

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioners are engaged in the business of crackers & fireworks items, with the special permissions and Trade Licenses obtained at the hands of competent authorities. They claim to have been in the business since years. They are grieving before the Writ Court against the order dated 27.09.2013 whereby, the second respondent-Director General of Police has negated their statutory appeals and thereby upheld the order dated 12.04.2012 made by the third respondent-Commissioner of Police withdrawing 'No Objection Certificates'. The net effect of the impugned order is that the petitioners cannot run the said business in the subject congested area of Bangalore city.

2. After service of notice, the official respondents having entered appearance through their respective advocates, resist the Writ Petition making submission in justification of the impugned order and the reasons on which it has been constructed. Learned Addl. Govt. Advocate representing the respondent Nos.2 & 3, has also

filed a detailed Statement of Objections, opposing the Writ Petition, after serving a copy thereof on the counsel for the petitioners well in advance.

3. Having heard the learned counsel for the parties and having perused the Petition Papers, this Court declines indulgence in the matter for the following reasons:

(a) AS TO OBSERVATIONS OF THE APEX COURT:

(i) In *ARJUN GOPAL vs. UNION OF INDIA*¹ what the Hon'ble Supreme Court with all concerns/constraints observed needs to be kept in view. It said amongst other things that, extensive public awareness campaigns should be undertaken by the Central Government, State Governments, schools, colleges, etc., to inform & alert the public at large about the harmful effects of firecrackers. It needs no research to know that the production, transportation & bursting of crackers (including those with reduced emission such as green crackers) are detrimental to the '*mother nature*', in varying degrees & kind. Firecrackers apart from being health hazard and risk to life & limb, cause

¹ AIR 2018 SC 5731

enormous environmental pollution; in dense cities like Bangalore that are plagued with ceaseless sound pollution, the bursting of crackers would only add, to the existing woes.

(ii) The following observations from the paper, '*Personal exposures to particulate matter <math><2.5 \mu\text{m}</math> in mass median aerodynamic diameter ($\text{PM}_{2.5}$) pollution during the burning of six most commonly used firecrackers in India*'² have been profitably reproduced below:

"...During the Diwali festival in India, 30%–40% increase in the cases of wheezing, respiratory infections, exacerbation of bronchial asthma, and chronic obstructive pulmonary disease (COPD) have been reported...Children are the most vulnerable population to the harmful effects of firecrackers air pollution since their lungs are growing and guided by a complex and precise time sequence of chemical messages. Many of these air pollutants interfere with this pathway making them vulnerable to develop infections, asthma, and overall poor lung development...Furthermore, their airway epithelium is more permeable to air pollutants, has a poor defense against PM as compared to adults, and has differential

² Shah, R., Limaye, S., Ujagare, D., Madas, S., & Salvi, S. '*Personal exposures to particulate matter <math><2.5 \mu\text{m}</math> in mass median aerodynamic diameter ($\text{PM}_{2.5}$) pollution during the burning of six most commonly used firecrackers in India.*' *Lung India : Indian Chest Society*, 36(4), pp 324–329 (2019)

ability to metabolize and detoxify environmental agents. The harmful effects of the pollutants emitted from firecrackers are not just restricted to respiratory illnesses but also have a significant effect on cardiovascular health as well."

The Apex Court too in *ARJUN GOPAL, supra* at paragraph 29

observed as under:

"From the aforesaid it can be gathered that when PM 2.5 crosses the normal limits, even if it remains in the air for few days, it becomes severe health hazard thereby causing serious health problems. Unfortunately such problems are virtually irreversible, which means that a person whose health gets affected because of this particulate has a long suffering. In view thereof, argument in opposition that air quality that gets worsened during Diwali remains only for few days would be of no consequence as even in few days it causes severe harm to the health of the people, that too for prolonged duration."

(iii) However, the above is not the end of matter, several cases are reported as to '*ocular firecracker injuries*' in children aged twenty & below. Those who have lost their eyes, the world becomes blind to them for the rest of their lives. This would make the Makers of the Constitution to

shiver in their grave. There cannot be a greater violation of the right to life, limb & liberty.

