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Reserved on 5.5.2020

Delivered on 15.5.2020

In Chamber

Case:- PUBLIC INTEREST LITIGATION (PIL) No. - 570 of 2020

Petitioners:- Afzal Ansari And 2 Others

Respondents:- State Of U.P. And 2 Others

Counsel for Petitioner:- Syed Safdar Ali Kazmi

Counsel for Respondent:- C.S.C.

Hon'ble Shashi Kant Gupta, J.

Hon'ble Ajit Kumar, J.

(Delivered by Hon'ble Shashi Kant Gupta, J.)

1. The matter was taken up by this Court on 05.05.2020 through Video Conferencing, in view of the outbreak of the pandemic- Covid-19. Mr. Syed Safdar Ali Kazmi and Mr. Fazal Hasnain, Advocates appeared before this Court in the present Civil Misc. Writ Petition (PIL) No. 570 of 2020 (Shri Afzal Ansari Vs. State of UP and two others) on behalf of the petitioners and Mr. Manish Goel Additional Advocate General for the State through Video Conferencing.

2. A letter dated 26.04.2020 was written by Mr. Afzal Ansari, Member of Parliament (Lok Sabha), Ghazipur with a prayer that fundamental right to religion of the people at

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Ghazipur may be protected and the State Administration may be directed to permit recite the *Azan* by only one person “*Muezzin*” from the respective mosques of the District Ghazipur, since it does not violate any of the directives issued for controlling the threat of the spread of the Covid-19, pandemic. Mr. Salman Khurshid, Senior Advocate, Supreme Court as well as Former Union Minister for Law & Justice, Govt. of India has by a letter dated 28.04.2020, approached this Court through Mr. Syed Mohd. Fazal, Advocate, seeking that Muslims at Farrukhabad and other districts such as Hathras and Ghazipur, in Uttar Pradesh, be permitted to recite *Azan* which, according to him, is an integral part of Islam and in no way undermines the society's collective response to the pandemic. A letter dated 25.04.2020 has also been written by Mr. S. Wasim A. Qadri, Senior Advocate seeking a similar relief with respect to District Ghazipur. Thereafter, Public Interest Litigation was filed in appropriate format on 30.04.2020 by Mr. Afzal Ansari. All the three matters including the letters were tagged together and were registered as Civil Misc. Writ Petition (PIL) No. 570 of 2020 (Shri Afzal Ansari Vs. State of UP and two others).

3. Counter affidavit has been filed on behalf of the State in the aforementioned writ petition.

4. Mr. Syed Safdar Ali Kazmi and Mr. Fazal Hasnain, learned

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counsel for the petitioners have stated that since pure questions of law are involved in the matter, therefore, they do not wish to file any rejoinder affidavit in the matter and they may be heard finally. The matter was, accordingly, taken up through video conferencing and after hearing the detailed submissions on the said date i.e. 05.05.2020, the judgment was reserved.

5. The key relief sought in the writ petition is that the Muslims in the Districts Ghazipur and Farrukhabad, may be permitted to recite *Azan* through “Muezzin”, by using sound amplifying devices and the restrictions imposed by the administration are wholly arbitrary and unconstitutional since they do not, in any way, violate the guidelines issued for the containment of the pandemic.

6. A perusal of the pleadings of the petitioner reveals that since 25th April 2020, month of Ramzan is being observed throughout the country, in this month, the entire Muslim Community all over the world observes fasting approximately from sunrise to sunset. The timing of beginning and concluding the daily fast is marked by the sound of the *Azan*. It has been pleaded that the practice of opening the fast by the sound of the *Azan* is an Islamic tradition prevailing since the time of Prophet and is being practiced for past 1400 years. Further there is no congregational prayer being conducted in any of the Mosques in District Ghazipur during the ongoing

