

SUPREME COURT OF INDIA

Arjun Gopal

Vs.

Union of India

WP(Civil)No.728 of 2015

(A.K.Sikri,J., Abhay Manohar Sapre and Ashok Bhushan,JJ.,)

09.10.2017

JUDGMENT

A.K.Sikri,J.,

1. Arjun Gopal and others (hereinafter referred to as the petitioners) have filed Writ Petition (Civil) No. 728 of 2015 seeking wide ranging reliefs against the use of fireworks (including fire crackers), prevention of harmful crop burning, dumping of malba and other further steps towards environmental purity. Along with this, the petitioners had also filed a miscellaneous application seeking interim relief, which was numbered as IA No.4. The petitioners had pressed for interim relief in respect of fireworks, drawing the attention of this Court to the emergent situation that has resulted in worsening the air quality standards in Delhi and National Capital Region (NCR) because of extensive use of fireworks, including fire crackers during Diwali last year. It was pointed out that onset of winter itself deteriorates air quality in this region and it gets aggravated because of festival/marriage season that occurs during these very months. Taking note of the aforesaid factors, particularly impact of fireworks on the ambient air and unhealthy effects thereof which had created unprecedented situation in Delhi, with air pollution going up at alarming levels and making it the most polluted city in the world. Air pollution had gone up to 29 times above, the World Health Organisation (WHO) standards. In the aforesaid scenario, this Court deemed it proper to pass certain directions vide its order dated November 11, 2016 in IA No.4. Snapping the supply chain of fireworks was considered to be the more practical way of addressing the menace instead of banning the burning the crackers by individuals as it would have been difficult to monitor and enforce the burning of the crackers by the citizenry.

2. In paragraph 18 of the Order dated November 11, 2016 it was clarified that much was left to be heard, discussed and said about the rival claims and contentions. However, the Court hastened to add that harmful effects of fireworks on the ambient air and the lungs, eyes and ears of people was also an acknowledged fact, as can be seen from the following portion of the said paragraph:

“18. We are aware that we are only issuing interim directions, and much is left to be heard, discussed and said about the rival claims and contentions. What is however indisputable is that the harmful effects of fireworks on the ambient air and the lungs, eyes and ears of people. What is also obvious is the extreme nuisance, noise the fireworks cause to citizens particularly the ailing and the aged. Therefore, though much can be argued as always about the significance and even joy of bursting fireworks, but at the same time (sic), prima facie, a just constitutional balance must overwhelmingly prioritize the harmful effects of this hazardous air on present and future generations, irreversible and imperceptible as they are, over the immediate commercial constraints of the manufacturers and suppliers of fireworks...”

3. In the process, this Court also recognised the duty of the State to ensure a healthy environment in terms of Article 48A of the Constitution of India as well as the duty of the citizens to ensure the same under Article 51A(g) of the Constitution. The Court also reminded itself of the “precautionary principle” which mandates that where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the order the Court had taken note of the deleterious effects of air pollution on the health of the people, particularly the children. Going by all these considerations, the Court passed the following directions:

“19. We thus consider it inappropriate that explosives which are used as fireworks should be available in the market in the NCR till further orders. The mechanism of the law in this regard is clear. Rule 118 of the Explosive Rules, 2008, framed under the Explosives Act, 1884, provides for the manner in which licenses issued under the Explosives Act to store and sell explosives could be suspended or cancelled. Sub-Rule (5) thereof specifically confers on the Central Government a power to suspend or cancel a license if it considers that it is in public interest. This provision also makes it clear that an opportunity to hear the licensee could be dispensed with if the Central Government considers that in public interest. This Court finds that the grave air quality situation in NCR is one such case, where this Court, can intervene and suspend the licenses to store and sell fireworks in the NCR. We direct the Central Government to:

- (i) Suspend all such licenses as permit sale of fireworks, wholesale and retail within the territory of NCR.
- (ii) The suspension shall remain in force till further orders of this Court.
- (iii) No such licenses shall be granted or renewed till further orders.

