Order reserved on :07.08.2020
Order delivered on :10.08.2020

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 112 of 2015

Mahendra Singh ....Petitioner

Versus

State of Uttarakhand & others ....Respondents

Present:- Mr. Arvind Kumar Sharma, Advocate for the petitioner.
Mr. Paresh Tripathi, Chief Standing Counsel with Yogesh Pandey, Additional Chief Standing Counsel, Mr. Anil Bisht, Standing Counsel and Mr. Suyash Pant, Brief Holder for the State/respondent nos. 1 & 2.
Mr. Aditya Pratap Singh, Advocate for respondent no. 3.
Mr. T.A. Khan, Senior Advocate with Mr. Vinay Bhatt, Advocate for the applicant in modification application.
Mr. Sanpreet Singh Ajmani, Advocate for the intervener.

Hon'ble Sudhanshu Dhulia, J.

This case has been nominated to this Court by orders of the Hon'ble Chief Justice (under Chapter VIII Rule 3 of the Allahabad High Court Rules, as applicable to the Uttarakhand High Court), for a third opinion since there was a difference of opinion on a point, between the two learned Judges of the Division Bench, while hearing an application.

2. A Public Interest Litigation (WPPIL No. 112 of 2015 i.e the present writ petition) was filed before this Court, where the petitioner alleged that the industrial waste of respondent no. 4 (the polluting industry) was seeping into the adjoining land of his school and has swept the playgrounds of the school as well as its agricultural land. The water and the waste, it was alleged, are poisonous and the act of the respondent is in violation of the Environment (Protection) Act, 1986.

3. The Division Bench (of Hon'ble Justice Rajiv Sharma, J. and Hon'ble Justice Lok Pal Singh, J.), while

hearing the matter chose to enlarge the scope of the petition, and took a judicial notice of the fact that is there is not only water pollution but air pollution as well in the State, which is not being checked by the authorities. The petition was then disposed of by the Court by giving a number of directions to the State Authorities. For our purposes, what is relevant here is the direction contained in para (i), which is regarding noise pollution and the permissible sound limits. Direction (i) reads as under:-

> "(i) The State Government is directed to ensure that no loudspeaker or public address system shall be used by any person including 2 religious bodies in Temples, Mosques and Gurudwaras without written permission of the authority even during day time, that too, by getting an undertaking that ***the noise level shall not exceed more than 5dB(A) peripheral noise level***."
>
> (emphasis provided)

4. The above order was passed on 19.06.2018. Now nearly two years later (on 16.05.2020), an application was filed before this Court by one Sri Munawar Ali, who is a member of Uttarakhand Waqf Board. He states his position to be of a social worker and a "mutawalli", and according to him he represents all the "Mutawallies'' of the State, since he was elected as a member of the State Waqf Board by the "Mutawallies" of all the Waqfs in the State of Uttarakhand. His grievance

was that in view of the directions given in the PIL by the Division Bench of this Court (stated above), in which he was not a party, the district administration is prohibiting him from using loudspeakers in the Mosque. The permissible limit of sound i.e. 5dB(A), effectively means that loudspeaker cannot operate. He has been practically stopped from using a loudspeaker in a Mosque!

5. The directions of the Division Bench contained in its direction No. (i), are two fold. Firstly loudspeakers or public address systems can be used by a person, including any religious body, only after a written permission has been obtained from the authority, and secondly before getting such permission they will have to give an undertaking that the noise level shall not exceed more than 5 dB(A) peripheral noise level.

6. The error pointed out by the applicant (Sri Munawar Ali) in the order dated 19.06.2018, was that the ultimate direction given by the Division Bench of this Court contained in Para (i) regarding the permissible noise limits (of 5 dB(A), is not in conformity of what has been discussed and decided in the body of the order. Whereas in the body, it has been discussed that the Regulations known as the "Noise Pollution (Regulation and Control) Rules, 2000, framed under powers conferred by clause (ii) of sub-section (2) of Section 3, sub-section (1) and clause (b) of sub-section (2) Section 6 and Section 25 of the Environment (Protection) Act, 1986, sets out clearly as to what have to be noise limits. It prescribes limits to the level of noise which is given in ambient air

quality standards in respect of noise in the Schedule, which reads as under:-

"SCHEDULE

[See rules 3(1) and 4(1)]

AMBIENT AIR QUALITY STANDARDS IN RESPECT OF NOISE

Area Code	Category of Area/Zone	Limits in dB (A) Leq*	
		Day Time	Night Time
(A)	Industrial Area	75	70
(B)	Commercial Area	65	55
(C)	Residential Area	55	45
(D)	Silence Zone	50	40

Note. –

1. Day time shall mean from 6.00 a.m. to 10.00 p.m.
2. Night time shall mean from 10.00 p.m. to 6.00 a.m.
3. Silence zone is an area comprising not less than 100 metres around hospitals, educational institutions, courts, religious places or any other area which is declared as such by the competent authority.
4. Mixed categories of areas may be declared as one of the four above mentioned categories by the competent authority.

