



**Government of Odisha
Office of Special Relief Commissioner**

ORDER

(As per direction of Hon'ble High Court of Odisha in WP(C) No.33208 of 2021)

No. 6076 /R&DM(DM)

Date: 31/10/2021

In exercise of the powers under the Disaster Management Act, 2005, the State Government vide order No. 5659/R dated 30.09.2021 passed the following directions for application across the State:

“With a view to protecting the health of general public and to curb the spread of infection, sale and use of fire crackers shall remain prohibited during this festive month.”

The All Odisha Fireworks Dealers Association preferred a writ petition being W.P.(C) No. 33208 of 2021 before the Hon'ble High Court of Orissa challenging the aforesaid order prohibiting the sale and use of fire crackers in Odisha during the festival of Diwali, which is scheduled to be held on 04.11.2021. The Petitioners therein had sought the following reliefs:

“The petitioner, therefore, prays that this Hon'ble Court be graciously pleased to admit this writ application, issue notice to the Opposite Parties and after hearing the parties issue appropriate writ/writs/order/direction/ directing the Opposite Party to modify its direction vide Annexure-2 to allow the sale and use of green firecrackers during the upcoming festive season in terms of the order of the Hon'ble Supreme Court in the case of Arjun Gopal and the order dated 01.12.20 by the National Green Tribunal is O.A.24912020;

AND to pass appropriate order/direction to allow the petitioners a short window to sell their stock of firecrackers within a specified period by granting them the requisite permissions and licenses.

AND to pass such other order/orders and to issue such other writ/writs as would afford complete relief to the petitioner”

The Hon'ble High Court, on 29.10.2021, in the aforesaid writ petition was pleased to pass the following directions:

“6. In view of the above affidavit, and in the light of the fact that the Supreme Court of India is stated to be still seized of the applications in the Arjun Gopal case, this Court issues the following directions:

- (i) The SRC will hear the Petitioners tomorrow, i.e. 30th October, 2021 at 11 am in his office.*
- (ii) The SRC will take into account the orders passed by the Supreme Court of India in the Arjun Gopal case including any order that may be passed today, the guidelines issued by the NGT and further the current status of the prevalence of the Covid-19.*
- (iii) The SRC will conclude the hearing tomorrow itself i.e. 30th October, 2021 by 1 pm and pass a reasoned order on the Petitioners" request on or before 1st November, 2021 10.30 am with a copy thereof being made available to the Petitioners and another being presented before this Court.”*

In obedience to the orders of the Hon'ble High Court, the Special Relief Commissioner granted an opportunity of hearing to the Petitioners in the writ petition at 11:00 am on 30.10.2021. The hearing was attended by the following persons:

1. Sri Pradeep Jena, IAS
Special Relief Commissioner &
Addl. Chief Secretary to Govt.
Disaster Management
2. Sri Soumendra Ku. Priyadarshi, IPS
Commissioner of Police
Bhubaneswar- Cuttack
3. Prof. C.B.K. Mohanty
D.M.E.T
4. Sri Bishikeshan Nayak
Sr. Environmental Scientist
State Pollution Control Board, Bhubaneswar
5. Sri Debakanta Mohanty
Addl. Govt. Advocate
6. Sri Arnav Behera
Advocate
7. Sri Goutam Mukharjee
Senior Advocate for Petitioners

8. Sri Mark Wright
Advocate for Petitioners
9. Sri Manoj Kumar Sahoo
Representative of Odisha Fire Crackers Association
10. Sri Trilochan Pattnaik
Representative of Odisha Fire Crackers Association
11. Sri Bishu Prasad Sahoo
Representative of Odisha Fire Crackers Association
12. Sri Aswini Kumar Behera
Representative of Odisha Fire Crackers Association

Sh. Gautam Mukherji, Senior Advocate, placed his submissions on behalf of the All Odisha Fireworks Dealers Association. He also submitted a convenience compilation of judgments and orders of the Hon'ble Supreme Court, the Hon'ble National Green Tribunal and the Hon'ble High Court of Orissa.

