

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
Appeal No. 24 of 2014 (SZ)

In the matter of

Ubhaya Vedantha Pravarthana Sabha
No.100, 10th Cross, East – West Park Road
Malleshwaram, Bangalore, rep. by its
Honorary Secretary R. Srinivasan

.. Appellant

Vs.

1. The Karnataka State Pollution Control Board
Bangalore, rep. by its Chairman.
2. The Managing Director
Bangalore Electricity Supply Company Ltd
Bangalore.
3. The Managing Director
BWSSB, Bangalore
4. The Commissioner
Bruhat Bangalore Mahanagar Palike
Bangalore
5. The Deputy Chief Electrical Inspector
Bangalore Circle, Malleshwaram, Bangalore
6. Malleshwaram Residents Welfare Association
Rep. by its President B.R. Gopala Rao
Malleshwaram, Bengaluru

.. Respondents

Counsel appearing for the appellant

M/s. N.G.R. Prasad, S. Vijayakumar, G. Narmadha

Counsel appearing for the respondents

For respondent No.1 .. M/s. R. Thirunavukarasu

M Swarnalatha

For respondent Nos. 2,3 & 5 .. Mr. Devaraj Ashok

For respondent No.4 .. Sri Prashanth Chandra

For respondent No.6 .. M/s. Taaurs Associates

S. Kamalesh Kannan, S. Sai Sathya Jith

ORDER

Quoram: Hon'ble Shri Justice Dr. P.Jyothimani, Judicial Member

Hon'ble Shri P.S. Rao, Expert Member

Delivered by Justice Dr.P. Jyothimani (JM)

13th January, 2017

Whether judgment is allowed to be published on the Internet .. Yes/No

Whether judgment is to be published in the All India NGT Reporter .. Yes/No

The appellant Sabha, registered under the Societies Registration Act, is having its object to encourage study of Visishtadvitha works in Sanskrit, Tamil and Kannada, regularly conducting examinations for Vidyarthi from all over India in the courses Bala Bhaga (4 years) Madhya Bhaga (5years) Praudha Bhaga (6 years) Anupuneetha Bhaga (below 7 years) and Prayoga – specialized course, to facilitate propagation of Visishtadvitha Philosophy, as decided by the Committee from time to time.

2. The appellant Sabha has challenged the order dated 6.3.2014 passed by the first respondent State Pollution Control Board (Board) under Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) read with Rule 20-A of the Karnataka Air (Prevention and Control of Pollution) Rules, 1983 (Rules) directing the appellant Sabha to stop its activities in the Sabha premises stated to be used for conducting marriages and functions which are trade activities and also directing the authorities concerned to cut off power supply and water supply to the appellant Sabha functioning at No.100, 10th Cross, East – West Park Road, Malleshwaram, Bangalore and also directing the Commissioner of Bruhat Bangalore Mahanagara Palike (BBMP) to withdraw the license granted to the appellant Sabha and directing the Chief Electrical Inspector, Bangalore to withdraw the license issued to the appellant Sabha to install D.G Set.

3. It is the case of the appellant Sabha that one, Malleshwaram Residents Welfare Association has filed a Public Interest Litigation in the High Court of Karnataka at Bangalore in W.P.No.45881 of 2012 in which the Board is also a party and the said writ petition is pending. In the mean time, the first respondent – Board has issued the impugned order with the directions, as stated above.

4. The appellant has challenged the impugned order on various grounds, including that the impugned order has been passed without giving any opportunity to the appellant, particularly when Rule 20-A of the Rules provides a detailed procedure to be followed, including giving opportunity to file objection. It is also the case of the appellant

that Section 31-A of the Air Act applies to industries and the appellant Sabha is not an industry and it is an ancestral public institution functioning for the object, as stated supra and also conducting marriages to the small gathering of about 150 people.