*dB(A) Leq denotes the time weighted average of the level of sound in decibels on Scale A which is relatable to human hearing.

A "decibel" is a unit in which noise is measured. "A", in dB(A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear.

Leq: It is an energy mean of the noise level over a specified period."

7. The Schedule has to be read along with Rule 5 of the Rules, which reads as under:-

> "**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, banquet 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 system and the like during nights hours (between 10.00 p.m. to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year. The concerned State Government shall generally specify in advance, the number and particulars of the days on which such exemption would be operative.
>
> [1](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.
>
> [2](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 5 dB(A) the ambient noise standards specified for the area in which it is used."

1. Subs. By S.O.. 50(E), dated 11th January, 2010 (w.e.f. 11-1-2010)

2. Subs. By S.O.. 50(E), dated 11th January, 2010 (w.e.f. 11-1-2010)

8. The specific reference is to sub-rule (4) and sub-rule (5), which were incorporated in the Rules by way of an amendment on 11.01.2010 (w.e.f. 11.01.2010), permits that the limits prescribed in the Schedule can exceed, but not beyond 10dB(A) or 5dB(A), as the case might be. Sub-rule (4) states that the noise level at the boundary of the public place where loud speaker or public address system is being used shall not exceed 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower, and sub-rule (5) states that the peripheral noise level of a privately owned sound system or a sound producing instrument at the boundary of the private place shall not exceed by more than 5 dB (A) the ambient noise standards specified for the area.

9. Sub-Rule (4) or (5) to the said Rules were added subsequent to a seminal decision given by the Hon'ble Apex Court (in **Re: Noise Pollution – Implementation of the Laws for Restricting Use of Loudspeakers and High Volume Producing Sound Systems** with **Forum, Prevention of Envn. & Sound Pollution, Appellant** v. **Union of India and another, respondent (AIR 2005 SC 3136).**

10. In the said case, the Hon'ble Apex Court dealt with certain issues of far reaching implication in the day to day life of people of India, relating to noise pollution vis-a-vis right to life enshrined in Article 21 of the Constitution of India. A number of directions under various heads were given by the Hon'ble Apex Court in the said judgment regarding noise pollution, its

prevention and check by the administrative authorities and the rights of ordinary citizens against noise pollution. Under the head "Loudspeakers", following directions were given:

> "*II. Loudspeakers*
>
> 1. 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.
> 2. No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10.00 p.m. and 6. A.m.) except in public emergencies.
> 3. The peripheral noise level of privately owned sound system shall not exceed by more than 5 dB(A) than the ambient air quality standard specified for the area in which it is used, at the boundary of the private place."

11. As we have seen, directions nos. 1 and 3 of the Hon'ble Apex Court were subsequently incorporated in sub-rule (4) and (5), respectively of the 2000 Rules, as referred above. I have mentioned this aspect as this judgment of the Hon'ble Apex Court (**AIR 2005 SC 3136)**, was relied upon by the Division Bench of this Court while disposing of the petition vide its order dated 19.06.2018, wherein it was emphasised that the

directions contained by the Hon'ble Apex Court as regarding loudspeakers must be followed.

12. As we have seen subsequent to the said decision, the noise level has now been specified in the Schedule contained in the 2000 Rules. The maximum sound level prescribed under the Schedule is 75 dB(A) for any area at any given point of the day or night. However, what has come in the operative portion of the order (dated 19.06.2018) was that sound shall not be more than 5 dB(A)!

13. The applicant hence pleads that this is clearly an error which has occurred due to an "accidental slip or omission" and is liable to be corrected by the Court. Specific reference given here is of Section 152 of CPC, which reads as under:

> "**152. Amendment of judgments, decrees or orders.** – Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

14. On this application of the applicants, objections were raised by the counsel for the petitioner Mr. A.K. Sharma as well as the learned Deputy Advocate General for the State Mr. S.S. Chauhan. The main objection was that the applicant (Sri Munawar Ali) was not a party to the writ petition and only a party who is

affected by the order can file an application for correction/modification. Other objections raised against the applicant were that he in any case has not come with clean hands before this Court. He has not submitted any proof that at any point of time, he was given any notice by the District Magistrate or the Authorities not to use loudspeaker. There is also nothing on record to show that he represents the entire "Mutawallies" of the waqfs of Uttarakhand, etc.

