Reserved Order

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Modification Application MCC No. 235 of 2020

(On behalf of applicant Munawar Ali)

In

Writ Petition (PIL) No. 112 of 2015

Mahendra Singh ……. Petitioner

versus

State of Uttarakhand & others ……. Respondents

Mr. Arvind Kumar Sharma, Advocate for the petitioner.
Mr. S.S. Chauhan, Dy. Advocate General for the State.
Mr. T.A. Khan, Senior Advocate assisted by Mr. Vinay Bhatt, Advocate for the applicant in CLMA no. 235 of 2020.
Mr. Aditya Pratap Singh, Advocate for the respondent no. 3.

Coram : Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Lok Pal Singh, J.

List of cases referred:

1. *(2010) 2 SCC 114 Dalip Singh v. State of U.P.*
2. *(2007) 6 SCC 120 Arunima Baruah v. Union of India*
3. *1994 SCC (1) 1, S.P Chengalvaraya Naidu vs Jagannath*
4. *AIR 1992 Del 197, Oswal Fats & Oils Ltd. Vs Additional Commr. (Admn.), Bareilly Division, Bareilly & others*
5. *(1991) 3 SCC 600, M.B. Sanghi v. High Court of Punjab & Haryana*
6. *(1985) 4 SCC 417 Ashok Kumar Yadav vs. State of Haryana*
7. *AIR 1982 Supreme Court 149, S.P. Gupta & others Vs President of India & others*
8. *AIR 1964 Supreme Court 358, State of U.P. Vs Singhara Singh & others*

[Per: Hon'ble Lok Pal Singh, J.]

Applicant has filed this modification application under Section 151 and 152 of the Code of Civil Procedure (hereinafter referred to as the 'Code') read with Article 226 of the Constitution of India seeking modification of judgment and order dated 19.06.2018, passed in Writ Petition (PIL) no. 112 of 2015, to the extent that the District Magistrate shall permit the use of loudspeakers in the places of worships within the limits

as prescribed in the "Schedule" of Noise Pollution (Regulations and Control) Rules, 2000. A further prayer has been made that if the noise level of use of loudspeaker exceeds the limits mentioned in the "Schedule", the same be relaxed upto 10dB(A) or in total upto 75dB(A), whichever is less as provided in Rule 5(4) of the Rules.

SCHEDULE
(See rule 3(1) and 4(10)
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

2) Facts necessary for proper adjudication of the case are that while disposing of the instant Petition (PIL) certain mandatory directions were issued by this Court in the operative portion of judgment and order dated 19.06.2018. The same are excerpted as under:

a. The respondent no.3 is directed to inspect each and every industry situate in the State of Uttarakhand to ensure that the industrial effluent/waste is treated properly before hazardous substances are also disposed of as per law. All the parameters laid down under various notifications issued under the Environment (Protection) Act, 1986 must be scrupulously followed, monitored and adhered to. The industries which do not conform to norms shall be ordered to be closed down.

b. Respondent no.3 shall visit and inspect each and every E.T.P., S.T.P. and C.T.P. to ensure that not even a drop of chemical/industrial waste material is discharged into the water and in the open causing water and air pollution. It is made clear by abundant 24 precaution that as and when the inspection is carried out by the

Environment Engineers of respondent no.3, he would be accompanied by the S.D.M of the concerned area and for this purpose the Secretary, Revenue shall also issue separate instructions to the S.D.Ms.

c. The respondent No.4 is liable to pay special/ exemplary damages amounting to Rs.5.00 Crores for restoration of the environment and ecology of the area. Respondent no.4 is directed to deposit a sum of Rs. 5.00 Crores with the District Magistrate, Haridwar within a period of four weeks from today. The District Magistrate, Haridwar/SDM concerned shall utilize this amount for the restoration of the water quality and to install the water purifiers in the concerned area after visiting the spot.

d. The respondent No.4 shall not run the factory without obtaining permanent NOC from the Uttarakhand Pollution Control Board.

e. The Secretary of the respondent No.3-Board is directed to initiate disciplinary proceedings against officers/officials in whose tenure the large scale untreated industrial effluent was discharged in the play ground and in the adjoining fields, within a period of three months from today, even if, the employees have retired.

f. All the representatives of the Panchayat Raj Institutions like Pradhan, Up Pradhan, Members of Panchayats, Zila Parishad and Panchayat Samities are directed to inform the respondent no.3 about the environment issues in their respective areas. These matters shall be taken up seriously by the respondent no.3. 25

g. Respondent no.1 is directed to circulate the copy of this judgment to all the Panchayats through their Pradhans to make the villagers aware of their rights.

h. It shall be the responsibility of the Secretary, State of Uttarakhand, Pollution Control Board to ensure that

each and every E.T.P., S.T.P. and C.T.P. functions 24 hours x 7 days throughout the State of Uttarakhand. The Court will not hesitate to put the Secretary under suspension, if degradation of the environment and ecology in any area is reported to the Court.