5. It is the admitted case of the appellant Sabha that as against the impugned order, the appellant is provided with a remedy to file appeal before the learned Appellate Authority constituted under the Air Act and in fact an appeal has been filed and numbered as Appeal No.211 of 2014. However, the Appellate Authority is not functioning for want of Presiding Officer and therefore it has become necessary for the appellant to move this Tribunal by filing the present appeal. The appellant also states that the impugned order is arbitrary which abruptly closed the appellant Sabha with various directions which are opposed to the principles of natural justice, particularly when the matter is subjudice and pending before the High Court of Karnataka. It is the further case of the appellant that under Rule 20-A of the Rules, if only the Board forms an opinion that it is not expedient to provide an opportunity, opportunity can be dispensed with by recording the reason therefor in writing.

6. On the facts of the present case, the impugned order nowhere speaks about the urgency in order to dispense with the opportunity which is mandatory under Rule 20-A of the Rules. It is also the case of the appellant that marriages performed in the appellant Sabha with a limited gathering of people, cannot be termed as "trade activity" and therefore the impugned order which proceeds as if the appellant Sabha is carrying on "trade activity", is unsustainable. Further, it is stated that there is no exchange of goods and the area in which the appellant Sabha is situated is a congested prime commercial area with large number of shops and innumerable vehicles moving always emanating noise. The permissible noise level is 65 Decibals with 10 Decibals further permissible. Even a reading of the impugned order reveals that the noise level has never been categorised beyond 75 Decibals and it is the case of the appellant that the vital fact that there has been constant movement of vehicles with honking of horns and commercial activities surrounding the area and they have not been considered and therefore the impugned order is liable to be set aside on the ground of non application of mind. It is the further case of the appellant that the impugned order which bluntly says that the noise level exceeds 25% during day time and 15% during night time, while

admittedly the particulars given are within the permissible limit and therefore the impugned order suffers from basic illegality. The appellant has also raised other legal grounds challenging the validity of the impugned order.

7. In the reply statement filed by the first respondent – Board it is stated that the appellant Sabha is running a Choultry without obtaining valid "Consent" under Section 21 of the Air Act and that the appellant Sabha has not been provided with fire safety measures. It is also stated that Malleshwaram Residents Welfare Association represented by Mr. Gopal Rao, made a representation that marriage ceremonies are conducted in respect of which a writ petition has been filed in the High Court of Karnataka. It is the case of the first respondent – Board that the Sabha building was inspected on 14.2.2014 and found that the appellant Sabha is surrounded by vegetable market, temple, shops and residences and the area is thickly populated with lot of vehicular movement. While denying that no opportunity was given to the appellant Sabha, it is stated by the first respondent – Board that noise level monitoring was conducted from 14.2.2014 to 20.2.2014 both during day time and night time and only after considering various parameters found out during monitoring, the "closure" order was issued.

8. It is further stated that the appellant Sabha building was donated by Maharaja of Mysore for promoting Vedas and Southern Languages and imparting knowledge to public without receiving any fee. When the appellant is letting out the building for conducting marriages by charging fee, it will be a trade activity under Section 2(k) of the Air Act and noise is being emitted by the said activity more than the permissible limit. It is also reiterated that between 15.2.2014 and 19.2.2014 it was found that noise level exceeded 24% during day time and 15% during night time and consequently the impugned order was passed only after ascertaining that the noise level emanated by the activity of the appellant exceeded the permissible limit. It is also admitted that the Marriage Hall is covered under "green" category and it is mandatory on the part of the appellant to obtain "Consent" from the Board.

9. The first respondent also repudiated the Advocate Commissioner's Report regarding noise level stating that it does not reflect the correct position. It is stated that

when the marriage function was going on, the noise level was between 82 and 85 Decibals. The noise level recorded outside the building near entrance on the ground floor, was 79 Decibals. The noise level recorded outside the Sabha building on the opposite side of the foot path was 78 Decibals and the noise level near the residence of Gopal Rao was 72 Decibals and therefore the noise level is above permissible limit. It is also denied that the Environmental Engineer Mr.K. Raja has admitted that the procedure adopted by the first respondent would not reflect the true noise level.