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period of lockdown. It has been further pleaded that in case any such congressional prayer is being organized in any of the Mosque in contradiction to the guidelines of social distancing the same would be illegal and must be stopped by the respondent authorities. It has been further pleaded that the pronouncement of *Azan* is not a congressional practice but is simply an act of recitation by a single individual, calling the believer to offer *Namaz* at their homes and therefore do not violate any of the conditions of the prevailing lockdown. According to the petitioner, in most of the cases *Azan* is given by a person who is the caretaker of the Mosque and is ordinarily residing in the Mosque. In other cases, the person assigned the duty of reciting *Azan* in the Mosque is the closest available person who can recite *Azan*. Therefore, in both the cases there is no occasion of violation of the lockdown norms by an individual who is reciting *Azan* in the Mosque. It has been further pleaded that on the eve of Ramzan i.e. 24th April 2020, local administration under the supervision of District Magistrate, Ghazipur began restraining all the Mosques within the district from reciting *Azan*. Several people have complained that the police personnel are using force in order to implement this illegal and arbitrary prohibition. It has been further submitted that ban on *Azan* through sound amplifying devices is violative of fundamental right as provided under Article 25 of the Constitution of India, as reciting *Azan* is an

essential religious practice. It is for the welfare of a religious community. It is not in any way contradictory to public order, morality, health or to any other provisions of Part III of the Constitution and therefore, cannot be prohibited or restricted by the administration.

7. In terms of the letter dated 28.04.2020, addressed by Mr. Salman Khurshid, which has been treated as Public Interest Litigation, that reciting of *Azan* is a call for the five times prayers, particularly the morning *Fajr* which is also the beginning of *roza* fast as well as *Maghrib* which is the breaking of fast at sun set. It has been further pleaded that there has never been any restriction on recitation of *Azan* by the the use of loud speakers to call the faithful to prayer. According to him, Covid-19 pandemic has necessitated stringent containment measures and Muslims across the country have promptly and willingly, accepted that congregational prayer be suspended as long as the danger of spread of infection continues. Leading seminaries like Deoband and religious leaders have advised people to perform *Namaz* at home consistent with social distancing norms. According to him, *Azan* is integral to religion and in no way undermines the society's collective response to the pandemic. It has been further pleaded that local administration at Farrukhabad has been somewhat ambiguous about the recitation of *Azan* and the local police continues to threaten coercive steps against

recitation of *Azan*. It was further pleaded that local police and administration have pasted unsigned notices on the entrances of several mosques in the city and all attempts made to seek redressal from the District Administration have been unsuccessful which has caused unnecessary disquiet and apprehension of violation of this religious right in the local Muslim populace. Similar issues have arisen from Ghazipur and Hathras that may require directions for uniform legal regime across the State of Uttar Pradesh. Lastly, it has been pleaded to this Court to preserve the spiritual comfort and the wholesome spirit of constitutional right to worship of all citizens. One notice issued under Section 149 Cr.P.C. by the Officer-In-Charge (Prabhari Nirikshak), Police Station Dildar Nagar, Ghazipur has also been placed on record.

8. Mr. Manish Goyal, Additional Advocate General has appeared on behalf of the State and supported the facts mentioned in the Counter Affidavit filed on behalf of the State by Mr. Avanish Kumar Awasthi presently posted as Addl. Chief Secretary (Home), Govt. of U.P.

9. The Counter Affidavit refers to a number of Government Orders and guidelines, which were issued by the State Government as well as Central Government in view of the Covid-19 pandemic, which threatened human life throughout the world including India. It has sought to be contended

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therein that *Azan* is a call for congregation to offer prayers at the Mosque and is therefore in violation of the Guidelines for containing the pandemic. It has been stated in paragraph 12 of the counter affidavit that ever since 24.03.2020, no religious activity is being carried out at any religious places and no loud speakers are being used for any religious purpose by Temple, Mosque, Church, Gurudwara etc., in District Ghazipur. It has been further mentioned that a meeting was convened on 24.03.2020 by the District Magistrate, Ghazipur which was attended by religious leaders and distinguished citizens whereupon it was agreed that no religious activities will be carried out during lockdown period at any public place of worship and no loud speakers/amplifiers would be used on such religious public places during the lockdown period. While referring to the guidelines issued by the Government, it has been further stated that new guidelines provide that all religious places/places of worship shall be closed for public. Religious congregation are strictly prohibited. It has been further stated that the assertions made in the said letter that unsigned notices have been pasted in several Mosques of District Farrukhabad prohibiting *Azan* by loud speakers during Ramzan are incorrect and no such order has been issued by the Police/ District Administration, Farrukhabad. Local Muslim community have been following the directions of the Government of India and no religious activities including *Azan*

are being carried out at any public place of worship and no loud speakers are being used for any purpose with effect from 24.03.2020. It was further pleaded that no complaint in this respect has been received by the District/Police Administration of Farrukhabad, Ghazipur and Hathras.