15. Learned Chief Justice saw what was obvious – an error due to accidental slip or omission. The objections to the maintainability of the application were rejected at the threshold, as the powers under Section 152 CPC to make corrections were to be exercised either on the application of any of the parties or on its own motion, by the court. This is what was said by the learned Chief Justice on the *locus standi* of the applicant :-

> "10. The question of locus standi need not detain us, since the power under Section 152 CPC, inheres in the Court, which passed the judgment, to correct a clerical mistake or an error arising from an accidental slip or omission, and to vary its judgment so as to give effect to its meaning and intention. (**Samarendra Nath Sinha & Another vs. Krishna Kumar Nag, AIR 1967 SC 1440**). Inherent powers are available to all Courts and authorities irrespective of whether the provisions

> contained under Section 152 CPC may or may not strictly apply to any particular proceeding. Where it is clear that a mistake had accidentally crept in something which the Court intended to do, due to a clerical or arithmetical mistake, it would only advance ends of justice to enable the court to rectify such a mistake. (**Jayalakshmi Coelho v. Oswald Joseph Coleho, (2001) 4 SCC 181**). The Court, as a court of record, owes a duty to itself to ensure that its record is free from any blemish or error. It retains the power to correct obvious errors in its own record. (**Jai Narain v. Chhedalal AIR 1960 All 385, Puthan Veettil Sankaran Nair vs. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad, AIR 1970 Ker. 57**)"

16. The learned Chief Justice then expressed his views on the powers of the Court under Section 151 and 152 of CPC, which needs to be reproduced here:

> "11. If the Court finds that the order, as passed and entered, contains an adjudication upon that which the Court in fact has never adjudicated upon, then it has jurisdiction which it will, in a proper case, exercise to correct its record so that it may be in accordance with the order really pronounced. (**In re. Swire,**

Mellor v. Swire, (1885) 30 Ch D 239; R.M.K.R.M. Somasundaram Chetty v. M.R.M.V.L 9 Subramanian Chetty, AIR 1926 PC 136; Puthan Veettil Sankaran Nair v. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad, AIR 1970 Ker. 57). If it is made out that the order, whether passed and entered or not, does not express the order actually made, the Court has ample jurisdiction to set that right, whether it arises from a clerical or accidental slip. (**In re. Swire, Mellor v. Swire, (1885) 30 Ch D 239; Puthan Veettil Sankaran Nair v. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad, AIR 1970 Ker. 57**). An order, even when passed and entered, may be amended by the Court so as to carry out its intention, and express the meaning of the Court when the order was made **(In re. Swire, Mellor v. Swire, (1885) 30 Ch D 239; Samarendra Nath Sinha and another v. Krishna Kumar Nag, AIR 1967 SC 1440**) as this power was always possessed by Courts. (**In re. Swire, Mellor v. Swire, (1885) 30 Ch D 239; Puthan Veettil Sankaran Nair v. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad, AIR 1970 Ker. 57**). As the inherent power,

which the Court possesses, must be exercised by it even in a case where none of the parties to the proceedings have invoked its jurisdiction seeking such correction, we may not be justified in refusing to correct an accidental slip or omission in the order of the Division Bench, in Writ Petition (PIL) No. 112 of 2015 dated 19.06.2018, on this score.

12. In Section 152 CPC no time limit is fixed for making an amendment in a judgment which has been occasioned by an accidental slip or error. Such an amendment may be made at any time subject, of course, to equities which may have arisen in favour of the party against whose interest the amendment is to be made. (**Jai Narain v. Chhedalal AIR 1960 All 385; Puthan Veettil Sankaran Nair v. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad, AIR 1970 Ker. 57**). An order may be amended by the Court so as to carry out the intention, and express the meaning, of the Court at the time when the order was made, provided the amendment be made without injustice or in terms which preclude injustice. (**In re. Swire, Mellor v. Swire, (1885) 30 Ch D 239; R.M.K.R.M. Somasundaram Chetty v. M.R.M.V.L Subramanian Chetty, AIR 1926 PC 136**).

13. Clerical or arithmetical mistakes in judgments, or errors arising therein from any accidental slip or omission, may, at any time, be corrected by the Court either on its own motion or on an application by any of the parties. (**L. Janakirama Iyer v. Nilakanta Iyer AIR 1962 SC 633; Samarendra Nath Sinha and another v. Krishna Kumar Nag, AIR 1967 SC 1440**). If any such error is brought to its notice in any manner whatsoever, and at any time whatsoever, the Court 11 has the power to correct errors of a clerical nature. To hold otherwise would mean that the Court is powerless even after discovering that a particular sentence in a judgment is grammatically incorrect or absurd. The Court will, however, not make any correction without hearing the parties whose interests are likely to be affected. (**Jai Narain v. Chhedalal AIR 1960 All 385; Puthan Veettil Sankaran Nair v. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad, AIR 1970 Ker. 57**).