10. The 6th respondent-Malleswaram Residents Welfare Association has filed M.A.No.241 of 2014 to implead itself as party and that was allowed by this Tribunal in the order dated 18.11.2014 and accordingly the said Welfare Association was impleaded as sixth respondent. In the application for impleadment, the sixth respondent has stated that the Sabha building is used for commercial activities in two floors and a Marriage Choultry Hall in the other two floors where marriages and other functions are conducted.

11. The sixth respondent Association has filed W.P.45881 of 2012 in the High Court of Karnataka praying for a direction to take action against the Appellant. As per the direction of the High Court of Karnataka, the Board conducted an inspection in the Appellant Sabha building between 14.2.2014 and 20.2.2014 by way of monitoring and having found that the noise level increased beyond the permissible limit, the impugned order came to be passed.

12. In the order dated 28.10.2014 taking note of the controversy raised in respect of the factual position regarding the noise level, the Tribunal appointed Mr. K. Ravi Anantha Padmanabhan as Advocate-Commissioner to make an inspection of the activities of the appellant – Sabha and in particular at the time of marriage function and file his Report.

13. Accordingly, the Advocate – Commissioner has filed a Report on 6.5.2015. In the Report, the learned Advocate Commissioner has stated that the appellant Sabha as a Society came into existence on 27.6.1929. Even before that by proceedings of the Maharaja of Mysore, the Municipal Commissioner, Bangalore City in the order dated 4.11.1947 has given vacant land free of cost. That was followed by a Gift Deed

executed by the Commissioner of Corporation, Bangalore dated 5.9.1952 in respect of the vacant land in favour of the appellant Sabha, represented by its Secretary H. Gopala Iyengar, the donee for charitable and religious purposes. By virtue of the same, the appellant got the building plan sanctioned on 17.10.1958 and subsequently the appellant has decided to demolish the old construction and put up new building on 8.11.2009 with a Kalyana Mahal by obtaining certificate from the authority. The learned Advocate-Commissioner has also stated that the sixth respondent Association came into existence on 26.2.2011 and it is as per the complaint of Mr. Gopal Rao, the Board has ordered closure of the appellant Sabha building which is impugned in this appeal.

14. The learned Advocate-Commissioner when inspected the premises on 25.1.2015 at 6.30 p.m, a wedding reception was going on and the District Environmental Engineer Mr. Raju installed noise absorption equipment two hours before to record pre-function noise also. The noise pickup mikes were multi directional and not uni directional. The learned Advocate Commissioner also states that the appellant Sabha is situated in 10th Cross Street which is a cultural hub of Bangalore City with two entrances on east and north. The north entrance is facing the street and on the southern side there is Ram Mandir and on the north there is Venugopala Krishnasamy Temple. On the east is Park Road surrounded by markets, the Sabha premises in the ground floor is having two lifts and there is a basement where 25 – 30 cars can be parked and there are four floors and on the ground floor there is a company known as Transval Company engaged in calibration of machines. On the first floor Penguins Promo Products Pvt. Ltd., is situated, selling shoes, T-Shirts etc. On the second floor there is a Marriage Hall measuring 70 ft x 80 ft. On the third floor there is a kitchen room and serving hall of equal size. That apart, the fourth floor is an open terrace. In the second and third floors, there are several windows and both halls are non air conditioned. Adjacent to the appellant Sabha is 8th Cross Street where all types of shops such as textiles, jewellery, super market and so on are situated and therefore it is one of the busiest streets, surrounding the Sabha i.e., Sampige Road. The Advocate – Commissioner has stated that all cars and scooters coming to adjacent streets either passing through the 10th Cross Street or parked along the 10th Cross Street and its adjoining road and every minute a car or a scooter passes through the appellant –