The real photographs clicked of such injuries caused by bursting of firecrackers are reproduced to understand the enormity of pain the victims would undergo:

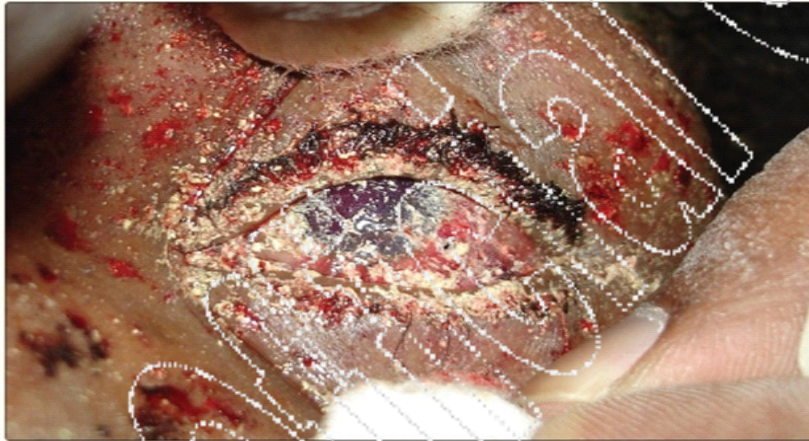


Figure 4

Clinical photograph of a patient with firecracker injuries showing multiple superficial foreign bodies. This patient subsequently underwent amniotic membrane graft for nonhealing corneal ulcers



Figure 7

Clinical photograph of a patient with burn injuries due to firecrackers showing superficial lid burns, seething of eyelashes, limbal ischemia in the inferotemporal quadrant and melting of cornea. The cornea shows combined chemical and burn injury

The above pictures have been taken from the very same research paper at footnote 3.

The following observations from a paper, '*Firecracker eye injuries during Deepavali festival: A Case Series*'³ is profitably reproduced as under:

"...The injuries reported ranged from conjunctival or corneal burns to globe rupture...Most of the patients were below the age of 20 years. Unlike the findings in some studies where victims were mostly those who were actively involved in igniting the firecracker, more than half of the victims in our study were bystanders...Many of the injuries were caused as a result of negligence of those igniting the firecrackers...In one instance, the patient suffered severe facial and bilateral ocular injuries when he attempted to ignite a homemade device made up of un-burnt firecracker powder... Ocular injuries by firecrackers are common during 'Deepavali'. Lack of knowledge about safety measures or not following them was a reason for eventualities. Absence of parental supervision, and failure to maintain safe distance from firecrackers were contributory in some cases of injuries. The other major cause of injury is the common practice of igniting firecrackers in the streets thus exposing passersby to injury..."

³ Kumar, R., Puttanna, M., Sriprakash, K. S., Sujatha Rathod, B. L., & Prabhakaran, V. C. '*Firecracker eye injuries during Deepavali festival: A Case Series*' *Indian journal of ophthalmology*, 58(2), pg 157-159, (2010).

(iv) Indisputably the ill effects of firecrackers cause irreversible damage to the environment. Apart from infants, expectant mothers & patients (more particularly those having heart ailment & high blood pressure) even animals & birds too feel the violence due to bursting of crackers. What right humans have to perpetrate acts of violence when our scriptures (*Brihadaranyaka Upanishad 1.4.14*) edict:

सर्वे भवन्तु सुखिनः सर्वे सन्तु निरामयाः।

*'sarve bhavantu sukhinaha,
sarve santu niraamayaha...'*

It nearly translates to: let all people be happy and all creatures be free from affliction. It is high time that the civil society accelerates its positive response to the inner voice of Apex Court of country as mentioned above. It is in this background, the cases relating to grant, renewal, transfer, denial & rescinding of Explosive Licenses, have to be approached. Added, the alarming rate of climate change is caused due to the unsustainable and environmentally harmful patterns of life, sustainability in this regard must now more than ever before factor into decision making.

(b) AS TO FACT MATRIX: With the above, let me come to the foundational facts of this case. All the petitioners have been running the business in crackers & fireworks items with the licenses granted by the competent authorities under the provisions of the Explosives Act, 1884 & the Rules promulgated thereunder. They also possess the Trade Licenses granted, and renewed periodically by the City Corporation, is not in dispute. Now these licenses have been put to peril by the impugned orders on the ground that the shops of the petitioners are situate in congested areas of the city, and that any fire mishap arising from the crackers & fireworks cannot be easily handled & abated, because of difficulty of fire engines moving in the narrow lanes that are thickly congested & over populated. Any fire mishap in these areas would transcend the locality and will have chain reaction, cannot be disputed. It is on this premise the impugned orders have been founded. The Commissioner of Police having looked into the matter, has taken the decision way back in April 2012 i.e., a little more than a decade ago. The Director General & Inspector

General of Police who happens to be Head of Police Wing in the State, too having considered the matter, has negated the appeals of petitioners with the participation of stakeholders. The impugned orders accord with the policy considerations of the State as promulgated in the Government Orders dated 11.04.1980 and 23.09.1981.

