

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Original Application No.98/2022/EZ

In the Matter Of:

1. Amitabh Kejriwal
Son of Late Sudarshan Kumar Kejriwal,
Residing at the Premises No.45, Fazlul haque Sarani
(Jhawtala Road), Kolkata-700019.

Applicant(s)

Versus

1. State of West Bengal
Through the Secretary, Department of Environment,
5th Floor, Pranisampad Bhawan,
Block-LB-II, Salt lake, Sector-III,
Bidhannagar, Kolkata-700106,
2. The West Bengal Pollution Control Board,
Paribesh Bhawan, 10A, Block-LA, Sector-III, Bidhannagar,
Kolkata-700106,
3. The Commissioner of Police,
Kolkata-18, Lalbazar Street, Kolkata-700001, West Bengal,
4. The Deputy Commissioner of Police, South East Division,
Kolkata, Park Court, 2. Syed Amir Ali Avenue,
Kolkata-700017,
5. The Officer-in-charge, Karaya Police Station, 52, Karaya Road,
Kolkata-700019
6. Dbar code Restro Bar and Club LLP.,
a limited liability partnership firm formed and/or
constituted under the Limited Liability Partnership Act, 2005,
with its registered officer at 45 Fazlul Huq Sarani, Kolkata-700019

Respondent(s)

Date of hearing: 18.01.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant(s) :Mr. Rajesh Upadhyay, Advocate (in Virtual Mode)

For Respondent(s) :Mr. Sudip Kr. Dutta, Adv. for R-1,3 to 5 (in Virtual Mode)
Mr. Dipanjan Ghosh, Advocate a/w
Mr. Prithwish Basu, Advocate for R-2,
Ms. Manika Roy, Advocate for R-6(in Virtual Mode)

ORDER

1. Mr. Rajesh Upadhyay, learned Counsel is present (in Virtual Mode) on behalf of the Applicant.
2. Reply affidavit dated 13.01.2023 has been filed on behalf of the Applicant; the same is taken on record.
3. This Original Application has been filed by the Applicant on the allegation that the Respondent No.6, Dbar Code Restro Bar and Club LLP., which is operating a Disco, Bar-cum-Restaurant and Hookah Bar in the name and style of "Tram Deepo" is playing loud music in the premises of entire second floor portion of Premises No.45, Fazlul Huq Sarani (Jhawtala Road), Kolkata-700019, in violation of the Noise (Pollution and Control) Rules, 2000 (hereinafter referred to as the Rules, 2000).
4. It is alleged that earlier also there were proceedings against the Respondent No.6 in which an order was passed on 26.04.2019, by West Bengal Pollution Control Board, directing the Respondent No.6, on the basis on an inspection carried out on 26.03.2019, to operate the sound level within permissible limit and operate its music system inside acoustically enclosed room only so that the noise may not travel outside the Restaurant. Copy of the order has been filed as Annexure-E (Page No.64) to the Original Application.
5. The Tribunal, however, noted that the Order dated 26.04.2019 did not even mention as to what was the decibel level recorded by the inspecting team which carried out the inspection on 26.03.2019. Such an order on the face of it, is no order. The order dated

26.04.2019 is nothing more than a vague and generalized advisory which does not satisfy the complaint.

