

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 249/2020

Indian Social Responsibility Network
through Santosh Gupta

Applicant

Versus

Ministry of Environment, Forests & Climate
Change & Ors.

Respondent(s)

Date of hearing: 02.11.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. The issue raised in this application relates to remedial action against pollution by use of fire crackers in NCR during the time air quality is unsatisfactory with potential of severity of Covid-19 pandemic. The application refers to the statement of the Union Health Minister and the Health Minister of Delhi that during festive season there will be rise of Covid cases due to air pollution. Increased pollution may further affect the vulnerable groups and increase the fatality rate. Covid cases in Delhi may go up to 15,000 per day, as against the current cases of about 5,000 per day. Use of green crackers will not remedy the situation. The smoke will choke and may create gas chamber like situation. It will lead to poor visibility, hazy conditions and asphyxia.

2. The issue of fire crackers has been dealt with by the Hon'ble Supreme Court by several orders. The matter has been considered in the

light of right to clean environment and acknowledged adverse effect of bursting of crackers on health due to increased pollution. Particular reference may be made to the following:

- (I) Vide order dated 11.11.2016, in *Arjun Gopal v. Union of India*, (2017) 1 SCC 412,¹ it was noted that air quality standards in Delhi are from ‘poor’ to ‘severe’ during winter resulting in potential of diseases. Following directions were issued:

“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.”*

- (II) Vide order dated 12.09.2017, in *Arjun Gopal v. Union of India* (2017) 16 SCC 280,² it was noted that since under the law, the health of the people has to take precedence over any commercial or other interests, graded regulation of fire crackers was necessary which would eventually result in prohibition. Accordingly, directions were issued to restrict the temporary licenses to 50%, pending further consideration.

- (III) Vide order dated 23.10.2018, in *Arjun Gopal v. Union of India*, (2019) 13 SCC 523,³ while banning certain categories of fire crackers and directing regulation of the remaining, it was inter-alia directed that on Diwali days or other festivals, fire crackers will be used strictly between 8 p.m. to 10 p.m. only with different timings for some other festivals. It was also directed that the Union of India, Government of NCT of Delhi and the State Governments of NCR would permit community

¹ Para 5, 19 & 20

² Para 69 to 72

³ Para 48

fire crackers only (for Diwali and other festivals, etc. as mentioned above), wherever it can be done.

(IV) There are also directions of the Hon'ble Supreme Court with regard to the noise level of the crackers vide judgment *In Re: Noise Pollution-implementation of the Laws for Restricting Use of Loudspeakers and High Volume Producing Sound Systems, (2005) 5 SCC 733*.

3. The above cases do not consider Covid-19 situation when the adverse effect may be so severe that number of deaths of children, senior citizens and other vulnerable persons may increase. Number of diseases may also increase. There are reports in public domain that air quality of Delhi is deteriorating and further deterioration may give rise to increase in Covid cases.⁴ It is well known that the Graded Response Action Plan (GRAP) has been introduced envisaging prohibiting of polluting activities if the air quality deteriorates. The Air Quality Index (AQI) is reported to be averaging between 410 and 450 i.e. 'hazardous' category. Fire crackers emit poisonous gases like SO₂, NO_x, CO as well as the metal besides creating noise. In the given climatic conditions, this may result in respiratory/pulmonary diseases, diabetic, hypertension and other diseases.

⁴ (i). Festivals, Air Pollution Reasons for rise in Delhi Covid cases: Centre: <https://www.ndtv.com/india-news/festivals-air-pollution-reasons-for-rise-in-delhi-covid-cases-centre-2317795> -
(ii). Covid-19 recoveries continue to surpass new cases; next two-and-a-half month period crucial says Harsh Vardhan: <https://www.firstpost.com/india/covid-19-recoveries-continue-to-surpass-new-cases-next-two-and-a-half-month-crucial-says-harsh-varadhan-8922691.html>
(iii). Covid cocktail: Why Delhi's air pollution crises may deepen this winter: <https://www.indiatoday.in/news-analysis/story/covid-cocktail-why-delhi-air-pollution-crisis-deepen-winter-coronavirus-lockdown-1722602-2020-09-17>
(iv). Covid-19 and pollution: Delhi staring at coronavirus disaster': <https://www.bbc.com/news/world-asia-india-54596245>

4. There are also expert views on clear nexus of air pollution with Covid-19.⁵ With increased air pollution, virus can cause more damage.

5. In view of above, issue notice to the MoEF&CC, CPCB, DPCC, Police Commissioner, Delhi, Governments of Delhi, Haryana, Uttar Pradesh and Rajasthan on the question whether the use of fire crackers may be banned for the period from 07.11.2020 to 30.11.2020 in the interest of public health and environment.

We request Shri Raj Panjwani, Senior Advocate alongwith Ms. Shibhani Ghosh, Advocate to assist the Tribunal as amicus.

A copy of this order alongwith set of papers be forwarded to Shri Raj Panjwani, Senior Advocate by e-mail.

List again on 05.11.2020.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

November 02, 2020
Original Application No. 249/2020
DV

⁵ "SARS-CoV-2 virus (COVID-19) is a member of the coronavirus family and is responsible for the pandemic declared by the World Health Organization. A positive correlation has been observed between the spread of the virus and air pollution, one of the greatest challenges of our millennium. COVID-19 could have an air transmission and atmospheric particulate matter (PM) that could create a suitable environment for transporting the virus at greater distances than those considered for close contact. Moreover, PM induces inflammation in lung cells, and exposure to PM could increase the susceptibility and severity of the COVID-19 patient symptoms. The new coronavirus has been shown to trigger an inflammatory storm that would be sustained in the case of pre-exposure to polluting agents. Given this state of affairs, the potential role of PM in the spread of COVID-19, focusing on Italian cities whose PM daily concentrations were found to be higher than the annual average allowed during the months preceding the epidemic. Furthermore, a positive correlation between the virus spread, PM, and angiotensin-converting enzyme 2 (ACE2), a receptor involved in the entry of the virus into pulmonary cells and inflammation was observed": <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7345938/>