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 more than 5dB(A) peripheral noise level.

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.

k. The State Government is directed to ensure that loud speakers or public address systems are not used except between 10.00 p.m. to 12.00 midnight during any cultural or religious festive occasion of a limited duration not exceeding 15 days in all during a calendar year, that too, the noise level shall not exceed 10dB(A) above the ambient noise standards for the area. The peripheral noise level of a privately 26 owned sound system or a sound producing instrument shall not, at the boundary of the private place, exceed by more than 5dB(A). The authority concerned shall keep on visiting and monitoring at the public places, private places, auditoriums, conference rooms, community halls, banquet halls, temples, mosques and Gurudwaras to ensure due compliance of the Rules.

l. We direct all the Senior Superintendents of Police/Superintendents of Police to ensure that no horn

shall be used in silence zone or during the night time between 10.00 p.m. to 06.00 a.m. in residential areas except during public emergency. No sound emitting construction equipments shall be used or operated during the night time between 10.00 p.m. to 06.00 a.m. in residential areas or silence zone.

m. The pressure horns are banned through the State of Uttarakhand.

n. The violators of the Rules be penalized under the Rule 6 of the Noise Pollution (Regulation and Control) Rules, 2000.

o. All the Senior Superintendents of Police/ Superintendents of Police and Circle Officers are directed to ensure that motorcycles throughout the State of Uttarakhand are duly fitted with silencers to avoid noise pollution and menace.

3) The applicant in the instant Writ Petition (PIL) filed Writ Petition (PIL) bearing no. 63 of 2020 titled as Munawar Ali vs. State of Uttarakhand, which came for hearing on 12.05.2020. It is contended that the Division Bench, comprising of Hon'ble the Chief Justice and Justice R.C. Khulbe, hearing said WP(PIL) was of the opinion that the applicant should move a modification application seeking modification of the judgment and order dated 19.06.2018, passed in instant WP(PIL), if he is aggrieved. The Division Bench, consisting of Hon'ble the Chief Justice and Justice R.C. Khulbe, passed following order on 12.05.2020:

> "Mr. T.A. Khan, learned Senior Counsel assisted by Mr. Vinay Bhatt, learned Counsel for the petitioner.
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> Mr. Paresh Tripathi, learned Chief Standing Counsel for the State of Uttarakhand.
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> In the affidavit filed in support of the writ petition, it is stated that the S.O. of P.S. Bajpur had compelled the petitioner to remove the loud speaker from the mosque of Jama Masjid, Bajpur on 25.03.2020; the Imam of the mosque had no option except to remove the loudspeakers; and no notice had been issued to the Imam and other mosques.

While it appears that a Division Bench of this Court, by its order in WP(PIL) No.112 of 2015 dated 19.06.2018, had directed the State Government to ensure that no loudspeaker or public address system were 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 more than 5dB(A) peripheral noise level, Mr. T.A. Khan, learned Senior Counsel appearing on behalf of the petitioner, would draw our attention to the Noise Pollution (Regulation and Control) Rules, 2000, more particularly to the schedule thereto, in terms of which the ambient or quality standards in respect of noise appears to be far higher than what has been stipulated in the order of the Division Bench.

The fact however remains that, as long as the said order of the Division Bench continues to remain in force, the respondent authorities are duty-bound to comply with the directions issued therein.

Mr. T.A. Khan, learned Senior Counsel appearing on behalf of the petitioner, submits that an application seeking modification or review of the said order would be filed by Monday.

Mr. Paresh Tripathi, learned Chief Standing Counsel for the State also seeks time till Monday to obtain instructions regarding the allegation of removal of loudspeakers of the Bajpur Mosque and whether it was preceded by a notice to show cause.

List this matter on 20.05.2020 in the daily list."

4) Pursuant to the observations made by the Bench hearing the WP(PIL) No.63 of 2020, the applicant has moved the aforesaid modification application, *inter alia*, on the following grounds:-

i) That the applicant is a social activist and he takes interest in the welfare of the public at large. He is also the permanent member of the Uttarakhand Waqf Board, Dehradun. He is also the mutawalli of a mosque known as "Jama Masjid", situated at Bazpur, District Udham Singh Nagar. The applicant represents all the mutawallies of waqfs of all the mosques in the entire state of Uttarakhand and as such he was elected as the member of the Waqf Board by the Mutawallies of all the Waqf Board in the State of Uttarakhand, from Mutawalli quota, as provided under Section 14 of the Waqf Act and thereafter he was appointed by the State Government as the member of the Waqf

Board vide Govt. Order dated 25.10.2016 for a period of 5 years.

