

S/L 2
11.10.2022
Court. No. 28
*Sourav/
Swayan/
PA*

**WPA (P) 292 of 2021
With
IA No: CAN 1 of 2022**

**Sabuj Mancha & Anr.
Vs.
The State of West Bengal & Ors.**

*Mr. R. N. Chakraborty
Mr. A. De*

...for the Petitioner.

*Mr. Tapan Kumar Mukherjee
Ms. Saheli Mukherjee*

...for the State.

*Mr. N. C. Bihani
Mrs. P.B. Bihani
Ms. K. Singh*

...for W.B.P.C.B.

*Mr. Biswaroop Bhattacharyya
Ms. Mayuri Ghosh
Ms. Madhushri Dutta
Ms. Easha Manchanda
Mr. Arnab Sengupta
Mr. Debarshi Dhar*

...for the Added Respondents.

CAN 1 of 2022 has been filed in this public interest litigation praying the applicants be added as party respondents and for permission to trade and sell in green firecrackers during the ensuing festive season, that is, Diwali, Kali Puja and Chatt Puja.

At the outset, we direct the applicants to be added as respondents to the writ petition. Cause title of the writ petition be amended accordingly in the course of the day.

Copy of the writ petition be also handed over to them.

Mr. Chakraborty, learned Counsel for the writ petitioner submits the directions given by the Apex Court in ***Arjun Gopal & Ors. Vs. Union of India & Ors.***¹ have been flagrantly violated in the State of West Bengal. No mechanism has been formulated either by the State of West Bengal or by the State Pollution Control Board for ensuring sale and bursting of green crackers only. This has resulted in severe noise and air pollution in the city and other parts of the State in previous years. Hence, he prays there should be a total ban on the sale of crackers in the State.

Mr. Bhattacharyya, learned Counsel for the added respondent Byabasayee Samity submits similar issue had fallen for consideration before the Apex Court in Civil Appeal No. 6561 of 2021. After considering the rival submissions, the Apex Court had set aside the order of total ban on firecrackers passed by this Court in WPA No. 282 of 2021 and remanded the matter for consideration of issuance of appropriate directions upon the State of West Bengal to ensure importation, sale and bursting of green crackers only in the State. Pursuant thereto, a co-ordinate Bench of this Court had directed the Home Secretary and the Commissioners and the Superintendent of Police of the concerned Districts in the State to regulate importation, sale and bursting of crackers. He, therefore, opposes the prayer for total ban of firecrackers.

¹ (2019) 13 SCC 523

Mr. Bihani, learned Counsel for the Pollution Control Board submits his client has issued directions vide Memo No. 321-3L/WPB-E(VI)/2020 dated 26.10.2021 permitting sale and bursting of green crackers only in the State of West Bengal on specified dates within the time frame as stipulated in the notification.

Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader submits appropriate steps have been taken for implementation of the directions issued by this Court in its order dated 03.11.2021 and compliance report in that regard has been filed.

In view of the directions in *Arjun Gopal & Ors. (Supra)* and the subsequent order of the Apex Court in *Goutam Roy and Another Vs. The State of West Bengal and Others*², parameters with regard to sale and bursting of crackers in the State of West Bengal are not in dispute. What is agitated before us is the mechanism for implementation of the directions of the Apex Court in the aforesaid decisions. While petitioner has strenuously argued the restrictions on sale and bursting of crackers in the State is merely theoretical, learned Counsel for Pollution Control Board and the State of West Bengal argues the directions had been duly implemented in the past.

In *Goutam Roy and Another (Supra)* the Apex Court while setting aside a direction on total ban of

² 2021 SCC Online SC 3238

firecrackers recorded the mechanism in place for ensuring the sale and bursting of green crackers as follows:-

“.....

regarding the question/issue of ascertainment by police and/or law enforcement agencies whether the crackers are green crackers or not, comprehensive directions and guidelines are available on the web portals of CSIR-NEERI and PESO and also the green firecrackers contains green logos of CSIR-NEERI and PESO as well as QR codes engrafted on the boxes which can be easily scanned on the NEFRI mobile app to verify the contents used in making those crackers. Moreover, this list of manufactures, those which are engaged with the manufacturing of only firecrackers along with their relevant certificates are also available for online verification, on real time basis, on the web portals of CSIR-NEERI and PESO. As such, the apprehension posed by the Hon'ble High Court at Calcutta to the effect that there is no mechanism in place at present to ascertain whether the crackers being sold or burst/lighted are only green crackers, complying with the norms as set in place by the relevant certifying body, and further it would be an impossible task for the police and/or law enforcement agencies to ascertain the veracity of the certificates of the crackers which are being used by the general public at the time of these festivals, irrespective of the classification under which they are sold, is completely vague and baseless, without any rational and reasonable basis.”