14. The power of correction, under Section 152 CPC, can be exercised at any time. The only limitation for its exercise is the scope of the Section within which it functions. Before exercising or refusing to exercise it, the Court should ensure that

> its records are true. These are two of the important duties of all Courts. (**Puthan Veettil Sankaran Nair v. Poomulli Manakkal Moopil Sthanam Parameswaran Namboodiripad, AIR 1970 Ker. 57**). As the power to correct accidental omissions or slips, in the order passed earlier, inheres in the Court and it is the obligation of the Court, when it comes to know that such a mistake has occurred, to correct it, it matters little that its attention, to the accidental slip or omission, has been drawn after a long delay."

17. Then the learned Chief Justice narrated the entire sequence of events and the facts in the PIL before the Court. How the question as to the noise pollution was dealt with in the judgment and the slip or the omission which crept in the operative portion of the judgment. It was stated in Para 26 and 27 as under:-

> "26. The Division Bench could not have intended that the noise level in a public place should not exceed 5dB(A), since what has been stipulated, both in the 2000 Rules and in the judgment of the Supreme Court, in **Forum, Prevention of Environment & Sound Pollution v. Union of India & another AIR 2005 SC 1316**, is that the peripheral noise level should not exceed 10dB(A)/5dB(A) above the ambient noise

standards for the area (as prescribed in the schedule). The prescription, in Para 'i' of the order of the Division Bench, that the noise level should not exceed more than 5dB(A) is not to be found in any of the earlier parts of the said order of the Division Bench, or in the judgments of the Supreme Court referred to therein or in the 2000 Regulations which was relied upon by the Division Bench. It is evident, therefore, that the last words of Paragraph 'i' that "**the noise level should not exceeds more than 5dB(A) peripheral noise level**" is an accidental error not intended by the Division Bench.

27. It is also evident that, in direction No. 'i', the words '**by**' between the words "**exceed**" and "**more**"; and the words "**above the ambient noise standards specified for the area in which it is used at the boundary of the private place**" after the words "**5dB(A) peripheral noise level**" has been accidentally omitted. Since it is an accidental error which the Court is required to correct on its own accord, Paragraph No. 'i' of the mandatory directions shall stand corrected and, after its correction, shall read as under:-

> "i. The State Government is directed to ensure that no loudspeaker or public address

> system shall be used by any person including religious bodies in Temples, Mosques and Gurudwaras without written permission of the authority even during day time, that too, by getting an undertaking that the noise level shall not exceed by more than 5dB(A) peripheral noise level above the ambient noise standards specified for the area in which it is used at the boundaries of the private place."

18. The other learned Member of the Division Bench (Hon'ble Justice Lok Pal Singh), saw the matter in a different perspective. The learned Judge did not go into the merit of the submissions as to whether the error had crept into the operative portion of the judgment by an accidental slip or omission. This aspect has not been touched. The learned Judge saw a limited scope under Section 151 CPC and 152 of CPC, more specifically under Section 152 CPC. In the opinion of the learned Judge error as pointed out could only be corrected if an application for such correction is moved by one of the parties to the litigation, which admittedly was not the case. Secondly, it was also not a case where a suo moto cognizance was being taken by the Court, as the Court did not invoke its jurisdiction suo moto, but it had come up before this Court on an application moved by the applicant who was not a party before the Court. The learned Judge said as under:-

"19. It is pertinent to note that Section 152 of the Code only can be invoked on the application of any of the parties or suo moto by the Court. This Court has not invoked its jurisdiction suo moto to correct the judgment and order dated 19.06.2018, rather modification application has been filed by the applicant in this regard. The applicant, who was not the party to the proceedings, cannot maintain the modification/ correction application for amendment of the judgment and order dated 19.06.2018. Section 152 of the Code confines only to the party to the proceedings. If there is an error in the judgment and order, the party to the proceeding can move an amendment application seeking amendment of the judgment passed by this Court but the applicant has no locus standi to maintain said application. The applicant has not annexed copy of notice dated 20.03.2020 supported by an affidavit. He has filed the copy of the notice issued to the Imam of Mosque of Kaladhungi, District Nainital but the same has not been addressed to the applicant as such applicant cannot be considered as a person aggrieved. Applicant has failed to show any authority in his favour to show that the mutawalli/Imam of mosque of