ii) That in the aforesaid case, Hon'ble Court has been pleased to pass an order dated 19.06.2018 issuing some directions as mentioned in para no.20 of the judgment. In paragraph 20(i) of the judgment, it has been provided that there will be no use of loudspeaker in any religious body without written permission of the authority and without any undertaking that the noise level shall not exceed more than 5dB(A) of peripheral noise level. By taking advantage of this order, the State authorities have asked the Imams/mutawallies of the mosques situated in the District of Udham Singh Nagar, in the city of Ramnagar and Kaladhungi of District Nainital to remove the loudspeakers from the mosques. The notice which has been issued by the police on 20.03.2020 is being annexed as an example thereto and consequently, the police has compelled the Imams of mosques to remove the loudspeakers from the mosques.

iii) That the respondents are compelling the Imams/Mutawallies of the Mosques to use the loudspeakers only with the limits of 5dB(A) peripheral noise level, which is not possible, even if a person only whispers in the loudspeakers, even then it is more than 5dB(A) peripheral noise level. That in fact, the police and the state authorities are making insistence that the level of noise should not exceed while using the loudspeaker 5dB(A) Leq, as mentioned in Clause (i) of para 20 of the Judgement of this Hon'ble Court. In fact, while passing the judgment the Hon'ble Court was pleased to hold that the level of noise should not exceed more than 5dB(A) peripheral noise level. The provisions in this regard are mentioned in Rule 5 of Noise Pollution (Regulations and Control) Rules 2000. Clause 5(4) is reproduced hereunder:-

> "5(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 10dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower;'

Meaning thereby, the intention of the legislature is that the noise level at the boundary of public place where the loudspeaker is being used, shall not exceed 10dB(A) in addition to the limit of ambient noise standard for the area or

75dB(A) whichever is lower. The ambient noise standards in respective areas have been mentioned in "Schedule" appended to the Rules. As per schedule it is provided that in the day time, in commercial area the maximum limit is 65dB(A) Leq and in night time it is 55 dB(A) Leq. Similarly in residential area, the maximum limit is 55 dB(A) Leq and in night time it is 45(A) Leq. The intention of Rule 5(4) is that the noise level at the boundary of public place may be within the limits of schedule appended to the Rules. But in no circumstances, it should be more than 10 dB(A) above the ambient noise standards for the area of 75 dB(A)whichever is lower. Meaning thereby, if one person uses the loudspeaker in commercial area in day time up to 75dB(A) Leq, it is permissible because it is not exceeding 10dB(A) in comparison to the ambient air quality standards in commercial area in the day time. Clause 5(5) has been incorporated with regard to the noise level of a privately owned sound system and its permissible even if it is more than 5dB(A) in addition to the ambient noise standards mentioned in the schedule. Meaning thereby, if any person uses the loudspeaker in commercial area up to 70 dB(A) Leq. in day time, it is permissible because it is not more than 5dB(A) in comparison to the standards as mentioned in the schedule. But when the noise level exceeds 70dB(A), it is impermissible in privately owned sound system.

iv) That it has not been clarified in para no.20(i) that the noise level of 5 dB(A) should be in addition to the standards mentioned in the schedule. While passing the order, the attention of Hon'ble Court was not drawn by either of parties towards the schedule appended to the Rules nor towards clause 5(4) of the aforesaid Rules. Therefore, the para 20(i) of the judgment needs to be modified and it is to be clarified that the use of loudspeakers shall be within the limits of ambient air quality standards as mentioned in the schedule. It is a relaxation clause as mentioned in clause 5(4) which provides that the use of loudspeaker can go upto the maximum limit of the standards mentioned in the schedule and in addition to that there is a relaxation of 10 dB(A) but after adding 10 dB(A), it will be considered that the noise level should not exceed the standards after adding 10 dB(A) or in total 75 dB(A) whichever

is lower. For example if any person uses the loudspeaker in residential area in day time, the maximum limit in the schedule is 55 dB(A) and after adding the relaxation as mentioned in para no.594) it can go upto 65dB(A) in day time. Though the maximum limit has been shown in Rule 5(4) as 75 dB(A) therefore the maximum limit will be 65dB(A) because it is lower side in comparison to 75 dB(A). If we read the provisions of Rule 5(4) along with the "Schedule", the answer is that the limit provided in the schedule can be extended by adding 10 dB(A) Leq or in total up to 75 dB(A) whichever is less.

v) That while passing the judgment, the aforesaid aspect has not been considered. Therefore, the judgment passed by the Hon'ble Court needs to be modified.

vi) That since the applicant was not having the knowledge with regard to the aforesaid judgment prior to the removal of the loudspeaker from the mosques but he has come to know for the first time with regard to the aforesaid judgment only after 20.03.2020 when some notices were issued to the Imams of Masjid of Kaladhungi. In this notice, the police have said the use of loudspeaker should not exceed the noise level of 10 dB(A), which is against the Rules of 2000.