20. In addition to the above, we direct the CPCB to study and prepare a report on the harmful effects of the materials which are currently being used in the manufacture of

fireworks. The report shall be submitted within a period of three months to this Court.”

4. Since direction was given to the Central Pollution Control Board (CPCB) to study and prepare a report of the harmful effects of the materials which are currently being used in the manufacture of fireworks and submit a report within three months, the matter was taken up for consideration thereafter from time to time. It is not necessary to give the details of the orders which were passed in this behalf. In the meantime, the manufacturers of fire crackers as well as licence holders also filed applications for modification of the said interim order; one such application being – IA No. 52448 of 2017, which has culminated in passing the orders dated September 12, 2017. A perusal of this order clinchingly reveals that the Court has recognised the serious problem of air pollution in Delhi and NCR and the manner in which it has worsened due to fireworks during Diwali days in the year 2016. The Court also took note of the steps which were taken from time to time by various authorities to reduce air pollution and after the passing of the aforesaid order dated November 11, 2016. The Court also discussed the provisions of the Explosives Act, 1884 and the Explosive Rules, 2008 framed thereunder and further steps which were required to be taken in this behalf.

5. In this Order as well, the Court has acknowledged the dire need for improving air quality, which was the result of various reasons (burning of crackers/ fireworks being one of them) as well as importance of elimination of air pollution which was paramount for the health of the residents of Delhi and NCR. The Court also accepted that one of the possible methods for reducing it during Diwali is by continuing the suspension of licences for the sale of fireworks, thereby implicitly prohibiting the bursting of fireworks. However, at the same time, the Court expressed the opinion that continuing the suspension of licences might be too radical a step to take for the present. It was deemed appropriate to adopt a graded and balanced approach, which is necessary that will reduce and gradually eliminate air pollution in Delhi and in the NCR, caused by the bursting of fireworks. In the process, the Court took into consideration the interest of those who had already been granted a valid permanent licence to possess and sell fireworks in Delhi and the NCR. We would like to reproduce the following paragraphs from the said order:

“67. The right to health coupled with the right to breathe clean air leaves no manner of doubt that it is important that air pollution deserves to be eliminated and one of the possible methods of reducing it during Diwali is by continuing the suspension of licences for the sale of fireworks and therefore implicitly, prohibiting the bursting of fireworks.

68. In our considered opinion, continuing the suspension of licences might be too radical a step to take for the present - a graded and balanced approach is necessary that will reduce and gradually eliminate air pollution in Delhi and in the NCR caused by the bursting of fireworks. At the same time it is necessary to ensure that injustice is not caused to those who have already been granted a valid permanent licence to possess and sell fireworks in Delhi and the NCR. The graded and balanced approach

is not intended to dilute our primary concern which is and remains the health of everybody and the human right to breathe good quality air or at least not be compelled to breathe poor quality air. Generally speaking this must take precedence over the commercial or other interest of the applicant and those granted a permanent licence to possess and sell fireworks.

69. But, from the material before us, it cannot be said with any great degree of certainty that the extremely poor quality of air in Delhi in November and December 2016 was the result only of bursting fireworks around Diwali. Certainly, there were other causes as well, but even so the contribution of the bursting of fireworks cannot be glossed over. Unfortunately, neither is it possible to give an accurate or relative assessment of the contribution of the other identified factors nor the contribution of bursting fireworks to the poor air quality in Delhi and in the NCR. Consequently, a complete ban on the sale of fireworks would be an extreme step that might not be fully warranted by the facts available to us. There is, therefore, some justification for modifying the interim order passed on 11th November, 2016 and lifting the suspension of the permanent licences.

70. At the same time, it cannot be forgotten that admittedly there is a huge quantity of fireworks in Delhi and in the NCR and the figure has been provided to us by the applicant. Similarly, there can be no doubt that the Delhi Police had issued a large number of temporary licences in 2016 and it would not be unreasonable to assume that around and during Diwali, there would have been some illegal temporary shops set up, whether known or not known to the police. We do not have the figures with regard to the NCR, but we assume that like in Delhi, a large number of temporary licences have been issued for the possession and sale of fireworks. Therefore, there is a need to regulate the availability and sale of fireworks in Delhi and the NCR.”