6. Affidavit dated 12.09.2022 has been filed by the Respondent No.5, Officer-in-charge, Karaya Police Station, Kolkata. It is stated that on 13.01.2021, he received a letter from one Md. Faizullah, Partner, that Impreza Kitchen & Restaurant LLP was running their business of Café-cum-Restaurant styled as “Hit Wicket” from the first floor of 45, Jhowtala Road, Kolkata and it was alleged that the Respondent No.6 was playing music loudly from 7 P.M. to 1 A.M. every night which is disturbing the customers of their café. It is stated that the police personnel from the Karaya Police Station visited the restaurant styled as “Tram Deppo” several times and at that time the representative of “Tram Deppo” produced ‘Consent to Operate’ dated 26.06.2019 issued by West Bengal Pollution Control Board.
7. The Applicant has filed supplementary-affidavit dated 14.10.2022 alleging that two officials of the Respondent No.2, West Bengal Pollution Control Board conducted a surprise visit at the M/s Dbar Code Restro Bar & Club of the Respondent No.6 at 7:35 P.M. on 21.09.2022 but it is alleged that since the inspection was conducted at 7:35P.M., the noise test level would not be correct and the inspection should be conducted at the relevant period of time particularly on weekends and holidays.
8. The West Bengal Pollution Control Board has filed affidavit dated 02.11.2022. Along with this affidavit an inspection report of an inspection of the premises in question carried out on 21.09.2022 has been filed. The Observations and Remarks in the Inspection Report read as under:-

“Observations:

The unit M/s Tram Deepo Restro Bar & club is a restaurant with a bar and a night club facility having seating capacity 120 heads approx. During the inspection, the unit was in operation occupancy about 65 persons. The unit is located on the 2nd floor of a (G+3) storied building and Mr. Amitabh Kejriwal, a complainant, resides on the 3rd floor of the building. The ground floor of the said building is occupied by AU Bank, Yes Bank and Computer wizard (Shop). There is a Restaurant & Hookah Bar under the name of Hit Wicket at a portion of 1st floor and the remaining portion occupied by AU Bank. It is found that all the floors except the 3rd floor are used for commercial purposes. The unit consists of two rooms. In the right-hand room there are 5 no ordinary boxes and, in the left-hand room, 04 ordinary & 02 woofer boxes are used in music systems. During inspection it was also observed that the unit had an acoustic enclosure with acoustic walls. There are 7 nos of LPG fired ovens in the kitchen for carrying out cooking activity with fume extraction system. Kitchen effluent is directly discharged into KMC. Accordingly to the spokesperson of M/s Tram Deepo Restro Bar & club, the unit was operating daily from 1:00Pm to 12:00 AM and during festive season it is operates till late night with the permission from Kolkata Police. However, the complainant, Mr. Amitabh Kejriwal informed that he suffers from the noise and vibration due to operation of music system during late night.

Noise level measured during inspection is listed below:- (Unit was In operation)

Measuring Places	Noise Level in dB(A) when the sound system was in operation at its optimum
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	<i>level on request (one non-functioning big woofer box out of two woofer box</i>
<i>From Complainant's residential floor (3rd floor) stairs</i>	<i>68.09</i>
<i>From in front of the Unit (main door was closed)</i>	<i>73.25</i>
<i>Inside the unit when the music system in operation</i>	<i>In left hand Room: 86.80 In right hand Room: 77.12</i>

However, no vibration and sound was felt at stairs during inspection and sound system was in operation at its optimum level.

Remarks:

As the unit has taken necessary measure to control the noise level within permissible limit, complaint may be disposed of with the following conditions:

- 1. The unit should always maintain noise level within permissible limit.*
- 2. The unit may be directed not to use woofer boxes at night time to take extra precautions to control noise and vibration at the night time.*
- 3. The nit should take care of maintenance of its exhaust fans so that these will not generate high noise.*
- 4. The unit should follow the operation of Night Club as per permissible norms.*
- 5. The unit should operate with all necessary valid licenses."*

9. Since this affidavit did not indicate as to whether the premises in question is a commercial area or residential area it was not clear whether the requisite standards of sound level for the area in question would be for commercial area or residential area. The

inspection report also did not state as to whether the decimal level recorded therein is within the permissible sound level or exceeds the permissible sound level.