Sabha. The learned Advocate Commissioner has stated that the atmospheric noise generated by honking horns and vehicle reverse alert sounds, is continuing during day time. It is also stated by the learned Advocate-Commissioner that the house of Gopal Rao who has made a complaint, is situated 100 feet away from the appellant – Sabha on the north – western side. Just outside the northern entrance of appellant - Sabha is the four road junction. Twenty feet away from the residence of Gopal Rao is the entrance of 10th Cross Street and it is "One Way" passing through the appellant – Sabha towards east. Beyond the junction is the residence of Gopal Rao. Adjacent to his house is the commercial shop. The learned Advocate Commissioner has also stated that the noise created on the 2nd and 3rd floors during marriage celebration includes common voice of chat among the people who attended the wedding numbering approximately 150, catering team consisting about 15 persons, Purohiths chanting Veda Mantras, playing of musical instruments such as trumpet, Melam and Nadhaswaram, apart from 8 to 10 ceiling fans. The musical instruments were played on 25th January for about 60 minutes. However, there was no sound source in the basement, ground and first floor or outside the appellant – Sabha building due to marriage celebration. The learned Advocate Commissioner has also given the measured noise level inside the 2nd floor where marriage was solemnised, outside the Sabha building near the entrance at ground floor, outside the appellant Sabha building and on the opposite foot path and has also given the analysis of the measurement. Ultimately, in the conclusion, the learned Advocate Commissioner has stated as follows:

"By the measurements done on 25th Jan. 2015 and analysis it can be concluded that the noise level outside and around the Sabha building is not exceeding 53 dBA (SPL) due to the sources of noise within the 2nd and 3rd floor, such as (a) Guests chat an conversation (b) Purohiths chanting vedic mantras (c) catering team working (d) ceiling fans and (e) music instruments (melam, nadhaswaram and trumpet) At this stage, the Advocate Commissioner feels it appropriate to apprise this Hon'ble Tribunal of the fact that while noise level findings were submitted by KSPCB at the High Court of Karnataka, it was persuaded to take only the average noise level between the lowest and the highest recorded over a period of time during the day and night. As explained above, the maximum noise level at the top roof just 21 feet above the marriage hall is only 53 dBA. But the same noise level down the 21 feet from the marriage hall is much more, which is solely due to vehicular noises, and not due to the noise from marriage hall. Hence, the quoting of an average level may not and does not show the actual emanating from the source of noise (marriage hall). When the Advocate Commissioner, during the course of

his inspection, confronted this issue with the Environmental Engineer Shri Raju he fairly admitted that such a procedure would not reflect the true noise level and it was done in urgency, which vital factor I feel morally obliged to bring it to the knowledge of this Hon'ble Tribunal. But for taking the Electronics communications Scientist Shri S Karunakaran, the above functional and apt mode of measuring the noise level could not have been known to me and I must have also gone by the 'average noise level' theory. I also pray to this Hon'ble Tribunal, in the larger interest of justice, to publish this case in its Law Journal, so that it will act as a pointer in future events. I conclude my report with the words of the illustrious Justice V.R. Krishna Iyer, who held " ... when the root of the grievance and fruit of the writ are attended with bureaucratic debility, it mandates courts of law to wear a corrective forensic lens for performing an administrative surgery ..."

It is true that the 6th respondent – Association has filed objection to the Commissioner's Report, apart from certain objections raised by the Board itself in respect of the alleged statement said to have been made by the Environmental Engineer of the Board, as stated by the learned Advocate Commissioner.