vii) That the applicant has also filed a PIL bearing no.63 of 2020, which came for hearing on 12.05.2020. At the time of argument, Hon'ble Court was of the opinion that the applicant should move a modification application for the modification of the order dated 19.06.2018, passed in WP(PIL) No.112/2015, if he is aggrieved. Therefore, the applicant is not having any alternate or efficacious remedy to move the modification application before this Hon'ble Court.

viii) That the order dated 19.06.2018 is suffering from apparent error on record, which needs to be modified.

ix) That since the applicant or Uttarakhand Waqf Board was not a party to the lis pertaining to the present writ petition, therefore the order was not within the knowledge of the applicant and it came to the knowledge of the applicant for the first time after 20.3.2020.

x) That in the light of the aforesaid circumstances, the order dated 19.06.2018 needs to be modified to the extent that the district

> Magistrate shall permit the use of loud speaker in the places of worships within the limits as prescribed below. In addition to the above, if the noise level of use of loudspeaker exceeds the limits mentioned in the schedule, it can be further relaxed up to 10 dB(A) or in total upto 75 dB(A) whichever is less.

5) The modification application was listed for hearing before this Court. Learned counsel for the applicant submitted that since the applicant was not party to the instant PIL, therefore, the judgment and order dated 19.06.2018 was not in his knowledge and that he filed the WP(PIL) no. 63 of 2020 and the Division Bench hearing said PIL observed that the applicant should have moved a modification application seeking modification of the judgment and order dated 19.06.2018, if he is aggrieved. Thus, in view of the observations made by the Division Bench, this modification application has been filed. He further submitted that the judgment and order dated 19.06.2018 was not in his knowledge and for the first time came to his knowledge on 20.03.2020 when a notice was issued to the Imam of the mosque of Kaladhungi, District Nainital. He had submitted that the modification application be allowed and the judgment and order dated 19.06.2018 be modified accordingly.

6) Mr. A.K. Sharma, learned counsel for the petitioner Mahendra Singh vehemently argued that the applicant has not come before the Court with clean hands. Applicant was not party to the WP(PIL) and deliberately he has not annexed the copy of the alleged notice dated 20.03.2020 as referred in paragraph no. 2 of the modification application. On this, applicant sought time to file the supplementary affidavit to bring on record copy of the notice dated 20.03.2020, but instead of filing supplementary affidavit, supplementary submissions were filed. It has been stated in the supplementary

submission that notice has been issued by S.O., P.S. Kaladhungi, District Nainital to the Manager / Imam of the mosque of Kaladhungi, District Nainital, wherein police has asked to use the loudspeaker within the norms of 5dB(A) or 10dB(A) peripheral noise level only. It is further stated that no notice has been issued to the applicant or to the Imam of Jama Masjid, Bazpur, District Udham Singh Nagar. Along with supplementary submissions applicant brought on record the photocopy of the alleged notice dated 20.03.2020 issued to the Manager / Administrator of mosque of Kaladhungi, District Nainital.

7) On filing the supplementary submissions, learned counsel for the petitioner and respondent no. 2 sought time to file objections. They were granted time to file their objections against the modification application. Petitioner Mahendra Singh filed his objections to the modification application. In paragraph no. 2 of the objection it has been averred that the applicant did not represent all the mutawallies of waqfs of all the mosques. It is averred that applicant had not received the consent of all the mutawallies of all the mosques of the entire State of Uttarakhand. As such, applicant is not a representative of all the mutawallies / Imams of mosques situated in the State of Uttarakhand. It is specifically averred that applicant is only mutawalli of a mosque known as “Jama Masjid” situated at Bazpur, District Udham Singh Nagar. In para 3 it has been stated that the applicant did not annex the copy of Government Order dated 25.10.2016. In reply to contents of paras 3 & 4 of the modification application it is averred that the authorities are not compelling the Imams / mutawallies of the mosques to use the loudspeaker beyond the limit of 5dB(A) peripheral noise level and the authorities are duty bound to follow the directions issued by this Court vide judgment and order dated 19.06.2018. It is specifically averred that 75dB(A) Leq. is the category zone

of the Industrial area not the residential area and all the mosques are situated in the residential areas, therefore, permission cannot be granted by this Court in this regard. It is further averred that if loudspeaker is used to operate beyond the specified limit it will certainly cause noise pollution. Lastly it is averred that as the applicant has no fundamental right to use the loudspeaker in the religious places (mosques), therefore, the modification application is liable to be rejected.