10. Further, in paragraph 24 of the counter affidavit it has been stated that in pursuance of the order passed by the Government of India circulating guidelines to be followed during lockdown period and prohibitory orders under Section 144 Cr.P.C. was imposed. Strict implementation of the guidelines yielded positive results and till 30.04.2020, no new Corona affected person was found in District Hathras. During the period of lockdown with cooperation of religious groups no loud speakers/amplifiers have been used during the festivals like Navratri, Ram Navmi, Hanuman Jayanti and Parasu Ram Jayanti. People of different religions have been following the guidelines and no religious activities are being carried out at any religious place of worship or public place, and no loud speakers have been used since 24.03.2020. Neither *Namaz* is being offered nor *Azan* is being is being recited from the Mosques since the date of lockdown i.e. 24.03.2020. It has been further asserted that *Azan* is not being offered from the mosque since 24.03.2020, voluntarily, and as such, there is no occasion to issue any restraint order or direction.

11. Heard Mr. Syed Safdar Ali Kazmi and Mr. Fazal Hasnain, for the Petitioners and Mr. Manish Goyal, Additional Advocate General appearing on behalf of the State through Video Conferencing and perused the record.

12. From the facts mentioned above, the main questions that arise for adjudication in the present writ petition are:

1. Whether any order prohibiting or restricting the recitation of *Azan*, through sound amplifying devices, is violative of the Article 25 of the Constitution of India and therefore arbitrary and unconstitutional?

2. Whether the recital of *Azan* by Muezzin/authorised person violates any of the orders or guidelines issued by the Government or administration or otherwise adversely impacts the containment measures of Covid-19 crisis?

13. With respect to first issue, the main argument of the petitioners is that they cannot be prohibited or restricted from reciting *Azan* through by the use of loudspeakers/microphones since offering *Azan* through sound amplifying devices is an integral part of Islam and the prohibitions/restrictions, sought to be imposed in this regard, impede their fundamental right under Article 25 of the Constitution of India to profess, practice, and propagate the religion of Islam.

14. It has been submitted by the learned counsel for the

petitioners that *Azan* was introduced by Prophet Muhammad. It was recited by a person from mosque in a loud voice but by passage of time, it was felt that a system was required to be introduced to invite the Believers in Islam to the congregational prayers by reciting *Azan* five times a day through a sound amplifying instrument, since on account of increase in population, it was not possible for the *Azan* to reach all believers of Islam. Therefore, reciting of *Azan* through loudspeakers five times a day is part of religious rights guaranteed under Article 25 of the Constitution of India. Any restriction or prohibition made with regard to recitation of *Azan* through loudspeaker would have to be declared unconstitutional.

15. Per contra, learned Sri Manish Goyal, Additional Advocate General has stated that right contained under Article 25 of the Constitution of India is subject to public order, morality, health and Part III of the Constitution of India. He also very specifically referred to rule 5 of The Noise Pollution (Regulation and Control) Rules, 2000 (in short “Noise Pollution Rules”) which states that a loud speaker or a public address system shall not be used except after obtaining written permission from the authority.

16. The argument made by the learned counsel for the petitioner is totally misconceived and has no basis. We proceed

to deal with this issue in detail. At this stage, it will be relevant to quote Article 25 as well as Article 19 (1)(2)

25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus

Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion

Explanation II In sub clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions 2 [or co-operative societies];

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; [and]

** * * * **

(g) to practise any profession, or to carry on any occupation, trade or business.

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of 6[the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.]

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17. In this regard it may be noted that the issue of the use of sound amplifying devices for amplifying human voice and other sounds while offering daily pujas by a Hindu Organization arose before the Calcutta High Court in the case of *Om Birangana Religious Society Vs. The State and Ors.*, MANU/WB/0254/1996, wherein it was held as under:

“15. It is well-settled that the right to propagate one's religion means the right to communicate a person's belief to another or to expose the tenets of that faith. The question is whether the right to propagate religion includes the right to use loud-speakers and microphones for the purpose of chanting religious tenets or religious texts and/or the indiscriminate use of microphones or loud-speakers during religious performance in the society.