10. The West Bengal Pollution Control Board was, therefore, directed to file a fresh affidavit furnishing full particulars of the sound level as per rules.
11. In response, affidavit dated 03.01.2023 has been filed the West Bengal Pollution Control Board. Along with this affidavit an inspection report of an inspection carried out on 22.12.2022 has been filed. The Observations and Remarks in this report read as under:-

“Observation:

The unit M/s Tram Deepo Restro Bar & Club is a restaurant with a bar and a night club facility having a seating capacity of 120 heads approx. During the inspection, the restaurant with bar and night club were in operation. The entire unit is located at the 2nd floor of a (G+3) storied building and Mr. Amitabh 2 Kejriwal, a complainant, resides at the 3rd floor of the building. The ground floor of the said building is occupied by AU Bank, Yes Bank and Computer wizard (Ship). There is a Restaurant & Hookah Bar under the name of Hit Wicket at a portion of 1st floor and the remaining portion occupied by AU Bank. It was found that all the floors except the 3rd floor are used for commercial purposes.

The unit consists of two sections. One section houses the restaurant with bar and there are 05 nos. ordinary sound boxes. The other section houses the night club and there are 04 no. ordinary sound boxes & 02 no. woofer boxes in the music systems. During inspection it was also observed that the entire unit had an acoustic enclosure in the walls.

There are 07 no. of LPG fired ovens in the kitchen for carrying out cooking activity with fume extraction system. According to the representative of the unit, the unit operates from 1:00Pm to 12:00 AM on a daily basis. During festive season it operates till late night with permission from Kolkata Police. The area is predominantly commercial in nature.

Noise level measured during inspection is listed below: **(Unit was in operation)**

Measuring Places	Noise Level in dB(A)
Ambient noise level (In front of Yes Bank ATM at 45 Jhowtala Raod)	77.96 (7:40PM)
Inside the unit: (A) Inside the restaurant (left hand side) (B) Inside the night club (right hand side)	When music was off :63.49(7:50PM) When music was being operated at full blast on request:74.14 (7:55PM) When music was off: 50.46 (8:00PM) When music was being operated at full blast on request: 84.11 (8:03PM)
In front of entire unit at staircase when main door was closed and music was being operated on full blast	64.09(8:07PM)

However, no vibration was felt at stairs during inspection and sound system was in operation at its optimum level.

Remarks:

1. The unit started operating since 2016 and first complaint was lodged in 2018.
2. It is this observed that the measured noise level of 64.09 dB (A) in front of the restaurant, bar and night club with main door closed and volume turned at full blast, is less then ambient noise level (77.96 dB (A)). Even though music was turned on at full volume in our presence Mr. Amitabh Kejriwal refused to

acknowledge that this was the maximum noise level. It may be mentioned here that Mr. Amitabh Kejriwal neither acknowledged the readings of inspecting team nor did he allowed to enter his flat for measuring noise levels even though it was repeatedly informed to him that the volume of the music boxes has been turned on at the maximum level.

3. It is to be inferred that as the noise level measured outside the restaurant [at the staircase when main door was closed and music was being operated on full blast] is 64.09 dB (A), the said noise level will be further dip inside Mr. Kejriwal's flat/room.

4. It is particularly noteworthy that the complainant grossly misbehaved with the inspecting officers and refused to cooperate during the inspection with dictatorial approaches. He finally obstructed the proceedings of the inspection in the midway as he did not allow the inspecting officers to continue with the necessary observation for the inspection within his own premises. He also threatened the inspecting team with dire consequences in a most improper manner."

12. The Respondent No.6 has also filed affidavit-in-opposition dated 19.10.2022 denying the allegations made in the supplementary-affidavit filed by the Applicant denying that there was any violation of the Noise Pollution (Regulation & Control) Rules 2000 between the time period from 8 P.M. to 10 P.M. or till 11:30 P.M. during weekends and upto 2:45 A.M. /3 A.M. at night or during holidays.
13. One more affidavit also dated 19.10.2022 has been filed by the Respondent No.6 denying the allegations of the O.A. and also stating that the Respondent No.6 has a valid 'Consent to Operate' and 'Consent to Establish' from the West Bengal Pollution Control Board.