8) Respondent no. 2 District Magistrate / Collector, Haridwar also filed his objections to the modification application through Mr. Rajendra Singh, Regional Officer, Uttarakhand Environment Protection and Pollution Control Board, Roorkee, District Haridwar. It is averred that the applicant is not a party to the WP(PIL), as such, he cannot move the modification application and the modification application is not maintainable on this ground alone. It is further averred that at the most the applicant can move a review application. It is specifically averred that the modification application is liable to be dismissed as the same has been filed after a considerable delay. It is stated that in compliance of order dated 19.06.2018, the Government has issued a G.O. dated 04.02.2019 and if the applicant has any grievance in this regard, he can challenge the same by filing a writ petition. It is specifically averred that the issue is no more res-integra, as in a similar matter Hon'ble Allahabad High Court while deciding a similar issue had passed a judgment and order dated 15.05.2020, in *Writ Petition No. 570 of 2020, Afzal Ansari & others Vs State of U.P. & others,* which fully covers the field. In reply to paragraph no. 4 of the modification application it is averred that in regard to use of loudspeaker in public area or place Rule 5(4) would be applicable which is very clear about the noise level to be followed and similarly Rule 5(5) addresses

the concerns in regard to peripheral noise level of a private sound system.

9) Applicant was offered opportunity of filing the rejoinder affidavit, but learned counsel appearing for the applicant has submitted that he does not wish to file any rejoinder affidavit. Thus, the matter was fixed for hearing.

10) During the course of hearing it was argued on behalf of the respondents that the applicant who claims himself to be the elected member of Waqf Board, but he has not annexed any document in this regard. Learned counsel appearing for the applicant sought time to file supplementary affidavit to bring on record copy of his election as member of the Waqf Board.

11) On the next date of hearing, another supplementary submission was filed by the applicant annexing a copy of the declaration of the result dated 05.10.2016 issued in favour of the applicant as well as the copy of the G.O. dated 07.10.2016 with regard to the nomination certificate of the applicant from mutawalli quota to show that he has been elected as a member of the Waqf Board from Mutawalli quota as provided under Section 14(1)(b) of Waqf Act.

12) During the course of hearing, the Court made following queries to the learned counsel appearing for the applicant:-

i) Whether the applicant has been authorized by all the mutawallies / Imams to represent them to challenge the notice dated 20.03.2020? Such query was raised for the reason that no notice has been issued to the applicant in the capacity of Imam or Mutawalli to remove the loudspeaker from the Jama Masjid,

Bazpur, District Udham Singh Nagar where he is discharging his duties as Mutawalli.

ii) Second query raised by the Court was that how come the applicant is an aggrieved person as admitted by him that he had preferred another writ petition (PIL) No.63 of 2020, wherein the Bench seized with the matter advised him to move modification application for modification of judgment and order dated 19.06.2018?

iii) Third query raised by the Court is that why the applicant has suppressed the material fact and why he did not file the copy of the notice dated 20.03.2020 along with an affidavit ?

13) Heard Mr. T.A. Khan, learned counsel appearing on behalf of the applicant (Munawar Ali), Mr. Arvind Kumar Sharma, learned counsel for the petitioner (Mahendra Singh), Mr. S.S. Chauhan, Deputy Advocate General for the State, Mr. Aditya Pratap Singh, learned counsel for respondent no. 3 and perused the entire documents brought on record.

14) Mr. T.A. Khan, learned counsel appearing for the applicant argued that he is a permanent member of the Uttarakhand Waqf Board, Dehradun and is also the mutawalli of a mosque known as Jama Masjid situated at Bazpur, District Udham Singh Nagar. Learned counsel also argued that the applicant represents all the mutawallies of waqfs of all the mosques in the entire state of Uttarakhand and as such he was elected as the member of the Waqf Board by the Mutawallies of all the Waqf Board in the State of Uttarakhand, from Mutawalli quota. Learned counsel submits that Vide judgment and order dated 19.06.2020, a Division Bench of this Court issued certain directions. In paragraph 20(i) of the judgment and order, it has been provided that there will be no use of loudspeaker in any