15. Mr. Vijayakumar, learned counsel appearing for the appellant, placing reliance on the impugned order of the Board has stated that on the face of it, the order is liable to be set aside on the ground that the same has been passed without notice to the appellant and without affording any opportunity and therefore the order is arbitrary. Even on the merits of the case, the learned counsel has taken us through various references in the impugned order, wherein the noise level has not increased the permissible limit. He also submitted that in the light of the statement in the impugned order, the conclusion arrived at by the Board as if the noise level exceeds 24% during day time and 15% during night time, is without any reason and without any basis whatsoever. According to the learned counsel, principles of natural justice is to be followed, particularly when the Rules framed under the Air Act prescribe the procedure and in the event of dispensing with the said procedure of giving opportunity an emergent and urgent situation must be noted by the Board in writing with the reason and the impugned order does not say anywhere about the urgent reason in writing and therefore the impugned order suffers from violation of principles of natural justice and the procedure prescribed under the Rules framed under Air Act. The learned counsel has also taken us to various portions of the Advocate Commissioner's Report in support of his contention that the appellant Sabha itself is situated in a crowded area and there is enormous noise level from outside and even otherwise during the time of marriage

ceremony the noise level has not exceeded the permissible limit. It is also his submission that when admittedly Marriage Hall is "green" category and in the absence of any grave nature, the impugned order cannot be sustained in the eye of law.

16. Mr. Thirunavukkarasu, learned counsel appearing for the Board would submit that the writ petition filed by the 6th respondent – Association in W.P.45881 of 2012 has been disposed of with certain directions. While admitting that before passing of the impugned order, there was no show cause notice issued to the appellant, the learned counsel would submit that the appellant which is carrying on marriage function is no doubt a "green" category but it ought to have obtained "Consent" from the Board. He has also raised objection regarding the Commissioner's Report particularly the portion wherein the learned Advocate Commissioner has said as if the Environmental Engineer of the Board has accepted that the procedure followed by the Board by passing the impugned order is not proper. He has also produced the Office Memorandum of the Board dated 23.5.2011 wherein 'Kalyanamandapams' and 'Community Halls' are treated as "green" category and therefore it requires "Consent" from the Board.

17. Mr. Kamlesh Kannan, learned counsel appearing for the 6th respondent Association, while admitting that the 6th respondent Association premises is situated 100 feet away from the appellant Sabha, in as much as the mandatory requirement of "Consent" has not been obtained by the appellant Sabha for running of marriage function, the appellant Sabha should be closed and should not be permitted to conduct marriage functions till "Consent" is obtained. He also submits that apart from "Consent" all other permits from the competent authorities should be obtained by the appellant – Sabha to maintain the noise level as per the permissible limit prescribed by the Board and therefore he submits that the appeal has to be dismissed and only after obtaining "Consent" the appellant must be permitted to carry on its activities.

18. While admitting the appeal in the order dated 28.3.2014 the Tribunal has granted an order of interim stay of the impugned order with a direction to the Managing Director, BWSSB, Cauvery Bhavan, Bangalore to restore water supply and the Managing Director, Bangalore Electricity supply Ltd, Bangalore for restoration of electrical service connection forthwith and the said order continues as on today. It is the

admitted case of the counsel that the writ petition filed before the High Court of Karnataka in W.P.No.45881 of 2012 has been disposed of with certain directions.

19. In the light of the above said facts, the issue to be decided is as to whether the impugned order is legally sustainable.

20. The fact relating to the coming into existence of the appellant Sabha in the beginning of 20th Century and also subsequent construction put up by the appellant and the existing ground + three floors are all not disputed. Even though it is the case of the appellant that in the 2nd and 3rd floors the appellant is conducting Vedic classes, it is admitted that certain functions like Literary Discourses (Upanyasas), Upanayanams and marriages are also conducted, as it is seen in the Advocate Commissioner's Report. The plinth area of the 2nd floor is very small which can accommodate hardly 100 – 150 persons even during marriage.

21. The contention of the learned counsel appearing for the 6th respondent Association that till the appellant obtains "Consent" from the Board for running the Marriage Hall, the Marriage Hall should be closed, is not just and fair not only for the reason that taking into consideration the small size of the Hall which can accommodate very little number of persons and therefore normally ordinary and low income group people will be engaging the Sabha Hall for conducting marriage ceremonies, small functions and literary discourses and taking note of the fact that this has been going on for fairly long number of years and at no point of time any objection has been raised, of course except by Mr. Gopal Rao, the 6th respondent Association has come into existence in 2011 and that many number of marriage functions would have been already booked in advance, on the principles of equity, good conscience and to render substantial justice, we are of the view that there is no necessity to direct closure of the Marriage Hall to prevent conducting of marriage. That is also not the issue in this appeal.

