

SACHIN KASHYAP & ORS.

v.

SUSHIL CHANDRA SRIVASTAVA & ORS.

(Civil Appeal No(s). 2691 of 2021)

JULY 15, 2021

[VINEET SARAN AND DINESH MAHESHWARI, JJ.]

Pleadings: Non-impleadment of affected parties in the writ petition before the High Court – Issuance of direction by High Court in writ petition, without there being any pleading or prayer with regard to a particular issue – Effect of – On facts, writ Petition before the High Court seeking issuance of direction to the respondent authority to remove L.C.D. from the area – Direction by the High Court that under the 2000 Rules, no permission for DJ to be granted by the authority since the noise generated by DJ is unpleasant and obnoxious level – On appeal, held: Since there were neither pleadings nor any prayer with regard to the playing of music or DJ in public place, the direction of the High Court, with regard to the noise generated by DJ and restriction on playing music, not justified – Writ Petition having been filed for a particular cause and with a particular prayer, cannot be expanded to cover within its ambit all the issues which may be of general or public importance without there being any pleadings or prayer with regard to a particular issue – No such directions could have been issued, especially in a private litigation which was not in the nature of Public Interest Litigation – Prior to passing any such order of public importance, the affected parties should be impleaded, at least in a representative capacity – Appellants are the affected parties who were neither impleaded nor given any opportunity to present their case – Direction by the High Court is quashed – Appellants or any other such persons may be permitted to play the music/DJ only in accordance with law and after obtaining the requisite license/permission from the concerned authorities – Constitution of India – Noise Pollution (Regulation and Control) Rules, 2000.

SACHIN KASHYAP v. SUSHIL CHANDRA SRIVASTAVA

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 2691 of 2021.

From the Judgment and Order dated 20.08.2019 of the High Court of Judicature at Allahabad in Writ C. No. 1216 of 2019.

With

Civil appeal no(s). 2701, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2702, 2703, 2704, and 2705 of 2021

Ms. Garima Prasad. Sr. AAG, S. R. Singh, Arvind Varma, Sr. Advs., Ankur Yadav, Prateek Yadav, Krishna Kumar Yadav, Pramod Kumar, Jabar Singh, Arvind Yadav, Dr. Amardeep Gaur, M/S. V. Maheshwari & Co., Shiv Sagar Tiwari, Ramjee Pandey, Raghvendra Shukla, Dhananjaya Kumar Tyagi, Satbir Singh Pillania, Sandiv Kalia, Ms. Reena Rao, Dr. Sushil Balwada, Himanshu Tyagi, Amit Wadhwa, Shailesh Singh, Pramod Tiwari, Ms. Priyanka Dubey, Dr. Vinod Kumar Tewari, Fuzail Ahmad Ayyubi, Vivek Sarin, Satish C. Kaushik, Aakarshan Aditya, Dushyant Parashar, Dinesh Pandey, Manu Parashar, Amrendra Kumar Singh, Anand Mishra, Ms. Harshita Raghuvanshi, Shashibhushan P. Adgaonkar, Pradeep Misra, Suraj Singh, Satish Pandey, Abdul Qadir, Gulfeshan Javed, Gulshan Jahan, Ninanda Nair, Ms. Parul Shukla, Ajitesh Soni, E. C. Agrawala, Mahesh Agarwal, Ankur Saigal, Advs. for the appearing parties.

The Order of the Court was passed :

ORDER

Permission to file Special Leave Petition(s) is granted.

Delay condoned.

Intervention/impleadment applications stand allowed.

Interlocutory Application No. 167927 of 2019 for deleting the proforma respondents No. 4 to 11 from the array of the parties stands allowed at the risk of the appellants.

Leave granted.

For the sake of convenience, we are taking up Civil Appeal No. 2691 of 2021 arising out of SLP(C) No.24806/2019 as lead matter and disposing of all the connected appeals by this common order.

This appeal is filed by non-parties in the Writ Petition who were, though directly affected, neither impleaded before the High Court as parties nor was there any prayer for issuance of such directions by which they are aggrieved.