6. It is followed by the following directions:

“71. As mentioned above, the health of the people in Delhi and in the NCR must take precedence over any commercial or other interest of the applicant or any of the permanent licensees and, therefore, a graded regulation is necessary which would eventually result in a prohibition. Taking all factors into consideration, we are of the view that the following orders and directions are required to be issued and we do so:

(1) The directions issued by this Court in Sadar Bazar Fire Works (Pucca Shop) Association shall stand partially modified to the extent that they are not in conformity with the Explosives Rules which shall be implemented in full by the concerned authorities. Safety from fire hazards is one of our concerns in this regard.

(2) Specifically, Rule 15 relating to marking on explosives and packages and Rule 84 relating to temporary shops for possession and sale of fireworks during festivals of the Explosives Rules shall be strictly enforced. This should not be construed to mean

that the other Rules need not be enforced - all Rules should be enforced. But if the fireworks do not conform to the requirements of Rules 15 and 84, they cannot be sold in the NCR, including Delhi and this prohibition is absolute.

(3) The directions issued and restrictions imposed in the order passed by this Court on 18th July, 2005 in Noise Pollution (V) shall continue to be in force.

(4) The concerned police authorities and the District Magistrates will ensure that fireworks are not burst in silence zones that is, an area at least 100 meters away from hospitals, nursing homes, primary and district health-care centres, educational institutions, courts, religious places or any other area that may be declared as a silence zone by the concerned authorities.

(5) The Delhi Police is directed to reduce the grant of temporary licences by about 50% of the number of licences granted in 2016. The number of temporary licences should be capped at 500. Similarly, the States in the NCR are restrained from granting more than 50% of the number of temporary licences granted in 2016. The area of distribution of the temporary licences is entirely for the authorities to decide.

(6) The Union of India will ensure strict compliance with the Notification GSR No. 64(E) dated 27th January, 1992 regarding the ban on import of fireworks. The Union of India is at liberty to update and revise this notification in view of the passage of time and further knowledge gained over the last 25 years and issue a fresh notification, if necessary.

(7) The Department of Education of the Government of NCT of Delhi and the corresponding Department in other States in the NCR shall immediately formulate a plan of action, in not more than 15 days, to reach out to children in all the schools through the school staff, volunteers and NGOs to sensitize and educate school children on the health hazards and ill-effects of breathing polluted air, including air that is polluted due to fireworks. School children should be encouraged to reduce, if not eliminate, the bursting of fireworks as a part of any festivities.

(8) The Government of NCT of Delhi and other States in the NCR may consider interacting with established medical institutions for issuing advisories cautioning people about the health hazards of bursting fireworks.

(9) The interim direction issued by this Court on 31st July, 2017 prohibiting the use of compounds of antimony, lithium, mercury, arsenic and lead in the manufacture of fireworks is made absolute. In addition, the use of strontium chromate in the manufacture of fireworks is prohibited.

(10) Fireworks containing aluminium, sulphur, potassium and barium may be sold in Delhi and in the NCR, provided the composition already approved by PESO is

maintained. It is the responsibility of PESO to ensure compliance of the standards it has formulated.

(11) Since there are enough fireworks available for sale in Delhi and the NCR, the transport of fireworks into Delhi and the NCR from outside the region is prohibited and the concerned law enforcement authorities will ensure that there is no further entry of fireworks into Delhi and the NCR till further orders. In our opinion, even 50,00,000 kg of fireworks is far more than enough for Dussehra and Diwali in 2017. The permanent licensees are at liberty to exhaust their existing stock of fireworks in Delhi and the NCR and, if that is not possible, take measures to transport the stocks outside Delhi and the NCR.

(12) The suspension of permanent licences as directed by the order dated 11th November, 2016 is lifted for the time being. This might require a review after Diwali depending on the ambient air quality post Diwali. However, it is made explicit that the sale of fireworks by the permanent licensees must conform to the directions given above and must be fully in compliance with the Explosives Rules. We were informed that the permanent licences were issued by PESO and therefore the responsibility is on PESO to ensure compliance.