14. In this affidavit reference has also been made to a Title Suit No.368 of 2019 filed before the Civil Judge (Junior Division) 2nd Court at Alipore which is stated to be still pending adjudication. It is stated that this Suit is against the Applicant for having stopped the water supply to the tenanted portion of the Respondent No.6.
15. However, we may clarify at this stage that as an Environmental Tribunal, this Court is not concerned with disputes of a private nature between the Respondent No.6 and the Applicant other than strictly environmental issues. It is also stated in this affidavit that the Applicant himself was carrying on business of Hooka Bar under the name and style of "Hit Wicket" on the first floor of the premises. However, as stated above, those facts are irrelevant for the purpose of this case.
16. The West Bengal Pollution Control Board has filed a further affidavit dated 03.01.2023. Along with this affidavit an inspection report of an inspection carried out on 22.12.2022 between 7:30 P.M. to 8:30 P.M. has been filed. The relevant extract of the Inspection Report has already been reproduced hereinabove.
17. The Applicant has filed affidavit-in-reply dated 13.01.2023 alleging that he had requested the inspection team to conduct surprise inspection after 10:00 P.M. on a Saturday, Sunday or any other holiday and it is stated that at the time of inspection the music was not loud and the inspecting team asked the petitioner to stand outside on the 2nd floor staircase lobby and hear if the music is loud or not and if the petitioner can feel any vibration. It is alleged by the Applicant that neither he nor his men were allowed to go to the 2nd floor during the surprise inspection and, therefore, he

cannot ascertain whether the music was played at the highest level or not.

18. It is further stated that the “Hit Wicket” (Restaurant & Hookah Parlor) does not exist in the building any more and it has left the premises in October, 2022.
19. We have heard the learned Counsel for the parties and perused the documents on record.
20. The allegation of the applicant is that the Respondent No.6 is playing loud music particularly on weekends and holidays on the 2nd floor of the premises in question which is causing considerable irritation and disturbance to the Applicant since the sound level of such music is far above the limits prescribed in the Noise Pollution (Regulation and Control) Rules, 2000.
21. The learned Counsel for the Applicant submitted that a fresh inspection may be directed to be conducted by the inspection team of the West Bengal Pollution Control Board after 10:00 P.M. on Saturday, Sunday or holiday in the presence of the petitioner.
22. We may refer to the last inspection report carried out on 22.12.2022 by the West Bengal Pollution Control Board. From perusal of the inspection report, it will be noticed that inside the Unit of Respondent No.6; when the music was off, the decibel level was 63.49 dB(A) at 7:50 P.M. and when the music was being operated at full blast, the sound level was 74.14 dB(A) at 7:55 P.M.
23. Inside the night club on the right hand side when the music was off, the sound level was 50.46 dB(A) at 8:00 P.M. and when the music was being operated at full blast, the sound level was 84.11 dB(A) at 8:03 P.M.

24. It is stated that the inspection report further shows that in front of the entire Unit at the staircase, when the main door was closed and the music was being operated at full blast, the noise level was 64.09 dB(A) at 8:07 P.M. The report further mentions that even when the music was turned on full volume, the Applicant refused to acknowledge that this was the maximum noise level. He also did not allow the inspecting team to enter his flat for measuring the noise levels there despite repeated request.
25. The allegation of the Applicant is that when the inspection team was measuring the sound levels on 22.12.2022, he was told to stand outside on the 2nd floor staircase lobby and hear if the music is loud or not and if he can feel any vibration as stated by him in paragraph-7 of his affidavit. He contended that the inspection should have been carried out after 10:00 P.M. on any Saturday, Sunday or holiday when the music is loudest.
26. Mr. Dipanjan Ghosh, learned Counsel for the West Bengal Pollution Control Board on the other hand submitted that the music was played at the loudest volume i.e., full blast by the inspecting team and, therefore, it is immaterial whether the sound level is tested prior to 10:00 P.M. on other days or whether it is tested after 10:00 P.M. on Saturday, Sunday or holiday and according to him the sound level at full blast inside the night club was 84.11 dB(A) and in front of the Unit at the staircase when the main door was closed and when music was being operated on full blast, the noise level was 64.09 dB(A).
27. The learned Counsel further submitted that as per the Noise Pollution (Regulation & Control) Rules, 2000 in the schedule the

