

Glover G P C v Municipal Council of Quatre Bornes

2007 SCJ 69

IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

Gavin Patrick Cyril Glover

Applicant

v.

The Municipal Council of Quatre Bornes

Respondent

And

In the presence of:-

Waqf of Hidayat-E-Islam Masjid

Co-

Respondent

JUDGMENT

This is an application calling upon the respondent and the co-respondent to show cause why an order in the nature of an injunction should not be made "directing the respondent to forthwith take such steps as are within its powers under the law to ensure that the mosque found at the corner of Belle Rose Avenue and Osman Avenue at Quatre Bornes forthwith stops using amplifiers and loudspeakers to broadcast outside the mosque the daily calls to prayers at any time during the day or at night".

Objection was taken by learned counsel for the respondent on the ground that the application was misconceived and to which learned counsel for the co-respondent concurred.

The applicant, a barrister-at-law, resides at less than 200m from the said mosque. He has averred that the use of loudspeakers outside that mosque for the five daily calls to prayers at specific hours of the day is unlawful and that the respondent, the authority vested with the necessary statutory powers under the Noise Prevention Act, has failed, despite notice served on it, 'to prevent, prohibit and restrict unnecessary noise' which would otherwise constitute an unreasonable interference with public comfort.

It is common ground that as far back as February 26, 2003, an application was made to the respondent for a development permit for the construction of a mosque and a madressa in a residential area and the necessary notices were served on the residents living in the immediate vicinity of the proposed site as well as publication in two dailies. Despite objection received from some 200 residents, the permit was delivered in April 2003. There had been no appeal to the respondent's decision. In the year 2004, an application for an extension to the building was acceded to after compliance with the procedure.

It was stated by the applicant that 'the respondent has failed in its statutory duty and that its decision to grant the initial development permit is therefore null and void and of no effect. Furthermore, the respondent granted the said development permit without any special conditions'.

The respondent averred that the applicant could not now challenge the granting of the development permit as no appeal was lodged by the objectors at the relevant period. It was

further argued that it could not after three years prevent the co-respondent from using loudspeakers since there was no condition that the co-respondent should not use amplifiers and loudspeakers when the development permit was issued. It conceded however that, after receiving several complaints from residents in the locality in respect of the loudspeakers, it had requested the co-respondent, by letter dated January 31, 2006, to bring down the noise level.

It was the case of the co-respondent that the daily calls for prayer by means of the loudspeakers which was part of the religious ceremony similar to the pealing of bells by other religions for a very short period could not be said to constitute a nuisance and reliance was placed on the report of Dr Veeraragoo to show that the level of noise could not constitute nuisance.

The applicant rebutted that no other religions used amplifiers or loudspeakers to call its devotees for prayers. He had further given a list of mosques in Mauritius which had been granted permits upon condition that no loudspeakers and amplifiers were used. He claimed that the use of loudspeakers outside the mosque was not compulsory for the prayers to take place.

As rightly pointed out by learned counsel for the respondent, the applicant cannot now, after some 3 years, challenge the granting of the development permit when no appeal was lodged at the relevant time to the competent authority by any of the objectors.

In effect the case of the applicant as agreed by all counsel before me is the powers of the respondent under the Noise Protection Act (the Act) and the regulations made there under to regulate the use of amplifiers and loudspeakers.

Under the section 3 of the Act, it is provided that:

'An authority may make regulations –

- (a) for preventing unnecessary noise;
- (b) for preventing the sounding of motor horns in any specified area at any specified time;
- (c) for restricting or altogether prohibiting the use, on the licensed premises of any trader, of any gramophone, loudspeaker, or other mechanical or electrical device for producing or reproducing sound, unless the sound produced by the gramophone, loudspeaker or other such device cannot be heard outside those premises; and
- (d) for prescribing measures for the prevention of noise or sound which, either on account of its volume or on account of the time at which it is produced, or both, constitutes an unreasonable interference with public comfort.

Under section 2, 'authority' has been defined as 'the municipal council or district council' and under section 4, the penalty for a breach of any regulation made under section 3 is Rs500.

It is appropriate to turn to the regulations made under the Act by the respondent in 1955 which is entitled 'Loud-Speakers and Amplifiers (Restriction of Use) Quatre Bornes Regulations 1955 and regulation 2 reads as follows: -

"It shall not be lawful for any person to make use at any time speakers and in the Town of Quatre Bornes, of any loud-speaker or amplifier mounted in such a way as to be easily moved from place to place:

Provided that the prohibition in this regulation imposed shall not apply to the use of loudspeakers-

(a) in connection with any National Assembly or Municipal Council Election at any time-

(i) in the case of a National Assembly Election from the date of issue of the writ of election,

(ii) in the case of a Municipal Council Election from the date of issue of the notice that an election will be held,

to the day preceding the day fixed for taking the poll;

(b) by the Police for the purpose of making announcements or of controlling or regulating traffic or crowds :

Provided also that the prohibition in this regulation imposed shall not apply to the use of loud-speakers or amplifiers in any Church, Temple, Mosque, Pagoda or other place of worship where a religious ceremony is being performed or at any place where a ceremonial parade or a public function of a official character is being held where such use is restricted to the purpose and is a formal part of the religious ceremony, ceremonial parade or public function aforesaid.'