Kaladhungi, District Nainital has ever authorized the applicant to initiate the legal proceedings or to move modification application on his behalf. Thus, the applicant is not an aggrieved person. If the Imam of mosque of Kaladhungi is aggrieved then he could have filed the review application with the correct facts but there is no occasion for the applicant to move such application. In the guise of modification application the judgment cannot be reviewed substantially. The prayer made by the applicant, if allowed, would substantially change the judgment which does not fall within the ambit of Section 152 of the Code. Appropriate remedy would be in such circumstances is to move a review application which can be filed by a person aggrieved only. The scope of amendment is confined only to the parties to the proceedings whereas the review can be filed by any party aggrieved. Having said so, I am of the view that the most the Manager/ Administrator of the mosque of Kaladhungi could have filed the review application which could have been entertained, if filed within the prescribed period of limitation, but at no point of time at the behest of the present applicant."

19. The learned Judge though was of the opinion that a review could have been filed in the case but that too within the prescribed time limitation period, which had long expired, but in any case a review was not maintainable at the behest of the applicant. The reason being that the applicant was not an aggrieved party and moreover he had not come up before this Court with clean hands and had rather suppressed material facts. The applicant claimed to be a representative of all "mutawallies" in Uttarakhand but had not filed any document to substantiate his claim to be the representative of all the "mutawallies". More importantly, he was not a person aggrieved as he had failed to show any proof before the Court whether at any point of time he had received any notice from the District Administration or the District Magistrate asking him not to operate loudspeaker from the mosque.

20. Additionally, it has also come in the order of the learned Judge that the counsel of the applicant, Mr. T.A. Khan, Senior Advocate, during the course of argument has made a statement before the Court to the effect that if the learned Judge does not want to give any relief, then he may reject his application. This statement, according to the learned Judge, amounts to a withdrawal of the claim by the applicant and his application was liable to be rejected straightaway on this ground alone. This is what the learned Judge has stated in paragraph no. 34 and 35 as under:-

> "34. This is a fit case for abandonment or withdrawal of claim and the modification application is liable to be

rejected straightaway on this ground alone.

35. In view of the foregoing discussion, modification application is liable to be dismissed primarily on the ground of maintainability, however, other material grounds for dismissal of the said modification application are also dealt with in detail in the order."

21. I have heard at length Sri A.K. Sharma, learned counsel for the petitioner as well as Sri Paresh Tripathi, learned Chief Standing Counsel for the State and Sri T.A. Khan, Senior Advocate for the applicant (Munawar Ali). In addition Sri Sanpreet Ajmani also appeared before this Court, who said that the applicant (Munawar Ali) has not come with clean hands as he has not apprised the Court of the fact that an S.L.P. against the original order of the Division Bench (dated 19.06.2018) is pending before the Supreme Court.

22. Mr. Sanpreet Ajmani represents an applicant which was admittedly never a party in the previous proceedings. There is also an objection from Mr. T. A. Khan (Sr. Counsel for the applicant Mr. Munnawar Ali), who submits that Mr. Ajmani should not be heard at this stage. Without going into any technicality, purely in the interest of justice, the submissions and the objections raised before this court have been heard and duly considered.

23. It may not be fair to blame the applicant (Mr. Munnawar Ali), for not mentioning about the pending SLP before the Apex Court. The applicant in all likelihood may not be aware of it, as stated by his counsel Mr. T. A. Khan. This issue was also never raised before this court earlier at any point of time. In any case the mere pendency of SLP before the Hon'ble Apex Court would not be material for the present disposal of this application, where the application is for correcting the records of this Court. Only this Court can correct or rectify the mistakes committed by it. (Pl. see **Bihar Finance Service H.C. Coop. SOC. Limited. vs. Gautam Goswami and others, (2208) 5 SCC Pg 339.**

24. Coming to the root of the matter, my opinion in this case is given in the paragraphs which follow.

25. Sound as we know is measured in decibel i.e. dB. Now just to put things in their right perspective, let us also understand that 5 dB(A) sound level is as good as silence. There is almost no sound. The drop of a needle makes a sound of 5 dB(A)! Normally human breathing makes a sound which is louder, which is 10 dB(A).