...

17. There cannot be any dispute that sound is a known source of pollution. The adverse and ill effect of sound on human body is also known. It has a tremendous impact on the nervous system of human being

....

20. The religion that has been performed by the petitioner and others, is nothing new, but the same is there for several centuries. It cannot be said that the religious teachers or the spiritual leaders who had laid down these tenets, had any way desired the use of microphones as a means of performance of religion. Undoubtedly, one can practise, profess and propagate religion, as guaranteed under Article 25(1) of the Constitution, but that is not an absolute right. The provisions of Article 25 is subject to the provisions of Article 19(1)(a) of the Constitution. On true and proper construction of the provisions of Article 25(1), read with Article 19(1)(a) of the Constitution, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require.”

18. Subsequently, the issue of using sound amplifying devices for the purposes of reciting *Azan* was specifically dealt with by the Calcutta High Court in the case of *Moulana Mufti Syed Mohammed Noorur Rehman Barkati and Ors. Vs. State of West Bengal and Ors.* MANU/WB/0211/1998. The claim in

the Writ Petition was that *Namaz* is the second pillar of Islam and occupies a permanent position among the practical duties of the Muslims. It was claimed that use of microphones for the purpose of *Azan* is a part of the religious right guaranteed under Article 25 of the Constitution of India. After detailed discussions the Calcutta High Court while recognizing that *Azan* was certainly an essential part of Islam, held that the use of microphone and loud-speakers were not an essential and an integral part of *Azan*.

19. The Apex Court in the case of *Church of God (Full Gospel) in India Vs. K.K.R. Majestic reported in (2000) 7 SCC 282* has held as follows:

“no religion or religious sect can claim that the use of loudspeakers or similar instruments for prayers or for worship or for celebrating religious festivals is an essential part of the religion which is protected under Article 25. We hold that there is no fundamental right to use loud-speakers or similar instruments under Article 19 (1) (a) of the Constitution. On the contrary, the use of such instruments contrary to the Noise Pollution Rules will be a violation of fundamental rights of citizens under Article 21 of the Constitution as well as fundamental right of citizens of not being forced to listen something which they do not desire to listen”

20. In the case of *P.A. Jacob v. Supdt. of Police, AIR 1993 Ker 1*, it was held that 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. A person cannot 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.

21. Similarly, a Co-ordinate Bench of this Court, comprising of *Hon'ble Pankaj Mittal J.* and *Hon'ble V.C. Dixit J.*, in the case of *Masroor Ahmad and another Vs. State of U.P. and two others* by judgment and order dated 9.1.2020 in no uncertain terms held that use of sound amplifying systems for the purposes of *Azan* at the Mosques could be refused on grounds of sound pollution and in order to maintain peace and tranquility in the area. It was further held that the freedom to practice, profess and propagate religion under Article 25(1) is not absolute and is subject to Article 19(1)(a) of the Constitution of India, and both have to be construed harmoniously.

22. The apex court while dealing with the issue of privacy as part of Article 21 of Constitution of India held that right to sleep has always been treated to be a fundamental right like right to breath, to eat, to drink, to blink, etc. In the case of ***Ramlila Maidan Incident, in re, reported in 2012 (5) SCC 1*** in paragraphs 318 and 327, the apex court held as follows:

“318. Thus, it is evident that right of privacy and the right to sleep have always been treated to be a fundamental right like a right to breathe, to eat, to drink, to blink, etc.”

“327. An individual is entitled to sleep as comfortably and as freely as he breathes. Sleep is essential for a human being to maintain the delicate balance of health necessary for its very existence and survival. Sleep is, therefore, a fundamental and basic requirement without which the existence of life itself would be in peril. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right. It would be similar to a third degree method which at times is sought to be justified as a necessary police action to extract the truth out of an accused involved in heinous and cold-blooded crimes. It is also a device adopted during warfare where prisoners of war and those involved in

espionage are subjected to treatments depriving them of normal sleep.”