(13) While lifting the suspension on the permanent licences already granted, we put these licensees on notice for Dussehra and Diwali in 2018 that they will be permitted to possess and sell only 50% of the quantity permitted in 2017 and that this will substantially reduce over the next couple of years. The permanent licensees are at liberty to file objections to this proposed direction within 30 days from today and thereafter the objections if any will be heard and decided. If no objections are filed, this direction will become absolute without any further reference to any licensee.

(14) Since there is a lack of clarity on the safety limits of various metals and constituents used in fireworks, a research study must be jointly carried out by the CPCB and the FDRC laying down appropriate standards for ambient air quality in relation to the bursting of fireworks and the release of their constituents in the air. While Schedule VII of the Environment (Protection) Rules, 1986 does deal with several metals, but as we have seen there are several other metals or constituents of fireworks that have not been studied by the CPCB and no standards have been laid down with regard to the concentration of these metals or constituents in the ambient air. The CPCB has assured us that it will complete the exercise by 15th September, 2017 but keeping in mind its track record subsequent to the order dated 11th November, 2016 this does not seem possible. Therefore, we grant time to the CPCB to come out with definite standards on or before 30th September, 2017.

(15) In any event, a research study also needs to be conducted on the impact of bursting fireworks during Dussehra and Diwali on the health of the people. We, therefore, appoint a Committee to be chaired by the Chairperson of the CPCB and consisting of officers at the appropriate level from the National Physical Laboratory,

Delhi, the Defence Institute of Physiology and Allied Sciences, Timarpur, Delhi, the Indian Institute of Technology-Kanpur, scientists from the State Pollution Control Boards, the Fire Development and Research Centre, Sivakasi and Nagpur and the National Environment Engineering Research Institute (NEERI) nominated by the Chairperson of the CPCB to submit a report in this regard preferably on or before 31st December, 2017.

(16) Keeping in mind the adverse effects of air pollution, the human right to breathe clean air and the human right to health, the Central Government and other authorities should consider encouraging display fireworks through community participation rather than individual bursting of fireworks.”

7. After the aforesaid order is passed, many applications (subject matter of this Order) have been filed seeking modification of some of the aforesaid directions. Pertinently, such applications have come from both sides.

8. As far as the petitioners are concerned, they have filed IA No. 96202 of 2017 with the prayer for modification of the order by removing direction Nos. 5 and 10 to 13. In essence, it is submitted that earlier order dated November 11, 2016, which suspended the issuance of licences in full, be restored. IA No. 95202 of 2017 is filed by manufacturers of the fireworks wherein it is prayed that suspension order dated November 11, 2016 should not have been removed partially, and the said suspension order be lifted in its entirety. IA No. 96755 of 2017 is preferred by the temporary licence holders who are concerned with direction No.1 in the order dated September 12, 2017. Though, the applicants in this application accept the fact that Rule 86 of the Explosive Rules lays down the requirement of distance which is to be maintained by such licensees from other places like schools, hospitals, residences, educational institutions, etc. to ensure that the places from which these crackers are sold do not become fire hazards, submission is that notwithstanding the aforesaid Rule, since the temporary licence holders are allowed to operate within the vicinity for last number of years, they should be granted at least one more year to bring their operations in conformity with the said Rules. In this application they have also sought modification of direction No.5 whereby Delhi Police is directed to reduce the grant of temporary licences by about 50% of the number of licences which were granted in 2016. Request made is that the number should not be reduced drastically by half and reduction should have been much lesser than 50%. IA No. 92862 of 2017 is filed by certain manufacturers of these fireworks with the submission that direction No.11 should be modified and these manufacturers who are having their depots where their stocks of fireworks are lying in the NCR, there should be free flow of transportation of these fireworks between Delhi and NCR. IA No. 94427 of 2017 is an application filed by an NGO seeking impleadment in the writ petition and it has also filed IA No. 94429 of 2017 praying for similar reliefs as that of the petitioners, viz. prohibiting manufacture, suspension/ cancellation of manufacturing licences and prohibiting issuance of temporary licences during Diwali 2017.