26. "The noise level shall not exceed more than 5 dB(A), peripheral noise level", are the directions. Can there be so much of a paradox in an order. No there cannot be, and there was none. It is simply an inadvertent error, and we quickly realize this when we study the entire judgment. The Court never intended to say that the noise level shall not exceed more than 5 dB(A); what was intended was that the noise level shall

not exceed by more than 5 dB(A) peripheral noise level above the ambient noise standards specified for the area. This is so because the limits of peripheral sound level have been prescribed under the Rules of Central Government known as “the “Noise Pollution (Regulation and Control) Rules, 2000”. The noise level is given in the Schedule where the maximum noise level in a residential area is 55 dB(A) during day and 45 dB(A) during night and in the main body of the Rules it is permissible to increase this noise level by 5 dB(A) and when we read the entire judgment dated 19.06.2018, we realize that the directions given in the operative portion of the judgment is not in agreement with what has been discussed by the Division Bench in the body of the judgment. What was intended was that noise level should not be more than 5 dB(A) of the prescribed sound level and the prescribed level is 55 dB(A) during day and 45 dB(A) during night. It is 5 dB(A) increase in the sound level, and not 5 dB(A) limited sound level! This is also evident from the next direction given by the Division Bench (in its order dated 19.06.2018). Direction (j) reads as under :

> “(j) The State Government is directed to ensure that the loudspeaker, public address system, musical instrument and sound amplifier are not played during night time except in auditoria, conference rooms, community halls, banquet halls as per norms laid down under the Noise Pollution (Regulation and Control) Rules, 2000.”

27. Clearly the directions contained in direction (i) were that the noise level should be as per the norms set out in the 2000 Rules. It could not be contrary to it. In case there is a contradiction, it is due to an accidental slip or omission and this Court has the inherent powers to correct the same. "Now, it is well-settled that there is an inherent power in a court which passed the judgment to correct a clerical mistake or an error arising from an accidental slip or omission and to vary its judgment so as to give effect to its meaning and intention".[3]

28. Powers of a Court to correct the omissions and errors due to accidental slip, etc. are universally recognised. The nature of the error is what an English Court or an American Court would describe as "manifest error" or "plain error", liable to be corrected by the Court *sua sponte* i.e. on its own.

29. In any case, the inherent power of a court has been given under Section 151 of CPC, which reads as under:-

> "**151. Saving of inherent powers of Court**. – Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

30. The Code sets no limits for a Court in making such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. The settled position is that it should not be in conflict with

3. Samarendra Nath Sinha and another v. Krishna Kumar Nag AIR 1967 SC 1440

any other procedure of CPC. The powers therefore to correct clerical mistake or error due to accidental slip or omission are inherent powers of a Court given under Section 151 CPC. But to be more specific, and so that there remains no doubt, the Legislature also incorporated Section 152 thereafter, which reads as under:-

> "**152. Amendment of judgments, decrees or orders**. – Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties."

31. The mistakes and errors such as the one mentioned in Section 152 CPC can either be corrected on an application of any of the parties or "of its own motion", by the Court, i.e. *sua sponte*.

32. It is always an inherent power of a Court to correct its errors, which have accidentally slipped into its order. Section 152 of CPC is merely a facet of the broad principles laid down in Section 151. The source of power to make corrections in order to meet the ends of justice lie in Section 151 of CPC and the Court would still have the power to make corrections as visualized in Section 152, even if there would have been no Section 152.

33. But as said earlier, in order that there remains no doubt the Legislature has made it more specific. In fact CPC does stress that there must be a finality to an order and this has been given in Rule 3 of Order 20 of CPC, which states that once a judgment is signed, it cannot be altered, except as provided in Section 152

CPC. The Courts always have powers to make correction suo moto in decree in order to make it in conformity with the judgment. The precursor to CPC, 1908 is CPC of 1882 (which was again largely amended in 1988). Chapter 17 of CPC of 1882 is on "Judgments and Decrees". Section 206[4] of CPC of 1882 is important for us, the third paragraph of which says as under:

> "Power to amend decree. If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error:
>
> Provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment."

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4. Full text of Section 206 of CPC of 1882 reads as under :

Contents of decree Section 206. The decree must agree with the judgment, it shall contain the number of the suit, the names and descriptions of the parties, and the particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

"Power to amend decree. If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error:

Provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment."

34. What we have now in Section 152 CPC are only the powers which are much wider, as the powers of the Court are not only to make corrections in a decree, but also in a judgment or an order which also includes error arising from any accidental slip or omission as well. The present provision also does not have the proviso which casts a duty on the court to first give a reasonable notice to the parties or their pleaders.

35. The power to make corrections in an order or decree 'on its own motion' would mean powers which can be exercised '*sua sponte*', i.e. on its own. The mere fact that there is an application too for such corrections is immaterial. Once the Court has an option to exercise powers *sua sponte* and it chooses to do that, that is the end of it. The fact that there is also an application before the Court by a party matters little. The Court here, we must not forget, is also a superior Court and a "Court of record". It has inherent powers and a duty to correct its records.