22. In the present appeal, we are concerned about the correctness of the impugned order passed by the Board under Section 31-A of the Air Act. It is true, as admitted by the appellant itself that as against the order under Section 31-A of the Air Act, appeal lies to the learned Appellate Authority and in fact, an appeal in Appeal No.212 of 2014

was also filed. But in the admitted position that appeal could not be taken up for hearing due to the want of Members in the Appellate Authority, the appellant has moved this Tribunal by filing the present appeal.

23. The learned counsel appearing for the appellant Sabha undertakes to withdraw the appeal pending before the Appellate Authority in Appeal No.212 of 2014. It is settled law that one cannot have two parallel proceedings in respect of the same issue. As the Appellate Authority is not sitting, we direct the appellant to withdraw the Appeal No.212 of 2014 from the file of the learned Appellate Authority constituted under the Air Act.

24. A reading of the impugned order shows that order of such magnitude has been passed by the Board without giving any opportunity to the appellant to put forth its case. Admittedly, no prior notice was given to the appellant Sabha. In this regard, it is relevant to note that under Section 31-A of the Air Act, the Board can always pass orders by way of direction which includes closure to cut off electricity and supply of water. Even though there is no express provision under the Air Act, particularly Section 31-A to provide opportunity to the person against whom an order is to be passed, law is well settled that principles of natural justice is inbuilt even though there is no provision in the statutory law unless of course in cases where giving opportunity is specifically barred in this regard. It is relevant to note that under Rule 20-A of the Rules which reads as follows:

"20-A. Directions.—(1) Any direction issued under Section 31-A shall be in writing.

- (2) The direction shall specify the natures of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.
- (3) The person, officer or an authority to whom any direction is sought to be issued, shall be served with a copy of the proposed direction, and shall be given an opportunity of not less than 15 days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.
- (4) Where the proposed direction is for the stoppage or regulation of electricity or water or any other service affecting the carrying on of any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process as the case may be, and objections if any, filed by the occupier with an officer designated now in this behalf shall be dealt with in accordance with the procedure under sub-rules (3) and (5) of this rule.

- (5) The State Board shall within a period of 45 days from the date of receipt of the objections, if any, or from the date up to which an opportunity is given to the person, officer or authority to file objections, whichever is earlier, after considering the objections, if any received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify or decide not to issue the proposed direction.
- (6) In a case where the State Board is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may for reasons to be recorded in writing, issue directions without providing such an opportunity.
- (7) Every notice or direction required to be issued under this rule shall be deemed to be duly served—
- (a) where the person to be served is a Company, if the document is addressed in the name of the Company at its registered office or at its principal office or place of business and is either—
- (i) sent by registered post; or
- (ii) delivered at its registered office or at the principal office or place of business;
- (b) where the person to be served is an officer serving Government if the document is addressed to the person and a copy thereof is endorsed to the Head of the Department and also to the Secretary to the Government, as the case may be, in charge of the Department in which, for the time being, the business relating to the Department in which the officer is employed is transacted, and is either—
- (i) sent by registered post; or
- (ii) is given or tendered to him;
- (c) in any other case, if the document is addressed to the persons to be served and—
- (i) is given or tendered to him, or
- (ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land, or building if any, to which it relates, or
- (iii) is sent by registered post to that person
- Explanation.—For the purpose of this sub-rule—
- (a) "company" means any body corporate and includes a firm or other association of individuals;
- (b) "a servant" is not a member of the family" ,