9. It is clear from the aforesaid that whereas the petitioners on the one hand want restoration of the order of complete suspension of licences by restoring the Order passed on November 11, 2016, the manufacturers, traders and licence holders of the fireworks/fire crackers want that the relaxation given in the impugned order should be further liberalised. In a way, both the parties are seeking review of the said order by filing these miscellaneous applications.

10. It is a matter of record that all these parties were heard at length before passing the judgment dated September 12, 2017. Moreover, as already pointed out above, even the judgment dated September 12, 2017 accepts the problem of air pollution. No doubt, it mentions that bursting of fire crackers is not the only cause for alarming air pollution in Delhi and NCR, but it is also acknowledged that it is one of the major causes. It is also recorded in the judgment that on bursting of these crackers during Diwali in 2016, the air quality had sharply deteriorated. Notwithstanding the same, the Court deemed it proper to adopt graded approach in reducing and gradually eliminating of air pollution in Delhi and in NCR caused by bursting of fire crackers. Because of this reason, rigours of order dated November 11, 2016 are relaxed to the extent indicated in the said order. In such a scenario, question of further relaxation, as pleaded by the manufacturers and licence holders does not arise. We may point out that M/s. C.A. Sundaram and Neeraj K. Kaul, learned senior counsel as well as other counsel for these applicants had made detailed submissions in this behalf pointing out various difficulties. However, at the same time, it also could not be disputed that these were the submissions which were made when the matter was heard earlier and culminated in the Orders dated September 12, 2017. For this reason, we are not recording the said submissions in detail. We will, however, like to remark that we bestowed our consideration on these submissions but are not inclined to accept the same. The argument of Mr. C.A. Sundaram was that bursting of crackers was not the only cause of air pollution. There were various other reasons attributable to the aforesaid phenomena. He even attempted to demonstrate that the use of fireworks including fire crackers contributed negligibly in worsening the air quality standards in Delhi and NCR. However, the material that was relied upon in support of this submission may not be relevant in the context. These studies indicate the air quality standards in Delhi and NCR which generally prevail throughout the year. It cannot be denied that there are various other factors which contribute to the air pollution in Delhi and NCR. There is a need to tackle those factors as well. However, what is the immediate impact of use of fireworks and fire crackers bursting during Diwali is an altogether different aspect. To this effect, nothing relevant is produced. On the contrary, we have the direct evidence of deterioration of air quality at alarming levels, which happens every year. As already pointed out above, burning of these fire crackers during Diwali in 2016 had shot up pm levels by three times, making Delhi the worst city in the world, insofar as air pollution is concerned. Direct and immediate cause thereof was burning of crackers during Diwali. It is interesting to note that every year before Diwali there are attempts on the part of the Government (Ministry of Environment, Government of India as well as Delhi Government), Media, NGOs and various other groups to create awareness in the general public about the ill-effects of bursting of these crackers. Campaigns are held in the schools wherein children are discouraged to have fireworks. Thus, there is virtually a consensus in the society that crackers should not be burnt during Diwali, which can be celebrated with equal fervour by various other means as well. Irony is that when causes are brought in the

Court, there is resistance from certain quarters. It cannot be denied that there are adequate statutory provisions, aid whereof can be taken to ban the sale of these crackers. It is one of the functions of the judges, in a democracy, to bridge the gap between law and the society. Here, fortunately, there is no such gap and the Court is only become facilitator in invoking the law to fulfill the need of the society.

11. Insofar as argument of Mr. Neeraj K. Kaul, learned senior counsel who appeared for temporary licence holders in I.A. No. 96755 of 2017, suffice it to state that Explosive Rules have to be strictly followed and complied with. It is for this reason that Mr. Kaul could not find fault with Direction No. 1 in the Orders dated September 12, 2017. These Rules came into force in the year 2008. They are in operation for almost 9 years. Giving further time to these licence holders for complying with the said statutory provisions is out of question.