religious body without written permission of the authority and without any undertaking that the noise level shall not exceed more than 5dB(A) of peripheral noise level. It is alleged that taking advantage of said judgment and order, the State authorities have asked the Imams/mutawallies of the mosques situated in the District of Udham Singh Nagar, in the city of Ramnagar and Kaladhungi of District Nainital to remove the loudspeakers from the mosques. It is further alleged that the respondent authorities are compelling the Imams/Mutawallies of the mosques to use the loudspeakers only with the limits of 5dB(A) peripheral noise level, which is practically not possible. It is further alleged that the police and the state authorities are making insistence that the level of noise should not exceed 5dB(A) Leq while using the loudspeaker, as mentioned in Clause (i) of para 20 of the judgment. Learned counsel would urge that the intention of the legislature is that the noise level at the boundary of public place where the loudspeaker is being used, shall not exceed 10dB(A) in addition to the limit of ambient noise standard for the area or 75dB(A) whichever is lower. The ambient noise standards in respective areas have been mentioned in "Schedule" appended to the Rules. Learned counsel would submit that it has not been clarified in paragraph no. 20(i) that the noise level of 5 dB(A) should be in addition to the standards mentioned in the schedule. Therefore, the para 20(i) of the judgment needs to be modified and it is to be clarified that the use of loudspeakers shall be within the limits of ambient air quality standards as mentioned in the schedule. It is a relaxation clause as mentioned in clause 5(4) which provides that the use of loudspeaker can go upto the maximum limit of the standards mentioned in the schedule and in addition to that there is a relaxation of 10 dB(A) but after adding 10 dB(A), it will be considered that the noise level should not exceed the standards after adding 10 dB(A) or in total 75 dB(A) whichever is lower. Lastly, it is argued that since the applicant

or Uttarakhand Waqf Board was not a party to the *lis* pertaining to the present WP(PIL), therefore the judgment and order was not within the knowledge of the applicant and it came to the knowledge of the applicant for the first time after 20.3.2020. Learned counsel for the applicant prayed that the order dated 19.06.2018 be modified to the extent that the district Magistrate shall permit the use of loudspeaker in the places of worships within the limits prescribed. In addition to the above, if the noise level of use of loudspeaker exceeds the limits mentioned in the schedule, it can be further relaxed up to 10 dB(A) or in total upto 75 dB(A) whichever is less.

15) Per contra, Mr. Arvind Kumar Sharma, learned counsel for the petitioner vehemently argued that the applicant is not a party to the writ petition and, as such, the modification application moved by him is not maintainable. Learned counsel would urge that since the applicant is not an aggrieved person and at the most the Manager / Administrator of the mosque of Kaladhungi, District Nainital is the aggrieved person, who could have filed a review application seeking review of the judgment and order dated 19.06.2018. Applicant is not an aggrieved person, therefore, he cannot maintain the application has he does not suffer any legal injury. Learned counsel further submits that scope of amendment of a judgment and order under Section 152 of the Code and Section 114 read with Order 41 Rule 1 of the Code are entirely on different footing. He further argued that the applicant has deliberately not filed the copy of the notice supported by an affidavit. Thus, the copy of the notice dated 20.03.2020 cannot be considered as part of modification application as the same has been filed along with the supplementary submissions which cannot form part of the modification application. Learned counsel further submits that applicant has deliberately not filed the copy of notice supported by an affidavit and has suppressed the material facts from this

Court that Clause 20(j) of the judgment and order mandated that no loudspeaker shall be used in the religious places without permission of the authorities concerned. Indisputably the applicant has not disclosed this fact as to whether he is having any permission to use the loudspeaker in the mosque. This material fact has been suppressed by the applicant. Learned counsel further submits that the applicant has not come before the Court with clean hands and the prayer made in the application is not for modification / correction. Rather in the guise of modification application, the applicant directly or indirectly seeking a seal of this Court seeking permission from the District Magistrate which cannot be granted to the applicant as it would be against the mandate of Clause (j) of paragraph no. 20 of the judgment and order dated 19.06.2018. Unless the applicant challenges Clause (j) of paragraph no.20, the relief sought by him in the modification application cannot be granted to him.

16) Mr. S.S. Chauhan, learned Deputy Advocate General for the State vehemently argued that in the guise of modification application filed under Section 151 and 152 of the Code, in fact, applicant is seeking a direction to the District Magistrate from this Court to consider his application and the prayer so made does not fall within the ambit of modification / correction application. Learned Deputy Advocate General would further submit that the applicant is not an aggrieved person. No notice has been issued to the applicant to remove the loudspeaker from the mosque. At the most the Manager / Administrator of the mosque of Kaladhungi could have moved a review application as he submits that there is a distinction between a review application and modification application. The scope of modification is limited to correct clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission by the court

either of its own motion or on the application of any of the parties. He further submits that in view of the provisions enumerated in Section 152 of the Code, a correction application only can be maintained by the parties and not by a third party. He would urge that the applicant is seeking substantial changes in paragraph no. 20(i) of the judgment and order, which is not permission under Section 152 of the Code. He would also urge that the applicant has not come before the Court with clean hands. Rather he has come before the Court for ulterior motive and in the guise of modification application is, in fact, seeking direction from this Court to the District Magistrate to grant permission to use loudspeakers in mosques.