The power of the respondent to take action is to be found under regulation 3 which provides that: -

"Any Police Officer not below the rank of Inspector or any officer deputed by the Municipal Council may take such action as he may deem reasonable to prevent any breach of these regulations or any continuance of such breach."

It cannot be gainsaid that the above regulations which were meant to prohibit the 'use at any time speakers (sic) and in the Town of Quatre Bornes, of any loud-speaker or amplifier mounted in such a way as to be easily moved from place to place' does not apply to 'the use of loud-speakers or amplifiers in any Church, Temple, Mosque, Pagoda or other place of worship where a religious ceremony is being performed.' (underlining mine)

The question is whether the calling of devotees for prayers can be said to fall within the exception namely that a religious ceremony is being performed. It is well known when a religious ceremony starts in any given religion. It cannot by any stretch of imagination be heard to say that the calling of the devotees to attend prayers by the use of a loudspeaker falls within the purview of 'a religious ceremony is being performed'. Indeed, it can be said without any doubt that no religious ceremony had yet started as the devotees had to be reminded, so to say, that the time for prayers has come and normally the celebration of the religious ceremony is confined within the four corners of the walls meant to receive the congregation. The exception as per the regulations is clearly to authorize the use of the loudspeakers inside the area where the religious ceremony is held and when there is a religious ceremony. Consequently, the use of loudspeakers outside the building meant to call devotees to attend prayer does not fall within the exception as provided for in the regulations. Even if loudspeakers could be used inside the building where a religious ceremony is being performed, that right could still be curtailed when the noise emanating from the religious centre is such as to be in breach of the Environment Protection Act 2002 and the Environment Protection (Environmental Standards for Noise) Regulations 1997 [[GN No. 17 of 1997](#)] (vide also *Dr Aumeer & Ors v L'Assemblée de Dieu – Mission Salut & Guerison* [[1988 MR 229](#)]). Is there any regulation to prohibit the use of loudspeakers in the town of Quatre Bornes? I must point out that no reference had been made by counsel to the Noise Prevention (Quatre Bornes) Regulations 1939 [[GN No. 26 of 1939](#)] which have not been repealed and which read as follows:

"1. It shall not be lawful for any person, in such a manner as may cause inconvenience to any member of the public

(a) (a) to play any instrument or conduct any show or performance in any street, thoroughfare or public place, which may cause noise in, or an obstruction to the general traffic proceeding along such street, thoroughfare, or public place;

(b) (b) to make use of any gramophone, loud-speaker, musical instrument, or electrical or mechanical device for producing or reproducing sound on any premises situate on, or in close proximity to, any street, thoroughfare or public place; (underlining mine)

(c) (c) to let off or cause to explode any cracker or fireworks in any street, thoroughfare or public place;

(d) (d) to keep on any premises any barking dog;

(e) (e) to shriek, shout, sing or make any unnecessary noise whether by day or by night in any street, thoroughfare or public place;

(f) (f) to make use of any motor vehicle without the engine thereof being fitted with an effective silencer or keep such engine running for an unreasonable period of time whilst such vehicle is standing still;

(g) (g) to make use of the horn of any motor vehicle in an unreasonable manner.

2. Any person who acts in contravention of any of the provision of the preceding regulation shall be liable to a fine not exceeding 500 rupees'

The regulations provide that it is not lawful for any person to use loudspeaker 'on any premises situate on, or in close proximity to, any street, thoroughfare or public place' such as to 'cause inconvenience to any member of the public'. It does not say that it is only when the use of loudspeakers on premises situate near the streets or public place becomes a nuisance that it is unlawful. The test is that the mere fact that it causes an inconvenience to any member of the public is sufficient.

In the case in hand, the use of loudspeakers mounted outside the building of the co-respondent used for religious ceremony to call devotees for prayers and which is close to the streets is apparently causing inconvenience not only to the applicant but also to many other

residents in the vicinity as alluded to by the respondent in its affidavit and which prompted the respondent to act in writing to the co-respondent requesting it 'to consider the possibility of lowering the volume of the loudspeakers'.

The use of the loudspeakers in the circumstances is contrary to the Noise Prevention (Quatre Bornes) Regulations 1939 and the 1955 Regulations. There is a flaw in the argument of the respondent that it could not impose conditions after the granting of the permit some three years back. That argument stems from an erroneous reading of the two regulations and it is consequently fallacious. Indeed the respondent could not in the first place authorize or allow the use of loudspeakers outside the building which would cause inconvenience to members of the public. It has no such power for the respondent would be in breach of the regulations it had passed. The respondent being the competent authority besides the police is therefore empowered to take action following complaints from the residents of the area concerned. It did timidly write to the co-respondent requesting it to lower the volume of the loudspeakers and apparently without any effect thereby compelling the applicant to enter the present application.

In the light of the undisputed facts and having regard to the erroneous interpretation of the regulations by the respondent, I find that the applicant has established a serious arguable case that the use of loudspeakers in the circumstances is unlawful.

After anxious consideration and being satisfied that the right of the devotees to practice their religion is not infringed by prohibiting the use of loudspeakers for the calling of the daily prayers; that the balance of convenience lies in upholding the rule of law namely prohibiting the unlawful use of loudspeakers; and that no amount of damage can compensate the daily inconveniences that the applicant claims he has to endure, I therefore grant the mandatory order prayed for with costs.

I certify as to counsel.

P. LAM SHANG LEEN
JUDGE

22 March 2007