A Brief facts of this case are that respondents No. 1 and 2 had filed a Writ Petition before the High Court with the following prayers:-

“(i) to issue a writ, order or direction in the nature of mandamus commanding the respondent authority to remove L.C.D. from Hashimpur Chauraha, Prayagraj immediately.

B (ii) to issue any other suitable writ, order or direction in the nature as this Hon’ble Court may deem fit and proper to meet the ends of justice under the facts and circumstances of the present case.

(iii) to award cost of writ petition to the petitioners.”

C While considering the said prayers, the High Court issued 9 directions in the penultimate paragraph of the judgment dated 20.08.2019.

The appellants are aggrieved by direction No. (iii) issued by the High Court, which is extracted below:-

D “(iii) Under the Rules, 2000, no permission for DJ shall be granted by the authority for the reason that noise generated by DJ is unpleasant and obnoxious level. Even if they are operated at the minimum level of the sound it is beyond permissible limits under the Schedule of the Rules, 2000. A DJ is made up of several amplifiers and joint sound emitted by them is more than thousand dB (A). They are serious threat to human health particularly children, senior citizens and patients admitted in the hospitals.”

E The submission of the learned counsel for the appellants is that in the entire Writ Petition there were neither any pleadings with regard to the noise generated by the DJ being unpleasant and of obnoxious level nor there was any such prayer made in the Writ Petition. The relief granted by the High Court with regard to the removal of L.C.D. from the particular area in question, which was a separate issue, and appellants have no grievance regarding the same. The appellants are only aggrieved by the direction no.(iii) issued in relation to a matter which was not an issue before the High Court.

G The contention of the learned counsel for the appellants is that they have a right to play music in public places only after obtaining license from the District Authority under the relevant *Noise Pollution (Regulation and Control) Rules, 2000*. It is contended that by imposing such restriction as contained in the aforesaid direction no.(iii) issued by the High Court, the livelihood of the appellants is affected and hit by Article 19(1)(g) of the Constitution of India.

Per contra, learned counsel for the private respondents No. 1 and 2 (Writ Petitioners before the High Court) has submitted that though there was no such prayer with regard to the playing of music (DJ) in public place, and the Writ Petition was limited only to playing of L.C.D. in the particular area, yet such directions could have been issued under Article 226 of the Constitution of India by expanding the scope of the Writ Petition.

Ms. Garima Prasad, learned Additional Advocate General appearing for the State of Uttar Pradesh and Ms. Harshita Raghuvanshi, learned counsel appearing for the Allahabad Development Authority have submitted that they are duty bound to comply with the directions issued by the High Court, and in compliance of the aforesaid direction no.(iii), the State Government as well as the Allahabad Development Authority are not permitting the parties to play DJ, except in those cases where the stay order has been granted by this Court and the parties have obtained necessary permission.

Having heard learned counsel for the parties and considering the facts of this case, we are of the clear opinion that since there were neither pleadings nor any prayer with regard to the playing of music or DJ in public place, the direction no.(iii) of the High Court, as quoted herein above with regard to the noise generated by DJ and restriction on playing music, cannot be justified in law. The Writ Petition having been filed for a particular cause and with a particular prayer cannot be expanded to cover within its ambit all the issues which may be of general or public importance without there being any pleadings or prayer with regard to a particular issue. In our view, no such directions could have been issued, especially in a private litigation which was not in the nature of Public Interest Litigation. We say so, particularly, because prior to passing any such order of public importance, the affected parties should be impleaded, at least in a representative capacity, which is not done in the present case. The appellants herein are the affected parties who were neither impleaded nor given any opportunity to present their case.

As such, while quashing the direction no.(iii) in the impugned judgment of the High Court, as quoted herein above, we make it clear that the appellants or any other such persons may be permitted to play the music/DJ only in accordance with law and after obtaining the requisite license/permission from the concerned authorities. Ordered accordingly.

A With the aforesaid observations, the appeal stands allowed to the extent indicated above.

 In view of the order passed in Civil Appeal No. 2691 of 2021 arising out of SLP(C) No.24806/2019, the other connected appeals stand allowed, accordingly.

Nidhi Jain

Appeals allowed.