17) Before proceeding further, it would be apt to quote the provisions contained in Section 151 and 152 as well as Section 114 and Order 47 Rule 1 of the Code. The same are reproduced here-in-below:

> "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.
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> 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.
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> *"**114. Review**:- Subject as aforesaid, any person considering himself aggrieved-*
>
> *(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,*
>
> *(b) by a decree or order from which no appeal is allowed by this Code, or*
>
> *(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."*

*"**Order XLVII Rule 1***

1. Application for review of judgment- *(1) Any person considering himself aggrieved-*

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"

18) Section 151 of the Code gives inherent power to the Court to do substantial justice to meet the ends of justice or to prevent abuse of the process of the court. The applicant has filed the modification application u/s 151 and 152 of Code. The powers u/s 152 of the Code can be invoked in following two contingencies:

(i) clerical or arithmetical mistakes in judgments

(ii) decrees or orders or errors arising therein from any accidental slip or omission

MAINTAINABILITY OF MODIFICATION APPLICATION

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 at the most the Manager / Administrator of the mosque of Kaladunghi 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.

20) Hon'ble Apex Court in **State of U.P. Vs Singhara Singh**[8], has categorically held that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed.

21) Assuming that the applicant is an aggrieved person, then at the best he could have filed a review application before this Court u/s 114 r/w Order 47 Rule 1 of the Code. But in the present case instead of moving a review application, modification application has been filed u/s 152 CPC and that too by a stranger. As has been observed in the preceding paragraphs the criteria of section 152 and Section 114 read with Order 47 Rule 1 of the Code are entirely different thus the modification application is misconceived and is liable to be rejected on this ground also.

CONCEALMENT OF MATERIAL FACTS

22) Applicant has not come to the Court with clean hands and has suppressed material facts from this Court. He has not annexed the authority of other Mutawallies in his favour. The averments made in the modification application are not supported by any documentary evidence. Thus, the same cannot be believed by this Court. The applicant has stated that he has moved the application before the District Magistrate seeking permission to use the loudspeaker but nothing has been stated as to what decision has been taken by the District Magistrate on

such application. It seems that the petitioner has deliberately suppressed this fact from this Court. It is settled position in law that If an applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then such an act would disentitle him from any relief.

23) In **S.P Chengalvaraya Naidu vs Jagannath**[3] the Supreme Court, while dealing with a case where a release deed was suppressed, came down heavily upon such tactics of litigants. It observed that the non-mentioning and non-production of the release deed amounted to "playing fraud upon the court" and concluded that:

> "6. ...A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

24) The Apex Court in **Oswal Fats & Oils Ltd. Vs Additional Commr. (Admn.), Bareilly Division, Bareilly & others**[4] has held that the court is duty bound to deny relief to persons mischievously approaching it with unclean hands. The relevant portion reads as under:

> "20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person."

25) Hon'ble Apex Court in **Arunima Baruah Vs. Union of India**[2] has observed that the court has jurisdiction to deny equitable relief when the complainant does not approach

the court with a pair of clean hands. Paragraphs no. 12 and 14 of the judgment are relevant in the context of present case. The same are excerpted hereunder for reference:

> "12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the *lis*, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the *lis* between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.
>
> 14. In Halsbury's Laws of England, Fourth Edition, Vol. 16, pages 874- 876, the law is stated in the following terms:
>
> > "1303. He who seeks equity must do equity.- In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.
> >
> > *** *** ***
> >
> > 1305. He who comes into equity must come with clean hands. A court of equity refuses relief to a plaintiff whose conduct in regard to the subject matter of the litigation has been improper. This was formerly expressed by the maxim "he who has committed iniquity shall not have equity", and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may

not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

26) Their Lordships of Hon'ble Apex Court in **Dalip Singh Vs State of Uttar Pradesh & others**[1] have held that a party which has misled the court in passing an order in its favour is not entitled to be heard on the merits of the case. If there is suppression of material facts or twisted facts have been placed before the Court then the Court will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. Relevant paragraphs of the judgment are excerpted hereunder:

"6. In S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others, (1994) 1 SCC 1, the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In Prestige Lights Ltd. V. State Bank of India (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in R v Kensington Income Tax Commissioners (1917) 1 K.B. 486 (CA), and observed:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses

> relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

27) Thus, in the opinion of this Court modification application is liable to be dismissed at the threshold owing to suppression of the facts and disentitles the applicant to any relief, equitable or otherwise.

