

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.33208 of 2021

All Odisha Fireworks Dealers Petitioners
Association and Others

Mr. Gautam Mukherji, Senior Advocate
Mr. M. Wright, Advocate
Ms. Ankita Mukherji, Advocate

-versus-

Union of India and Others Opposite Parties

Mr. Ashok Parija, Advocate General (State)
Mr. Debakanta Mohanty, Addl. Government Advocate
Mr. P.K. Parhi, Asst. Solicitor General
Mr. Debasish Tripathy, Central Government Counsel
Mr. Susanta Mishra, Advocate (O.P. No.6)

CORAM:
THE CHIEF JUSTICE
JUSTICE B.P. ROUTRAY

ORDER
01.11.2021

Order No.

03. 1. On 29th October, 2021 a detailed order has been passed by the Supreme Court of India in I.A. No.44727 of 2021 in W.P.(C) 728 of 2015 (*Arjun Gopal vs. Union of India*).
2. Relevant to the present petition are the observations of the Supreme Court in paras 8 and 9 of the said order which read as under:

“8. Considering the fact that earlier directions issued by this Court which have been issued by this Court from time to time in the larger public interest and having found that such use of banned fireworks affects the health of the other innocent citizens including the senior citizens and the children, it is the duty of all the States/State Agencies to see that the directions issued by this Court in the earlier orders reproduced hereinabove are strictly complied with. No authority can be

permitted the violation of the directions issued by this Court and permit banned firecrackers under the guise of celebration. Celebration cannot be at the cost of the other's health. Under the guise of 9 celebration, nobody can be permitted to infringe the right to health of the others, guaranteed under Article 21 of the Constitution of India and nobody can be permitted to play with the life of the others, more particularly the senior citizens and the children. It is made clear that there is no total ban on use of firecrackers. Only those firecrackers are banned, as directed hereinabove, which are found to be injurious to health and affecting the health of the citizens, more particularly the senior citizens and the children.

9. Before passing any further orders and while adjourning the present application, we again reiterate the directions issued by this Court earlier reproduced hereinabove including banning the use of Barium Salts in the firecrackers and manufacturing and selling joined firecrackers and other directions issued by this Court reproduced hereinabove. We direct all the States/Union Territories to see that the directions issued earlier by this Court and issued by this Court today are strictly complied with in its true spirit and in toto. Any lapse on the part of the State Governments/State Agencies and Union Territories shall be viewed very seriously and if it is found that any banned firecrackers are manufactured, sold and used in any particular area, the Chief Secretary of the concerned State(s), the Secretary (Homes) of the concerned State(s) and the Commissioner of Police of the concerned area, District Superintendent of Police of the concerned area and the SHO/Police Officer in-charge of the concerned police station shall be held personally liable. Nobody can be permitted to flout and/or disobey the directions issued 10 by this Court/Courts. Any wilful and deliberate

disobedience shall have to be viewed very seriously.”

3. In para 10 of the said order the Supreme Court has directed to all the States/Union Territories to give due publicity through electronic media/print media/local cable services “to make the people aware and know the directions issued by this Court issued hereinabove with respect to manufacture, use and sale of banned firecrackers.”

4. Pursuant to the orders passed by this Court in the present petition on 29th October, 2021 the Special Relief Commissioner (SRC) heard the present Petitioners and after referring to the orders of the Supreme Court including the aforementioned order dated 29th October, 2021 passed an order on 31st October, 2021 issuing the following directions:

“...In the light of the order dated 29.10.2021 passed by the Hon’ble Supreme Court, the following directions are passed in respect of sale and use of fireworks during the festival of Diwali:

- A. Sale and use of fireworks shall be limited to only “green fireworks” that conform to the definition and formulation as proposed by CSIR-NEERI.
- B. Sale and use of other fireworks shall be completely banned. Sale and use of joined firecrackers (series crackers or *laris*) shall also remain banned.
- C. Only those traders/dealers who obtain and produce a certificate from the PESO, after due inspection of their existing stock, certifying that the green fireworks stocks in their possession conform to the definition and formulation

proposed by CSIR-NEERI and are genuine shall be allowed to sell their products.

- D. Authenticated copy of the PESO certificate granted after due inspection of existing stocks lying in possession of the traders/dealers shall be deposited with the District Administration/Police Commissioner for getting permission to sell the green fireworks.
- E. Traders/dealers who fail to obtain and produce the certificate from PESO shall not be allowed to sell their products, keeping the “precautionary principle” in mind. Mere labeling of fireworks boxes as “green fireworks” and providing QR codes shall not entitle any trader/dealer to sell the same.
- F. Only those retailers who obtain a license from the concerned authorities under the provisions of the Indian Explosive Act, 1884 shall be allowed to sell green fireworks.
- G. Retailers shall be allowed to set up shops and sell green fireworks only in special zones designated by the respective District Administrations/Police Commissionerate.
- H. Green fireworks shall only be sold at designated sites and all COVID-19 protocols shall be strictly followed. Sale of Fireworks on the internet shall be strictly banned.
- I. Wholesale Traders and Retailers shall have to produce original invoices on demand by the District Administration/Police Commissionerate.
- J. The use of fireworks shall be limited to 8:00 pm to 10:00 pm on Diwali day, i.e., 04.11.2021 only. Use of fireworks beyond the said time frame shall be visited with strict penal action.
- K. Violation of any of the aforesaid conditions shall be dealt with strictly and penal action shall be taken in accordance with law.

L. The District Administration/Police Commissionerate is directed to ensure strict compliance with the above conditions.

M. The District Administration/Police Commissionerate shall ensure full & complete compliance of the orders above through proper verification of the documents as mentioned supra and proper enforcement so as to ensure no spurious/unauthorized/banned fire crackers are sold anywhere within their jurisdiction. Further, the local officers shall be personally liable for violations of the orders of Hon'ble Apex Court, Hon'ble National Green Tribunal and Hon'ble High Court of Odisha.”

5. Mr. Mukherjee, learned Senior Counsel for the Petitioners, while welcoming the above order expressed an apprehension that the Petroleum and Explosive Safety Organizations (PESO) may not be able comply with the directions issued in paras C and D above particularly since it has a relatively a small team of officers, and the task before it was rather daunting.

6. It will be open to PESO to expand its team of personnel to implement the directions at para C and D above, considering that this is a festival season.

7. No further directions are called for in the present writ petition and it is disposed of with the above directions.

8. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(B.P. Routray)
Judge