23. There is catena of judicial decisions which recognizes the right to live in freedom from noise pollution as a fundamental right protected by Article 21 of the Constitution of India. Noise pollution beyond permissible limit is hazardous which violates the fundamental rights of citizens.

24. In the case of **Church of God (Supra)**, the Supreme Court has held that no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice amplifiers or beating of drums. In a civilized society in the name of religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during daytime or other persons carrying on other activities cannot be permitted. A student preparing for his examination is entitled to concentrate on his studies without their being any unnecessary disturbance by the neighbours. Similarly, the old and the infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution. Aged, sick, people afflicted with psychic disturbances as well as children up to 6 years of age are considered to be very sensitive to noise. Their rights are also required to be honoured.

25. Learned counsel for the petitioner has not been able to

explain why, *Azan* cannot be offered without the use of sound amplifying devices. It will be not out of place to mention that in the past, during old days when the loud-speaker was not invented, *Azan* used to be given by human voice. The use of microphone is a practice developed by someone and not by the Prophet or his main disciples, and which was not there in the past, and that the microphone is of recent origin and accordingly it could not be said that the use of microphone and loud-speaker is essential and integral part of the *Azan*. There is no such religious order which prescribes that *Azan* can be recited only through loud-speakers or by any amplifiers. *Azan* is certainly an essential and integral part of Islam but use of microphone and loud-speakers is not an essential and an integral part thereof. Microphone is a gift of technological age, its adverse effect is well felt all over the world. It is not only a source of pollution but it is also a source which causes several health hazardous. Traditionally and according to the religious order, *Azan* has to be recited by the Imam or the person in-charge of the Mosques through their own voice. Right to religion, by no stretch of imagination, ought to be practised, professed and propagated saying that microphone has become an essential part of the religion.

26. It cannot be denied that sound is one of the recognised mode of creating pollution and thus sound pollution by means of using loud-speakers, without prior permission of authority,

as prescribed in law, has to be controlled. A citizen has a right to leisure, right to sleep, right not to hear and right to remain silent. He has also the right to read and speak with others. Use of microphones certainly takes away the right of the citizens to speak with others, their right to read or think or the right to sleep. There may be heart patients or patients suffering from nervous disorder and they may be compelled to bear this serious impact of sound pollution which has had an adverse effect on them. It may create health problems.

27. No person has right to take away the right of others. There is no religious freedom in this country except the provisions of Art. 25 of the Constitution which is subject to public order, morality and health and other provisions of part III including Art. 19(1)(a) of the Constitution of India. Freedom of religion is subject to others' right as guaranteed under Article 19(1)(a) of the Constitution, namely, religious freedom cannot abridge or take away or suspend others' right under Article 19(1)(a) regarding their freedom of speech and expression. Use of loud-speakers is not an integral part of *Azan* or necessary for making *Azan* effective. Use of loud-speakers otherwise in accordance with law affects fundamental rights of the citizens under Article 19 (1)(a) of the Constitution of India. No one has got the right to make other persons captive listeners. One cannot disturb others' basic human rights and fundamental rights. Use of loud-speakers can cause hearing

loss, disturbance of sleep, interference with communication, annoyance etc. and other diseases. Right to sleep is not only a fundamental right but it is to be conceded to be a basic human right.

28. Thus, we are of the considered opinion that *Azan* may be an essential and integral part of Islam but recitation of *Azan* through loud-speakers or other sound amplifying devices cannot be said to be an integral part of the religion warranting protection of the fundamental right enshrined under Article 25 of the Constitution of India, which is even otherwise subject to public order, morality or health and to other provisions of part III of the Constitution of India. Thus, it cannot be said that a citizen should be coerced to hear anything which he does not like or which he does not require since it amounts to taking away the fundamental right of other persons.

29. At this juncture, it would be worthwhile to refer to Rule 4, 5, 5A and Section 6 of the Noise Pollution Rules as follows;

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

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

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

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

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

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

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

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

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

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

(A) Republic Day;

(B) Independence Day;

(C) State Day; or

(D) such other day as notified by the Central Government or the State Government.]¹⁵

[(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 5dB (A) the ambient noise standards specified for the area on which it is used.]