Ambient Air Quality Standards in respect of noise in a commercial area in the day time is 65 dB(A) and 55 dB(A) in the night time

28. Learned Counsel also referred to Rule-5 Sub-Rule-4 of the Rules, 2000 and submitted that 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.

29. The Rule-5 Sub-rule 4 of the Rules, 2000 reads as under:-

"[(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 ²[public address systems and the like during night 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.] ³ [The Concerned State government shall generally specify in advance the number and particulars of the days on which such exemption would be operative]

[(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."

30. We find force in the submission of the learned Counsel for the West Bengal Pollution Control Board. What is relevant for purposes of the present case is consideration of the sound level/noise level at its full blast being played inside the Respondent No.6, (Restro Bar) and the sound level/noise level outside the unit when its doors are

closed and the music is being played at full blast, in the light of Rules, 2000.

31. The Inspection Report the West Bengal Pollution Control Board shows the sound level inside the night club to be 84.11 dB(A) when the music was being operated at full blast and in front of the unit at the staircase when the main door was closed and the music was being operated at full blast, the sound level/noise level was 64.09 dB(A).
32. Sub-rule 4 of Rule-5 of the Rules, 2000 provides that the noise level at the boundary of the public place shall not exceed 10 dB(A) above the Ambient Noise Standards for the area or 75 dB(A) whichever is lower.
33. The unit of the Respondent No.6, Restro Bar & Club is a restaurant with a bar and a night club facility located on the 2nd floor of the building whereas the Applicant resides on the 3rd floor of the building. The area in question is said to be a commercial area though this was vehemently contested by the learned Counsel for the Applicant who insisted that it was a residential premises, but we find from the inspection report itself that the ground floor of the building is occupied by AU Bank, Yes Bank and Computer Wizard (Shop). The Restaurant & Hookah Bar under the name of "Hit Wicket" is at a portion of the first floor and the remaining portion is occupied by the AU Bank. All the floors of this building, except the third floor, are used for commercial purposes.
34. In this view of the matter, the noise level at full blast outside the unit when its door is closed at the staircase of the unit is 64.09 dB(A) and as per Sub-rule-4 of Rule-5 of the Rules, 2000 by allowing the margin 10 dB(A) which should not in any case exceed

noise standards 75 dB(A), we find that the noise level in front of the unit of Respondent No.6 even when the door is closed, at the staircase, would be within the Ambient Noise Standards prescribed as per Sub-rule-4 of Rule-5 of the Rules, 2000.

35. So far as the contention of the learned Counsel for the Applicant that the music was not played at full blast, we reject the same as we have no reason to doubt that the West Bengal Pollution Control Board would have any animus against the Applicant to deliberately record incorrect findings at less than full blast, and in fact, if the Applicant was asked to stand on the 2nd floor at the staircase while the inspecting team was testing the sound volume of Respondent No.6 Unit at full blast with the door closed, in our opinion, it was the correct procedure and the Applicant has nowhere complained that even at that stage, the noise level, when he was standing on the 2nd floor staircase in spite of the door of the Unit being shut, was above the prescribed level of Ambient Noise Standards or that he was feeling any vibrations on the staircase.
36. We, therefore, find no merit in this Original Application and the same is accordingly dismissed.
37. Interlocutory Applications, if any, stand disposed.
38. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Prof. A. Senthil Vel, EM

January 18, 2023
Original Application No.98/2022/EZ
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