Sh. Mukherji emphasised that use of fireworks is an expression of celebration which is protected as a fundamental right. However, he submitted that the Right to Life and Healthy Living under Article 21 must undeniably be prioritised. He submitted that the State Government ought not to ban fireworks altogether but must make a balanced approach to phase out hazardous fireworks.

He thereafter, referred to the judgment of the Hon'ble Supreme Court in the case of Arjun Gopal v. Union of India, (2019) 13 SCC 523, and the judgment of the Hon'ble National Green Tribunal dated 01.12.2020. He emphasized that whereas, the Hon'ble National Green Tribunal has banned fireworks only in towns/ cities where the ambient air quality falls under the 'poor' category, and restricted the use of fireworks to only green fireworks in towns/ cities where air quality is 'moderate', the air quality in the State of Odisha as per the data from the State Pollution Control Board has never been worse than 'moderate'.

He then referred to the order dated 29.10.2021 passed by the Hon'ble Supreme Court of India wherein the Hon'ble Court has clarified that there is no total ban on use of fireworks. However, only those fireworks which are termed as "green fireworks" have been permitted for sale and use. He also referred to the affidavit filed by PESO before the Hon'ble High Court in W.P.(C) No. 33208 of 2021 wherein PESO has stated that it has no objection to the sale and use of green fireworks conforming to the standards set by Council for Scientific and Industrial Research- National Environmental Engineering Research Institute (CSIR-NEERI).

He further submitted that while the Fireworks Traders have in their stock of both green fireworks and hazardous fireworks, they undertake that only green fireworks shall be put up for sale by them. He finally submitted that there are

'black sheep' amongst genuine traders who have been dealing with fake green fireworks, but the presence of a few 'black sheep' cannot be used to ban fireworks altogether, thereby gravely affecting the businesses of genuine and honest traders.

Sh. Mukherji requested that the State Government may balance the concerns raised in light of the COVID-19 pandemic, the concerns of Fireworks Traders who are faced with major economic loss, and the concerns of common citizens who wish to express their joy during the festivities. He requested that the State Government may allow the sale and use of green fireworks.

Sh. Saumendra Priyadarshi, Commissioner of Police, Bhubaneswar-Cuttack Police Commissionerate submitted that it will be difficult to regulate retailers so as to ensure that retailers only sell genuine green fireworks obtained from authorised dealers, instead of cheap, hazardous, locally manufactured fireworks.

Dr. CBK Mohanty, DMET, Odisha raised concerns regarding the effect of unregulated hazardous fireworks causing irreparable damage to people recuperating from COVID-19.

The representative of the State Pollution Control Board submitted that in deference to the directions of the Hon'ble Supreme Court to monitor ambient air quality and noise levels seven days prior to, and after Diwali, the State Pollution Control Board has started the said exercise on 29.10.2021.

The Hon'ble Supreme Court in the case of Arjun Gopal v. Union of India, (2019) 13 SCC 523 has recognised that prima facie, the fundamental right to life and healthy living under Article 21 must be prioritised over the fundamental right to carry on trade or business under Article 19(1)(g), as well the fundamental right to carry on religious practice under Article 25. This finding of the Hon'ble Supreme Court is enshrined in paragraphs 41 and 42 of the judgment which are reproduced hereunder:

"41. It may be stressed that in Vellore Citizens' Welfare Forum case [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647] this Court had banned the tanneries when it was found that they were causing immense damage to the environment. Thus, environment protection, which is a facet of Article 21, was given supremacy over the right to carry on business enshrined in Article 19(1)(g). We state at the cost of repetition that right to health, which is recognised as a facet of Article 21 of the Constitution and, therefore, is a fundamental right, assumes greater importance. It is not only the petitioners and other applicants who have intervened in support of the petitioners, but the issue involves millions of persons living in Delhi and NCR, whose right to health is at stake. However, for the time being, without going into this

debate in greater details, our endeavour is to strive at balancing of two rights, namely, right of the petitioners under Article 21 and right of the manufacturers and traders under Article 19(1)(g) of the Constitution.