12. Accordingly, IA Nos. 92862, 95202 and 96755 of 2017 are dismissed.

13. Coming to IA No. 96202 of 2017, we may state at the cost of repetition that the petitioners in the writ petition were also heard when the aforesaid order was passed. Further, we are not sitting in appeal over the judgment dated September 12, 2017. However, learned counsel for the petitioner has made an emphatic and passionate plea on the following three counts:

“(a) In the judgment dated September 12, 2017 the Court has chosen to adopt graded approach. However, at that time it was not within the knowledge of the petitioners as well as the Court that the CPCB had taken a stand, nearly 20 years ago, that Sulphur in fireworks should not be permitted as Sulphur on combustion produces Sulphur Dioxide and the same is extremely harmful to health. The CPCB has in the said proceedings stated that between 9:00 pm to midnight on Diwali day the levels of Sulphur Dioxide content in the air is dangerously high. Moreover, all the above authorities were also unanimous in their view that crackers should only be burst in designated places. Also the CPCB had specifically stated that joined crackers should be banned by way of their letter dated November 04, 1996 to the Commissioner of Police. Neither the CPCB nor the Delhi Police divulged this fact to this Court. Insofar as this plea is concerned, except that similar attempt made in proceeding before Delhi High Court 20 years’ ago, no fresh material has been brought on record. The stand taken by the CPCB at that time was the same which was taken before this Court when Orders dated November 11, 2016 or September 12, 2017 were passed. CPCB, therefore, has been consistent in its stand. This was stressed by Mr. Panjwani, learned counsel appearing for CPCB before us as well, who even took the decision of supporting the ban. Therefore, in substance, it is not the new material which is brought. On the contrary, we find that the main objective behind this move, by making reference to the aforesaid proceedings in Delhi High Court and in the process filing one particular annexure which was the report submitted at that time to the Court, was an attempt to take the matter away from a particular Bench. This is not a healthy practice. We denounce the same and place on record our strongest

condemnation. We are leaving the matter at that simply because of the reason that insofar as present petition is concerned it has raised a very important public cause and it needs serious and adequate consideration.

(b) Another submission was that when the Order dated November 11, 2016 was passed suspending the licences, the primary reason for passing such an order was rising of pm levels at alarming proportion because of burning of crackers during Diwali, which had direct impact thereupon. Insofar as harmful effect of the materials used in the manufacture of fireworks is concerned, that is another aspect and it is on this aspect that the CPCB was directed to carry out further studies. Therefore, insofar as suspension of the licences is concerned, there was no reason to relax that condition.

(c) It was further pointed out that the previous Order dated November 11, 2016 was passed immediately after Diwali. But the effect of that order would not be discernible as in the judgment dated September 12, 2017, the said order stands relaxed. It was pleaded that at least for one Diwali season this suspension should have continued in order to find out the effect thereof.”

14. These aspects highlighted by the learned counsel appear to be convincing. We are of the view that the order suspending the licences should be given one chance to test itself in order to find out as to whether there would be positive effect of this suspension, particularly during Diwali period. Insofar as adverse effects of burning of crackers during Diwali are concerned, those have been witnessed year after year. The air quality deteriorates abysmally and alarmingly and the city chokes thereby. It leads to closing the schools and the authorities are compelled to take various measures on emergent basis, when faced with “health emergency” situation. This very situation had occurred on the very next morning after Diwali in the year 2016. It resulted in passing the order dated November 11, 2016. This order prevailed during the year but the impact and effect of this order remains to be tested on Diwali days. Going by these considerations, we are of the opinion that the judgment dated September 12, 2017 passed by this Court should be made effective only from November 01, 2017. To put it clearly, though we are not tweaking with the various directions contained in the Orders dated September 12, 2017, the effect of that Order would not be given during this Diwali and, therefore, we are making it effective only from November 01, 2017. We are conscious of the fact that after the said order was passed, the police may have issued temporary licences. Accordingly, those are suspended forthwith so that there is no further sale of the crackers in Delhi and NCR. Further orders in this behalf can be passed on assessing the situation that would emerge after this Diwali season. IA No. 96202 of 2017 is ordered accordingly.

15. IA Nos. 94427 and 94429 of 2017 stand disposed of in the aforesaid terms.