25. A person to whom a direction is said to be issued should be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days to raise objections. Therefore, there is an explicit clause providing opportunity which

has not been adhered to on the factual matrix of this case before passing the impugned order. It is true that under sub-rule 6 of Rule 20-A opportunity of filing objections can be dispensed with but that must be in an extraordinary case where by giving such opportunity a grave injury to the environment is likely to be caused and therefore it is not expedient to provide any opportunity to file objection. It further states that in such circumstances, the authority must record its reasons in writing while issuing direction. Therefore, even otherwise, the impugned order does not show anywhere in writing the reason for not giving opportunity to the appellant before passing the impugned order. It is incumbent and mandatory on the part of the Board as per sub-rule 3 of Rule 20-A of the Rules to give opportunity to the appellant. When such opportunity having not been given to the appellant, the impugned order is unsustainable as per the Rules framed under the Air Act.

26. Even on the merits of the case, by a cursory reading of the impugned order it shows that the noise level has not exceeded the permissible limit as prescribed by the Board. There is no justification for the Board to abruptly say that the noise level exceeded 24% during day time and 15% during night time without providing any particulars. In the admitted position of the factual scenario, the area where the appellant Sabha is situated is, highly crowded and there is traffic movement throughout with noise created by moving vehicles and also it is a market place, the Board ought to have considered all those issues, but in our considered view the Board has totally failed to discharge its duty to consider the same. This view of ours is supported by the Report of the Advocate Commissioner which threadbare gives not only noise level in various places but also states the nature of the place where the appellant Sabha is situated.

27. It is also seen in the impugned order that under Section 2(k) of the Air Act the appellant is carrying on trade, since the appellant has been conducting marriages which is totally misconceived. Section 2(k) of the Air Act defines

“industrial plant” means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere.”

Simply because the words “industrial plant” is defined, one cannot jump to a conclusion that the activity of the appellant is a trade activity. Trade activity must be in relation to

the industrial activity as per Section 2(k) of the Air Act and therefore, we reject the contention raised by the learned counsel appearing for the first respondent that the activity of the appellant is commercial in nature and therefore it should be treated as a trade, attracting Section 2(k) of the Air Act.

28. At the same time, we do not express any view about the responsibility of the appellant in obtaining any other licence, as the same may be, required either under the Municipal Law or any other law as exists as on date. On such terms if licence is required, it is incumbent on the appellant to obtain the same. In so far as it relates to "Consent" to be obtained by the appellant in the circumstances that the activity of the appellant is covered under the "green" category, as it is seen in the Official Memorandum of the Board dated 23.5.2011, it requires "Consent" from the Board.

29. Even though we do not want to abruptly close the Marriage Hall in the interest of the society, we make it clear that the appellant shall apply to the Board and obtain necessary "Consent" within a period of 30 days from the date of receipt of copy of this order. We make it clear that on such application being made by the appellant, the Board shall consider the same and pass appropriate orders expeditiously in any event, within the above said period, in accordance with law. We also make it clear that even after obtaining "Consent" it is incumbent on the part of the appellant while permitting the place to be given for conducting marriages and other ceremonies/functions, to see that noise level during those functions either day time or night time, shall not exceed beyond the permissible limit and all necessary measures shall be taken in this regard. In the event of any violation, it will be always open to the Board to take appropriate action in the manner known to law. We reiterate that for the present, we are not directing closure of the Marriage Hall in the interest of the society at large, as such closure will affect the people, who generally belong to marginalised sections of society in conducting marriages and other functions in such a small extent of area. Till "Consent" is obtained, it is the duty of the appellant to see that noise level at all times is restricted within the permissible limit as prescribed by the Board.

30. For all the above said reasons, we are of the considered view that the impugned order is not sustainable and liable to be set aside not only on the ground of

violation of natural justice but also on merit and accordingly the impugned order stands set aside and the appeal is allowed. There shall be no order as to cost.



Justice Dr. P. Jyothimani

Judicial Member

सत्यमेव जयते

P.S. Rao

Expert Member



NGT