42. Almost for the same reasons, argument predicated on Article 25 of the Constitution need not detain us. We proceed on the assumption that burning of crackers during Diwali is a part of religious practice. The question is as to whether it should be allowed to be continued in the present form without any regulatory measures, as a part of religious practice, even if it is proving to be a serious health hazard. We feel that Article 25 is subject to Article 21 and if a particular religious practice is threatening the health and lives of people, such practice is not entitled to protection under Article 25. In any case, balancing can be done here as well by allowing the practice subject to those conditions which ensure nil or negligible effect on health.”

Finally, the Hon’ble Supreme Court passed the following directions for regulation of fireworks in paragraph 48 of the judgment which are reproduced hereunder:

“48. We are of the opinion that the aforesaid suggestions strike a nice balance between the two competing interests. We accept the aforesaid measures as suggested by the Union of India and direct the Union of India and other authorities concerned to implement the same with immediate effect. In view thereof, the following specific directions are issued:

48.1. The crackers with reduced emission (improved crackers) and green crackers, as mentioned in Suggestions II and III above only would be permitted to be manufactured and sold.

48.2. As a consequence, production and sale of crackers other than those mentioned in Suggestions II and III is hereby banned.

48.3. The manufacture, sale and use of joined firecrackers (series crackers or laris) is hereby banned as the same causes huge air, noise and solid waste problems.

48.4. The sale shall only be through licensed traders and it shall be ensured that these licensed traders are selling those firecrackers which are permitted by this order.

48.5. No e-commerce websites, including Flipkart, Amazon, etc., shall accept any online orders and effect online sales. Any such e-commerce companies found selling crackers online will be hauled up for contempt of court and the Court may also pass, in that eventuality, orders of monetary penalties as well.

48.6. Barium salts in the fireworks is also hereby banned.

48.7. PESO is directed to review the clinical composition of fireworks, particularly reducing Aluminium content, and shall submit its report in respect thereof within a period of two weeks from today. For undertaking this exercise, PESO would also associate FRDC.

48.8. Even those crackers which have already been produced and they do not fulfil the conditions mentioned in Suggestions II and III above will not be allowed to be sold in Delhi and NCR.

48.9. PESO will ensure fireworks with permitted chemicals only to be purchased/possessed/sold/used during Diwali and all other religious festivals, of any religion whatsoever, and other occasions like marriages, etc. It shall test and check for the presence of banned chemicals like lithium/arsenic/antimony/lead/mercury.

48.10. PESO will ensure suspension of the licences of manufacturers of such fireworks items and appropriate disposal of such stock.

48.11. PESO will ensure that only those crackers whose decibel (sound) level are within the limits are allowed in the market and will ensure to take action by suspending the licences of the manufacturers on such violations and disposal of such lots. To add to it, as mentioned in the order dated 12-9-2017 [Arjun Gopal v. Union of India, (2017) 16 SCC 280] , the directions issued and restrictions imposed in the order passed by this Court on 18-7-2005 in Noise Pollution (5) [Noise Pollution (5), In re, (2005) 5 SCC 733] shall continue to be in force.

48.12. Directions 4 to 9 and 11 contained in the order dated 12-9-2017 [Arjun Gopal v. Union of India, (2017) 16 SCC 280] shall continue to operate and are reiterated again.

48.13. Extensive public awareness campaigns shall be taken up by the Central Government/State Governments/Schools/Colleges informing the public about the harmful effects of firecrackers.

48.14. On Diwali days or on any other festivals like Gurupurab, etc., when such fireworks generally take place, it would strictly be from 8.00 p.m. till 10.00 p.m. only. On Christmas eve and New Year's eve, when such fireworks start around midnight i.e. 12.00 a.m., it would be from 11.55 p.m. till 12.30 a.m. only.

48.15. The Union of India, Government of NCT of Delhi and the State Governments of NCR would permit community firecracking only (for Diwali

and other festivals, etc. as mentioned above), wherever it can be done. For this purpose, particular area/fields would be pre-identified and pre-designated by the authorities concerned. This exercise shall be completed within a period of one week from today so that the public at large is informed about the designated places one week before Diwali. The areas designated now for the purpose of Diwali shall be valid for community firecracking on other occasions/festivals as well, as mentioned above. Even for marriages and other occasions, sale of improved crackers and green crackers is only permitted. Insofar as other States are concerned, an endeavour shall be made by them also to explore the feasibility of community firecracking. However, it is made clear that Direction 48.14 pertaining to the duration within which fireworks can take place on all such occasions would be applicable throughout India. Similarly, Direction 48.13 for extensive public awareness campaigns is also a pan India direction.