CONSTITUTION OF BENCH

28) Admittedly, the Division Bench of Hon'ble the Chief Justice and Hon'ble Justice R.C. Khulbe, while hearing WP(PIL) No.63 of 2020 had opined that the applicant should move a modification application seeking modification of judgment and order dated 19.06.2020, if he is aggrieved. On such advice, the applicant moved the present modification application, whereafter a Bench was constituted by Hon'ble the Chief Justice, comprising himself and me (Lok Pal Singh, J.). It is pertinent to mention that the judgment sought to be modified was delivered by the Division Bench comprising of Hon'ble Rajiv Sharma, ACJ and me (Lok Pal Singh, J.). In my firm opinion, Hon'ble Chief Justice by giving opinion to the applicant Munawar Ali in WP(PIL) no. 63 of 2020 to file modification application, has expressed his view to the effect that judgment and order dated 19.06.2020 is liable to be modified. In such a situation, Hon'ble the Chief Justice should not have constituted the present Bench comprising himself on the principle of natural justice *"Nemo iudex in causa sua"*, i.e. no person shall be a judge in his own cause. Though Hon'ble the Chief Justice has no direct or indirect connection in the

matter but the fact remains that he has expressed his view at the time of hearing WP(PIL) no. 63 of 2020.

29) Hon'ble Apex Court in **Ashok Kumar Yadav & ors. v. State of Haryana & Ors.**[6] has held that no person should adjudicate a dispute which he or she has dealt with in any capacity.

> 16. We agree with the petitioners that it is one of the fundamental principles of our juris SC prudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is ―in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting‖. The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power strict sense is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a Welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forest Service in ***A.K. Kraipak***. This Court emphasized that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown

> that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close be the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

LOCUS STANDI OF APPLICANT TO MAINTAIN THE MODIFICATION APPLICATION

30) According to Black's Law Dictionary *locus standi* means the right to bring an action or to be heard in given forum. If a citizen wants to challenge a law, the citizen must first show that he or she is experiencing harm as a result of that law. People cannot challenge laws just because they think that those laws might harm other people. In the instant case, the applicant has failed to prove that he has suffered any legal grievance or the decision so pronounced has wrongfully deprived him of something or wrongfully refused him something.

31) In **S.P. Gupta and others Vs President of India and others**[7], Justice Bhagwati (as he then was) speaking for the Bench quoted the famous words of Holmes J. in Northern Security Co. Vs United Sates (1903) 193 US 197. The same are reproduced as under:

> "Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend."

CASTING ASPERSIONS UPON THE COURT

32) During the course of argument when queries were raised, learned counsel appearing for the applicant stated that –

यदि आप मुझे रिलिफ नही देना चाहते हैं तो मेरा प्रार्थना पत्र खारिज कर दिजिए (if a member of the Division Bench (Justice Lok Pal Singh) is not inclined to grant any relief to the applicant, the application should be dismissed). I objected that such a statement of Senior Counsel Mr. T.A. Khan is contemptuous. Hon'ble the Chief Justice has intervened and said – मिस्टर खान आप बुजुर्ग अधिवक्ता हैं, आपको कोर्ट की मर्यादा का ध्यान रखना चाहिए (Mr. Khan you are a senior counsel and you should maintain dignity of the court). Despite the intervention of the Hon'ble the Chief Justice, Mr. Khan did not utter a single word of apology and remained adamant. The statement made by learned counsel for the applicant that *if a member of the Division Bench (Justice Lok Pal Singh) is not inclined to grant any relief to the applicant, the modification application should be dismissed,* amounts to withdrawal of his claim and disentitles the applicant for grant of any relief. As soon as such statement was made by the learned counsel for the applicant, the application should have been dismissed at the threshold. Such statement of applicant's counsel amounts to abandonment of the claim and it would be considered as withdrawal of claim, as enshrined in Order 23 Rule 1 CPC.

33) In **M.B. Sanghi v. High Court of Punjab & Haryana**[5] this Court took notice of the growing tendency amongst some of the advocates of adopting a defiant attitude and casting aspersions having failed to persuade the Court to grant an order in the terms they expect. Holding the advocate guilty of contempt, Ahmadi, J. observed: (SCC p. 602, para 2) CONT. CAS (C) 165/2008 Page 50 of 118

> "The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalize which would shake the

confidence of the litigating public in the system, the damage caused is not only to the reputation of the Judge concerned but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the Judge concerned but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the CONT. CAS (C) 165/2008 Page 51 of 118 executive or the legislature but also from those who are an integral part of the system." (emphasis supplied) Again, in Vinay Chandra Mishra, Re [(1995) 2 SCC 584] this Court observed: (SCC p. 616, paras 37-38)

"37. To resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scenes in the court, to address him by losing temper are all acts calculated to interfere with and obstruct the course of justice. Such acts tend to overawe the court and to prevent it from performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice.

38. The stance taken by the contemner is that he was performing his duty as an outspoken and fearless member of the Bar. He seems to be labouring CONT. CAS (C) 165/2008 Page 52 of 118 under a grave misunderstanding. Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the court, presentation of correct facts and law with a balanced mind and without overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentleman first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the court."

(emphasis supplied)

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.

36) In the result, modification application stands rejected.

(Lok Pal Singh, J.) **(Ramesh Ranganathan, C.J.)**

22.07.2020

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