5A. Restrictions on the use of horns, sound emitting construction equipments and bursting of fire crackers.

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

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

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

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

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

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

(iii) whoever, exhibits any mimetic, musical or other 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.]

30. Rule 5 deals with not only use of loud-speakers/public address system but it also deals with sound producing instruments or a musical instrument or a sound amplifier. Under Sub-rule (1) of Rule 5, it is provided that a loud-speaker or a public address system shall not be used except after obtaining written permission from the Authority under the Noise Pollution Rules. Sub-rule (2) provides that a loudspeaker 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 such as auditorium, conference halls, banquet halls, community halls or during a public emergency. The Schedule under the Rules of 2000, defines night time to mean the period between 10.00 p.m. to 6.00 a.m. Day time is defined as 6.00 am to 10.00 pm. Thus, even if permission is granted under Sub-rule (1) of Rule (5) to use loudspeakers or public address systems, the same cannot be

used between 10.00 pm till 6.00 a.m. Then comes Sub-rule (3) which confers power of relaxation on the State Government. It confers power on the State to permit the 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 not exceeding fifteen days in all during a calendar year. The said Sub-Rule requires the concerned State Government to specify in advance, the number and particulars of the days on which such exemption would be operative. Sub-rule (3) is an exception carved out which permits the State Government to relax the prohibition under Sub-rule (3) for a period of 15 days in a calendar year by permitting use of loudspeakers/public address systems or the like only between 10 pm to 12 midnight.

31. The challenge to Sub-rule (3) was negated by the Apex Court in the case of *Noise Pollution (VII) Vs. Union of India and Ors.* (2005) 8 SCC 796. In paragraph 8 of the said decision the Apex Court held thus:-

"8. Looking at the diversity of cultures and religions in India, we think that a limited power of exemption from the operation of the Noise Rules granted by the Central Government in exercise of its statutory power cannot be held to be unreasonable. The power to grant exemption is conferred on the State Government. It cannot be further delegated. The power shall be exercised by reference to the State as a unit and not by reference to districts, so as to specify different dates for different districts. It can be reasonably expected that the State Government would exercise the power with due care and caution and in the public interest. However, we make it clear that the scope of the exemption cannot be widened either by increasing the number of days or by increasing the duration beyond two hours. If that is attempted to be done, then the said Sub-rule (3) conferring power to grant exemption may be liable to be struck down as

violative of Article 14 and 21 of the Constitution. **We also make it clear that the State Government should generally specify in advance, the number and particulars of the days on which such exemption will be operative. Such specification would exclude arbitrariness in the exercise of power. The exemption, when granted, shall not apply to silence zone areas.** This is only as a clarification as this even otherwise is the position of law."

(emphasis added)

32. Thus, under no circumstances loud-speakers or any public address system or musical system or sound amplifiers can be permitted to be used between 12.00 p.m. to 6.00 a.m. As according to Noise Pollution Rules, night hours have been fixed between 10. p.m. to 6 a.m. For the period between 10pm to 12 midnight the power of relaxation has been conferred only upon the State Government under Sub Rule 3 of Rule 5

33. In the present case, there is no averment in the writ petition that any permission has been sought by the concerned persons to recite the *Azan* through loud-speakers or any public address system. Therefore, until and unless there is a license/permission from the authorities concerned under the Noise Pollution Rules, under no circumstances, *Azan* can be recited through any sound amplifying devices. In case *Azan* is being recited through aforesaid means, it will be violative of provisions contained under the Noise Pollution Rules and strict action is liable to be taken against the persons violating such Rules, in accordance with law.

34. Hence it is ruled that while the right to offer *Azan* by voice, without the use of sound amplifying devices is a right

protected under Article 25 of the Constitution. However, the right to recite *Azan* through sound amplifying devices is not protected under Article 25, since it is not an integral part of Islam. In any view of the matter, the restriction on the use of sound amplifying devices, is subject to the Noise Pollution Rules which is reasonable and valid.