36. This aspect i.e. the aspet of the powers of a Court of records has been emphasised by the learned Chief Justice in his order. It is the powers and the duties of a Court of record. A High Court is a Court of record (Article 215 of the Constitution of India). What is a Court of record has not been defined in the Constitution, though it is well understood in law, through judicial pronouncements and legal literature. In Black's Law Dictionary[5] , "court of record" is defined as under:

> "**court of record.** A court that is required to keep a record of its proceedings and that may fine and imprison people for contempt. The court's records are presumed accurate and cannot be collaterally impeached."

5. Black's Law Dictionary – Seventh Edition
West Group
St. Paul, Minn., 1999

37. Dr. B.R. Ambedkar had explained the meaning of a 'Court of Record' to the Constituent Assembly thus : "I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any Court. That is the meaning of word "Court of record"[6] .

38. It is therefore a duty of a Court of record, to ensure that its records is free from any blemish or error[7]. "If any such error is brought to its notice in any manner whatsoever and at any time whatsoever, it has the powers to correct errors of a clerical nature. To hold otherwise would mean that this Court is powerless even after discovering that a particular sentence in a judgment is grammatically incorrect or absurd"[8]. The learned Chief Justice while allowing the application of the applicant (Mr. Munawar Ali) had relied upon the above ruling of the Allahabad High Court.

39. The Hon'ble Apex Court reiterated the same position of the court of record. In **M.M. Thomas v. State of Kerala and another, (2000) 1 SCC 666**, the Hon'ble

6. Dr. B.R. Ambedkar – Constituent Assembly Debates, May 27, 1949 Vol. VIII

7. Jai Narain and others v. Chhedalal AIR 1960 All 385

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Apex Court has said as under:-

> "14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1, a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record."

40. Powers of a Court of record were again explained by the Hon'ble Apex Court in a more recent judgment, relying upon M. M. Thomas judgment (**Municipal Corporation of Greater Mumbai & Another v. Pratibha Industries Ltd. & Others (2019) 3 SCC, Pg 203**).

41. It is not merely the powers of a court of record but it is its duty as well to keep its record correct and in accordance with law. Consequently here there was no option for the Court, but to set its records straight and carry out the modification and remove the errors which had inadvertently crept into its earlier order.

42. Learned Chief Justice again emphasised that the principle behind Section 152 CPC is that no one should suffer due to mistake of the Court. *Actus Curiae Neminem Gravabit*. Above all it is also a principle of equity and good conscience. In a three-Judge Bench decision of the Apex Court had applied this principle to the facts of a case before him. The facts of the case must be stated. The Civil Court had passed a decree in favour of one Jang Singh on the basis of compromise, and he was directed to deposit Rs. 5951/-, less Rs. 1000/- already deposited by him. The decree also ordered that of his failure to deposit the amount, the suit would stand dismissed with costs. Jang Singh moved an application before the Sub-Judge for making the deposit of the balance amount and the clerk of the executing court prepared a "challan" which mentioned an amount of Rs. 4950/- to be deposited instead of Rs. 4951/-. Jang Singh took the challan and promptly deposited the amount mentioned in the challan, much before the due date. The defendant on having the knowledge that full amount had not been deposited applied to the Court for dismissal of Jang Singh's suit. His application was allowed as the Sub-Judge was of the view that the pre-emptor by his failure to deposit the correct amount had incurred the dismissal of the suit. Earlier orders were recalled and orders were passed directing that possession of the immovable property be restored to the opposite party. Jang Singh appealed against that order which was allowed, as the appellate court was of the view that in making the deposit of lesser amount the Court was as much responsible as Jang Singh. The case again went in appeal before a learned Single Judge of the High Court

who set aside the decision of the District Judge and restored that of the Sub-Judge, Sirsa. Jang Singh took the matter before the Apex Court. His appeal was allowed and the Hon'ble Apex Court stated thus:

> "This challan is admittedly prepared by the Execution Clerk and it is also an admitted fact that Jang Singh is an illiterate person. The Execution Clerk has deposed to the procedure which is usually followed and he has pointed out that first there is a report by the Ahlmed about the amount in deposit and then an order is made by the Court on the application before the challan is prepared. It is, therefore, quite clear that if there was an error the Court and its officers largely contributed to it. It is no doubt true that a litigant must be vigilant and take care but where a litigant goes to Court and asks for the assistance of the Court so that his obligations under a decree might be fulfilled by him strictly, it is incumbent on the Court, if it does not leave the litigant to his own devices, to ensure that the correct information is furnished. If the Court in supplying the information makes a mistake the responsibility of the litigant, though it does not altogether cease, is atleast shared by the Court. If the litigant acts on the faith of that information the Courts cannot hold him responsible for a mistake which it itself caused. There is no higher principle for the guidance of the Court than the one that no act

> of Courts should harm a litigant and it is the bounden duty of Courts to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. This is aptly summed up in the maxim:
> *"Actus curiae neminem gravabit".*

43. The apparent error which was there in order dated 19.06.2018, ought to have been brought to the notice of this Court by any of the parties to the petition. It could have been noticed by the Registry and should have been placed before the appropriate Court for corrections. This was never done. Yet the ultimate responsibility will always be of the Court. No one can suffer due to the mistake of the Court.

