisation and modernisation and is having many evil effects including danger to health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastrointestinal problems, allergy, distraction, mental stress and annoyance etc. This also affects animals alike. The extent of damage depends upon the duration and the intensity of noise. Sometimes it leads to serious law and order problem. Further, in an organised society, rights are related with duties towards others including neighbours.....  
.....because of urbanisation or industrialisation the noise pollution may in some area of a city/town might be exceeding permissible

limits prescribed under the Rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and, therefore, rules prescribing reasonable restrictions including the Rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisances Act, 1889 and also the Noise Pollution (Regulation and Control) Rules, 2000 are required to be enforced”.

15. We, therefore, answer the question in the affirmative as it is clearly borne out from the inspection reports that there has been noise pollution exceeding the prescribed decibels level and further there has been no restriction of noise at the hospital in close proximity to the club.

16. However, since the said Punjabi club has subsequently obtained ‘CTE’ and ‘CTO’ on 17.08.2016, it became necessary to examine the conditions thereof. Mr. Pradeep Mishra, learned counsel for the UPPCB submitted that consent granted is on several conditions which the club has to comply. Since there was no statement on behalf of the Punjabi Club that they had complied with those conditions and as it was subsequent event after filing of this case, we had directed the Punjabi Club to file a statement as to whether the condition on which the consent was granted have been complied or not. The Punjabi Club has filed its supplementary affidavit pursuant to our order dated 11.04.2017 and in that they have detailed the step taken by them to comply with the conditions on which the consent was granted.

17. In the circumstances, we directed the UPPCB to re-conduct the inspection of the club and report as to whether the conditions of the consent have been complied or not. UPPCB has file a report in which they have listed out the conditions imposed and also stated that the Punjabi Club has complied with most of the conditions. We are therefore, satisfied that the club has complied with the conditions as stipulated in the conditions to the extent stated by them in their supplementary affidavit and some steps are to be taken.

18. In the given circumstances, since the club has now obtained consent it could be permitted to function subject to certain conditions. Accordingly, we would settle the matter with the following directions:

- a. The club shall henceforth strictly conform to the prescribed noise levels and there should be no occasion for them to be a nuisance to the public residing nearby, particularly to the Hospital and the applicant.
- b. Since the Respondent No. 5 is now mindful of the grievances arising out of the noise levels exceeding the prescribed standards, the Respondent No. 5 shall definitely maintain the noise level below the standards prescribed.
- c. The UPPCB shall maintain a strict vigil and conduct periodical visits to ensure that under no circumstances the club violates the noise pollution norms.
- d. There should be a complete ban on the use of loudspeakers to curtail the noise pollution.

e. Respondent No. 5 shall use double glazed windows to contain the sound within the premises of the restaurant.

f. Respondent No. 5 will also create a wall of tall trees around their lawn to contain the sound from going out.

4. However, as the club has been running for a period of ten years without consent and has caused severe noise pollution affecting the life of the people and patients in the hospital. It has to be saddled with appropriate orders towards the payment of environmental compensation of Rs. 5,00,000/- (Rupees Five Lakh only) to the Bhardwaj Hospital and a sum of Rs. 2,00,000/- (Rupees Two Lakh only) to the UPPCB which would act as deterrent against future violation.

5. We also direct the Noida Municipal authorities to put signages which shall display the penalty and fine in case of violation under the Noise Pollution (Regulation and Control) Rules, 2000 at atleast 5 places or as may places where there are hospitals, to make the citizens aware.

19. With the above directions, we dispose of the Miscellaneous Application Nos. 935/2016 as well as the Original Application with no order as to costs. The interim order is also set aside.

**Dr. Justice Jawad Rahim  
Judicial Member**

**Mr. Ranjan Chatterjee  
Expert Member**

**New Delhi**  
26<sup>th</sup> May 2017