35. Therefore, under the Noise Pollution Rules, a person has to take care of Rule 5 of the Noise Pollution Rules. The use of loud-speakers/public address system or any other sound producing mechanical device cannot be used by any person except after obtaining written permission from the authority. In the present case, there is nothing on record to show that any person has sought or has been given authority to use aforementioned instruments for recital of *Azan* from their respective mosques. In case any such application is filed before the concerned authorities, that may be dealt with in accordance with law including Noise Pollution Rules.

36. While dealing with the second issue, it is noted that it is the categorical case of petitioners that *Azan* is simply a call to offer *Namaaz* and does not necessarily entail the people assembling at any mosque for the purposes of offering *Namaaz*. It has been categorically stated by the petitioners that they are offering *Namaaz* at their home and they are not visiting or assembling in any mosque, as such, they are not violating any

guidelines or Government Orders issued by the State Government/Central Government. It is further undisputed that the District administration would not just be well within its rights but it would be its bounden duty to restrain any such attempt at congregation at the mosques which would be in violation of the guidelines issued for containment of the pandemic- Covid-19.

37. However, it has been argued on behalf of the State that since all the places of worship are closed in terms of the guidelines issued by the Government, and *Azan* is a call for congregation at the Mosques, to offer *namaaz*, it is in violation of the Guidelines issued for the containment of the pandemic. In this regard emphasis has been laid on Paragraphs 9 & 10 of the guidelines contained in order No. 40-3/2020-D dated 24.03.2020, issued by the Ministry of Home Affairs, Government of India for containing Covid-19 pandemic in the country, which are as follows:

“(9) All places of worship shall be closed for public. No religious congregations will be permitted, without any exception.

(10) All social /political/ sports/ entertainment/ academic/ cultural/ religious functions/ gathering shall be barred.”

38. However, Mr. Manish Goyal, Additional Advocate General has not been able to explain as to how the recitation of *Azan* merely through human voice can be violative of any provision of law or any guidelines issued by the State

Government/Government of India in view of Covid-19 pandemic. It is neither a case of the petitioners nor of the State that the Muslims of any of the districts- Ghazipur, Hathras, Farrukhabad or as a matter of fact any District in the State of Uttar Pradesh, are gathering in any mosque for the purpose of offering prayers at the mosque. We fail to understand as to how the recital of *Azan* by a single person in the mosque i.e. Muezzin/Imaam or any other authorised person, through human voice without using any amplifying device, asking the Muslims to offer prayer and that too without inviting them to the mosque, can be violative of any guidelines. Merely reciting of *Azan* from the mosque through human voice does not cause any health hazards to any person of the society.

39. Therefore, we are of the considered opinion that *Azan* can be recited by *Muezzin* from minarets of the Mosques by human voice without using any amplifying device and the administration is directed not to cause hindrance in the same on the pretext of the Guidelines to contain the pandemic-Covid-19, unless such guidelines are being violated.

40. Therefore, it is held that *Azan* may be an essential and integral part of Islam but recitation of *Azan* through loud-speakers or other sound amplifying devices cannot be said to be an integral part of the religion, warranting protection of the fundamental right enshrined under Article 25 of the

Constitution of India, which is even otherwise subject to public order, morality or health and to other provisions of part III of the Constitution of India. Thus, under no circumstances sound amplifying devices can be permitted to be used between 10.00 p.m. to 6.00 a.m. by the district administrations. Further, the petitioners have failed to bring on record or even plead that they sought any such permission for the use of sound amplifying devices, for recital of *Azan* from their respective mosques and, therefore, their use without such permission would be illegal and cannot be accorded approval by this Court. However, in case any such application is filed before the concerned authorities, that may be dealt with in accordance with law including Noise Pollution Rules. Furthermore, as already discussed in detail hereinabove, *Azan* can be recited by Muezzin from minarets of the Mosques by human voice without using any amplifying device and such recitation cannot be hindered with under the pretext of violation of the Guidelines issued by the State, to contain the pandemic- Covid-19.

41. With these observations, this petition (PIL) stands disposed of finally.

42. The Registrar General is directed to forward a copy of this judgment to the Chief Secretary, Government of Uttar Pradesh, Lucknow forthwith for its onward circulation to all the District

(27)

Magistrates of the State to ensure its compliance.

Order Date :- 15.5.2020

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