48.16. All the official respondents, and particularly the police, shall ensure that fireworks take place only during the designated time and at designated places, as mentioned above. They shall also ensure that there is no sale of banned firecrackers. In case any violation is found, the Station House Officer (SHO) of the police station of the area concerned shall be held personally liable for such violation and this would amount to committing contempt of the Court, for which such SHO(s) would be proceeded against.

48.17. CPCB and respective State Pollution Control Boards/Pollution Control Committees (SPCBs/PCCs) of the States and Union Territories shall carry out short-term monitoring in their cities for 14 days (commencing from 7 days prior to Diwali and ending 7 days after Diwali) for the parameters namely, aluminium, barium, iron apart from the regulatory parameters against the short-term Ambient Air Quality Criteria Values (AAQCVs) proposed by CPCB with regard to bursting of firecrackers. This will help in generation of data on pollution caused by the bursting of firecrackers and would be helpful for regulation and control quantity of aluminium, barium and iron used in the manufacture of firecrackers.”

It may be pertinent to state herein that the judgment of the Hon'ble Supreme Court in Arjun Gopal (supra) was issued prior to the COVID-19 pandemic era.

Subsequently, on 03.03.2020, the Hon'ble Supreme Court in W.P.(C) No. 728 of 2015 being Arjun Gopal & Ors. v. Union of India & Ors., took cognizance of the issue that several manufacturers of fireworks had been wilfully flouting the directions laid down by it in Arjun Gopal (supra) and have continued to use banned items, namely Barium and Barium salts. The Hon'ble Supreme Court



directed an investigation by the Central Bureau of Investigation (CBI) into the alleged violations of the Hon'ble Supreme Court's orders.

In the meantime, taking into account the effect of air pollution on COVID-19, a disease which primarily affects the respiratory system, the Hon'ble National Green Tribunal, on 01.12.2020 also passed the following directions, supplementing the directions passed by the Hon'ble Supreme Court:

“32. In view of above discussion, following directions are issued:

- i. There will be total ban on sale and use of all kinds of fire crackers during Covid-19 pandemic in the NCR and all cities/towns in the country where the ambient air quality falls under the 'poor' and above category.*
- ii. Direction to restrict use of fire crackers in cities/towns where air quality is 'moderate' or below to green crackers only and for duration of not more than two hours and only for celebration of any specified festivals or permitted occasions will continue. Such festivals be specified by the States. Other than specified festivals, prior permission of the District Magistrate of the area will be required for use of crackers for limited period which will be given having regard to air quality.*
- iii. During Christmas and New Year, green crackers can be used from 11:55 pm to 12:30 am only at places where air quality is 'moderate' or below as directed by the Hon'ble Supreme Court.*
- iv. With a view to ensure availability of air quality data, atleast one air quality monitoring station must be set up at every district headquarter at the earliest. Where no such monitoring station exists, atleast a manual monitoring station which is very easy to set up and is not costly must be installed at the earliest, using simpler procedure like GeM. This should not exceed three months in any case. This will be the responsibility of the State PCBs/PCCs from available funds under 'consent mechanism' / 'environmental compensation'. The air quality data may be placed on the website of the District administration and also at prominent locations in the towns, in the form of AQI, PM2.5 and PM10.*
- v. We further direct that the Air Quality Monitoring Committees (AQMC) in terms of order of this Tribunal dated 08.10.2018 in OA No. 681/201819 to coordinate with*

the District Magistrates. 20 for compliance of the above directions.