After recording the aforesaid mechanism, the Apex Court remanded the matter before this Court for considering the issue of implementation of the aforesaid mechanism.

Pursuant to the remand by the Apex Court, this Court by order dated 03.11.2021 affixed responsibility for enforcement of the orders of the Apex Court as well as the NGT on the Home Secretary and the Commissioners and the Superintendent of Police of the concerned Districts in the State.

It may be apposite to note West Bengal Pollution Control Board vide memo dated 26.10.2021 had already passed the following directions:-

“1. There shall be a complete ban on the sale and bursting of all kinds of firecrackers, except green crackers in the State of West Bengal, till further orders in this respect.

2. In the State of West Bengal only green crackers can be sold and bursting of such crackers shall be allowed for (i) two hours during Deepawali festival from 8 p.m. to 10 p.m. (ii) two hours during Chatt Puja from 6 a.m. to 8 a.m. (iii) 35 minutes during Christmas and New Years' eve from 11.55 p.m. to 12.30 a.m.

3. Other than the above festivals, prior permission of the District Magistrates/ Commissioners of Police/Superintendents of Police shall be required for use of only green crackers for a limited period (not more than two hours) in the State of West Bengal.

4. In addition to the above, there shall be strict compliance of all terms and conditions mentioned in the order passed by the Hon'ble Supreme Court of India vide Judgment dated 23.10. 2018 in W.P. (C) No. 728 of 2015 and orders passed by the Hon'ble NGT dated 09.11.2020 and 01.12.2020 passed in O.A. No. 249/2020.

The District Magistrates and Commissioners of Police/Superintendents of Police shall implement the aforesaid directions. Daily action taken report is to be submitted to West Bengal Pollution Control Board in the prescribed proforma.”

This memo, *inter alia*, came to be challenged in the present writ petition but no order of stay has been passed thereon.

Learned Counsels for Pollution Control Board and the State of West Bengal assures this Court that the directions given by the Apex Court in *Goutam Roy and Another (Supra)* as well as this Court vide order dated 03.11.2021 shall be scrupulously implemented during the ensuing festive season.

Mechanism to determine which crackers can be treated as green crackers has already been spelt out by the Apex Court in *Goutam Roy and Another (Supra)*. It shall be incumbent on the Pollution Control Board as well as the police authorities to ensure that there is no importation, sale or bursting of crackers other than the green crackers bearing

QR Code as specified in ***Goutam Roy and Another (Supra)*** in the State of West Bengal.

In order to ensure the effective implementation of the aforesaid directions, we direct the Pollution Control Board and the State of West Bengal to take appropriate measures including the following:-

- a) No firecrackers other than green crackers bearing QR Code would be sold in the Bazi-Bazar which is proposed to be held in Kolkata on and from 18.10.2022.
- b) State Pollution Control Board as well as the Commissioner of Police, Kolkata shall deploy appropriate number of personnel in the Bazi Bazar to ensure implementation of the aforesaid direction.
- c) The representatives of the State Pollution Control Board and the police personnel shall be at liberty to inspect the firecrackers which are sold at Bazi Bazar and the police personnel shall seize any banned firecrackers which are offered for sale in the bazar.
- d) Representatives of PESO/NEERI shall also be present at the Bazi Bazar and assist the Pollution Control Board/ police personnel to determine whether the firecrackers which are offered for sale bearing the requisite QR Code;

- e) Similar exercise shall be undertaken by Pollution Control Board and police authorities to prevent importation and sale of firecrackers other than green firecrackers bearing QR Code in any place in the State of West Bengal;
- f) All necessary steps shall be taken by the police authorities/PCB Officials to ensure only green crackers are burst during the festive season strictly in compliance with the directions of the Pollution Control Board vide Memo No. 321-3L/WPB-E(VI)/2020 dated 26.10.2021.
- g) State Pollution Control Board and the State of West Bengal shall undertake public awareness measures including issuance of advertisements in newspapers, announcements on radio/television/social media platforms etc. to spread awareness with regard to restrictions on sale and bursting of crackers during festive season and its beneficial impact on pollution and environment. It shall also make members of the public aware of the penal consequences arising from sale and bursting of banned crackers.

These directions are illustrative in nature and shall be in addition to any other direction or measure taken/that may take by the Pollution Control Board and the State of West

Bengal to ensure the sale and bursting of green crackers only in the State of West Bengal.

We hope and trust that the festival of lights does not become a cause for concern where the demon of pollution poisons our air and leads to irreparable damage to the health of the population at large.

State of West Bengal and the Pollution Control Board shall submit report with regard to the steps taken by them for strict implementation of the aforesaid directions relating to sale and bursting of green crackers alone on the adjourned date.

Let the matter appear one week after Puja Vacation before the appropriate Bench.

(Apurba Sinha Ray, J.)

(Joymalya Bagchi, J.)