44. There is one more aspect which must be stated. The learned Judge (Lok Pal Singh, J.) has rejected the application of Mr. Munawar Ali primarily on a technicality, as the learned Judge agrees that a review could have been maintainable. I would most respectfully state that it matters little how the matter came up before this Court. Whether it was clothed in the shape of a review or a mere application under Section 152 CPC is not relevant. The Rules of procedure are after all the handmaids of justice. Consequently when there is no doubt as to the powers of the Court in correcting an apparent error, correction must be done. The case was before this Court ultimately in a writ proceeding. The powers of review in a writ proceeding are inherent in Article 226, which must be exercised in appropriate cases as the Hon'ble Apex Court while exercising powers

of review also acts as a Court of equity, which is duty bound to correct its errors. In **Food Corporation of India and another v. Seil Ltd. and others**, reported in **(2008) 3 SCC 440**, it was said as under:-

> "A writ court exercises its power of review under Article 226 of the Constitution of India itself. While exercising the said jurisdiction, it not only acts as a court of law but also as a court of equity. A clear error or omission on the part of the court to consider a justifiable claim on its part would be subject to review; amongst others on the principle of *actus curiae neminem gravabit* (an act of the court shall prejudice none)."

45. In view of the above, I am of the same opinion as given by the learned Chief Justice Ramesh Ranganathan. Direction (i) in order dated 19.06.2018 has an apparent error which is liable to be corrected. It shall stand corrected as stated in paragraph 27 of the opinion of Justice Ramesh Ranganathan. To remove all doubts, direction (i) shall now read as under:-

> "i. The State Government is directed to ensure that no loudspeaker or public address system shall be used by any person including religious bodies in Temples, Mosques and Gurudwaras without written permission of the authority even during day time, that too, by getting an undertaking that the noise level shall not exceed by more than 5dB(A) peripheral noise level above the ambient noise standards specified for the

> area in which it is used at the boundaries of the private place."

46. The sanctity to the finality of judicial orders should never deter a Court in correcting its plain errors, as Lord Atkin has famously said, "finality is a good thing, but justice is better".

47. Before I part, I must refer to Aharon Barak[9], who never tires in reminding Judges that they are human beings after all, and as such prone to commit errors. But then these errors must be corrected at the first given opportunity. To emphasise his point, Barak[10] first cites the well known statement of Justice Jackson ("we are not final because we are infallible but we are infallible only because we are final"), and then adds "I think that the learned Judge erred. The finality of our decisions is based on our ability to admit our mistakes, and our willingness to do so in appropriate cases."[11] Barak then cites a case in which he gave an opinion. This case was later reargued before a larger Bench. Barak's earlier decision was reversed, and while doing so Barak explained why:

> "This conclusion of mine conflicts with the conclusion that I reached in my ruling, which is the subject of this petition. In other words, I changed my mind. Indeed, since the judgment was given – and against the backdrop of the further hearing itself – I have

9. One of the most profound and powerful jurist of our times. He served as an Attorney General of Israel and later as a Justice and President of Supreme Court of Israel. After retirement he resumed his academic career and presently teaches law. His works include:
"The Judge in a Democracy" – Princeton University Press
"Purposive Interpretation of Law" – Princeton University Press, 2005.
10. FOREWORD: A JUDGE ON JUDGING: THE ROLE OF A SUPREME COURT IN A DEMOCRACY; Heinonline - 116 Harv. L. Rev. 19 2002-2003
11. FOREWORD: A JUDGE ON JUDGING: THE ROLE OF A SUPREME COURT IN A DEMOCRACY; Heinonline - 116 Harv. L. Rev. 19 2002-2003

not ceased to examine whether my approach is correctly grounded in law. I do not count myself among those who believe that the finality of a decision testifies to its correctness. We all err. Our professional integrity requires us to admit our mistakes, if we are convinced that we have indeed erred…in our difficult hours, when we evaluate ourselves, our North Star should be uncovering the truth that brings justice within the limits of law. We should not entrench ourselves in our previous decisions. We must be prepared to admit our mistakes."[12]

(Sudhanshu Dhulia, J.)
10.08.2020

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12. FOREWORD: A JUDGE ON JUDGING: THE ROLE OF A SUPREME COURT IN A DEMOCRACY; Heinonline - 116 Harv. L. Rev. 19 2002-2003