- vi. *The District Magistrates in every district may take steps to ensure that banned fire crackers are not sold in terms of order of the Hon'ble Supreme Court dated 23.10.2018.21*
- vii. *The District Magistrate, on a complaint or otherwise, will recover compensation from violators of the above directions on the parameters already mentioned in Para 24 above.*
- viii. *Any victim of pollution, apart from other remedies, can approach the District Magistrate for compensation, by showing evidence of individual damage and the person responsible for the damage. Such claim may be dealt with by a reasoned order*
- ix. *If no such claim is made for six months after collection of the compensation, the amount credited to the 'District Environment Compensation Fund' can be spent for restoration of the Environment in the District.*
- x. *The State PCBs/PCCs may compile data of compliance from all the Districts by 28.2.2021 and furnish the same to the CPCB by 15.3.2021. CPCB may file consolidated report in this regard in OA 681/2018 by 31.3.2021. The applications are disposed of"*

It may be stated herein that undeniably, the second wave of the COVID-19 pandemic placed a greater strain on the people as well as the resources of the State than the first wave. Indeed, the number of casualties from the second wave are much higher than those of the first wave. Hundreds of people who have recovered from COVID-19, which affects the respiratory system, are convalescing and any increase in air pollution levels (however mild) can cause irreparable damage to the respiratory system of COVID-19 survivors. Needless to state, close proximity and crowding during festivities, exposure to harmful chemical pollutants from fireworks also increases the risk of contracting COVID-19. It was in this light that the State Government had passed the earlier direction to ban the sale and use of fireworks across the State.

Now, on 29.10.2021, the Hon'ble Supreme Court, after hearing various stakeholders, including representatives of Fireworks Traders, has reiterated the earlier directions passed by it in Arjun Gopal (supra). The relevant paragraphs from the order dated 29.10.2021 passed by the Hon'ble Supreme Court in W.P.(C) No. 728 of 2015 are reproduced hereunder:

"6. It is unfortunate that despite the various directions issued by this Court referred to hereinabove, there is a blatant violation of

*various directions issued by this Court and it is alleged that manufacture, sale and use of banned fireworks have been continued. Even though they are banned, the manufacturing, selling and using of joined firecrackers have been continued and the same is being used in blatant violation of the directions issued by this Court. **It is reported that even under the guise of 'green crackers' banned chemicals firecrackers are being sold and there is a mislabelling on the boxes and even the QR codes provided on the boxes of 'green crackers' are alleged to be fake.***

7. There is a report submitted by the CBI submitted pursuant to the earlier directions/orders passed by this Court and it prima facie appears that there is a blatant violation of the directions issued by this Court by the respective manufacturers and the banned firecrackers are being sold and used in the markets. The allegations, if found to be true, are very serious and cannot be tolerated. Everybody including the implementing agencies are bound to see that the directions issued by the Courts are implemented and followed in its true spirit and in toto. It prima facie appears that the implementing agencies of the concerned States either lack desire to implement the directions issued by this Court or they close their eyes for whatever reasons. Despite the use of Barium Salts in the firecrackers was banned; manufacture and use of the joined fireworks have been banned and transporting and selling them across the country have also been banned physically and/or online, the banned firecrackers are being manufactured, transported, sold and used. From the earlier directions, it can be seen that even the responsibility to see that the directions issued by this Court are complied with by all concerned was on the concerned District Magistrates and the Police officials.

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 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 by this Court/Courts. Any wilful and deliberate disobedience shall have to be viewed very seriously.”

The Hon’ble Supreme Court has clarified that there is no total ban on use of fireworks. However, only those fireworks which are termed as “green fireworks” have been permitted for sale and use.

Even in respect of green fireworks, the Hon’ble Supreme Court has raised the concern that “*even under the guise of ‘green crackers’ banned chemicals firecrackers are being sold and there is a mislabelling on the boxes and even the QR codes provided on the boxes of ‘green crackers’ are alleged to be fake*”.

The Hon’ble Supreme Court has made it clear that it is for the “*States/State Agencies to see that the directions issued by this Court in the earlier orders reproduced hereinabove are strictly complied with*”.

Further, the Ministry of Environment, Forest and Climate Change, in their Affidavit dated 29.10.2021 filed before the Hon’ble High Court in W.P.(C) No.

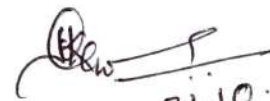
33208 of 2021 in paragraph 5 have stated that PESO grants an approval and final authorisation to manufacturers of green fireworks.

In 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 labelling 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 Explosives 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/ unauthorised/ 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.


31.10.2021

Special Relief Commissioner &
Additional Chief Secretary to Govt.
(Disaster Management)