(c) The answering respondents who are high ranking officials of All India Service, happen to be the statutory authorities under the Explosives Act, 1884. The relevant part of Rule 115 of the Explosive Rules, 2008 providing for the cancellation of 'No Objection Certificate' reads as under:

"115. Cancellation of no objection certificate.—(1)

No objection certificate granted under rule 103, may be cancelled by the authority issuing the same or authority superior to it, if such authority is satisfied, that—

(c) the cancellation of no objection certificate is absolutely necessary for public peace and safety:

Provided that before cancellation of the no objection certificate, the licensee shall be given a reasonable opportunity of being heard."

The very text & context of this Rule shows the concern of the Rule Maker for public peace & safety. Two statutory authorities of high ranking, one in original jurisdiction and the other in appellate have looked into the matter with the participation of stake holders. The Appellate Authority has concurred with the views of original authority. After hearing the parties and after perusing the material on record has taken the impugned decisions that are not easily vulnerable for challenge on the ground urged here. A Writ Court examining these quasi judicial orders under restrictive supervisory jurisdiction constitutional vested under article 227, is not a court of appeal, needs to be kept in mind. The focal point of Judicial Review is the decision making process, and not the decision itself. The doctrine of '*separation of powers*' which is a Basic Feature of the Constitution vide *INDIRA NEHRU GANDHI vs. RAJ NARAIN*⁴, expects the constitutional courts to show due deference to the decisions of the executive, in the absence of an exceptional case being made out for indulgence. The factual foundation on which the impugned orders are structured cannot be readily

⁴ AIR 1975 SC 2299

demolished by the courts exercising such limited supervisory jurisdiction vide *SADHANA LODH vs. NATIONAL INSURANCE COMPANY LIMITED*⁵. What Justice Neely observed in *MONONGAHELA POWER CO. vs. PUBLIC SERVICE COMMISSION*⁶ is worth mentioning:

"I have very few illusions about my own limitations as a judge and from those limitations I generalize to the inherent limitations of all appellate courts reviewing rate cases...It is not the function of a judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

(d) AS TO VIOLATION OF FUNDAMENTAL RIGHT: It hardly needs to be stated that the explosive substances being 'res extra commercium' like the liquor, poison, etc., no citizen can claim an unrestricted fundamental right under Article 19(1)(g) of the Constitution to carry on trade & business of the kind, vide *KHODAY DISTILLEREIS vs. STATE OF KARNATAKA*⁷. It is difficult to countenance the vehement submission of learned Sr. Advocate Smt.Pramila Nesargi

⁵ (2003) 3 SCC 524

⁶ 276 S.E. 2d 179 (1981)

⁷ 1995 SCC (1) 574

appearing for the petitioners that her clients are discriminated qua others similarly circumstanced in general and private respondents herein in particular. If the petitioners have to shift their '*apple carts*' to safer areas, quitting the lanes in question, other similarly circumstanced businessmen cannot be permitted to cling on to the same area. What applies to goose applies to gander, as rightly contended by the counsel for the State. Even otherwise, in matters like this, the doctrine of equality enshrined in Article 14 cannot be readily pressed into service, unmindful of enormous hazards that would possibly put the public at large to, should a section of traders be permitted to continue their firecracker business in the areas in question. The interest of the public would be more served by petitioners & other traders shifting their said business to safer areas than being permitted to continue in the same areas in question. The observations of the National Green Tribunal in Original Application No. 249/2020 between *TRIBUNAL ON ITS OWN MOTION vs. MINISTRY OF*

ENVIRONMENT, FOREST & CLIMATE CHANGE & ORS decided on 11.12. 2020 have been profitably reproduced as under:

"As already laid down by the Hon'ble Supreme Court, discussed in the order of this Tribunal dated 09.11.2020, the laid down air quality and noise level norms under the Air (Prevention and Control of Pollution) Act, 22 1981 and noise level under the Environment (Protection) Act, 1986 have to be maintained to give effect to the principle of Sustainable Development of which Precautionary principle is a part. Since mere passing of order does not ensure compliance, necessary coercive measures have to be taken. Even if there are other sources of pollution and meteorological conditions contributing to the air pollution, it does not justify ignoring acknowledged pollution by bursting of fire crackers adding to the air and noise pollution, beyond statutory norms. Right to business is not absolute. There is no right to violate air quality and noise level norms. This being a crime under the law of the land cannot be a right. Exceeding of the norms, adversely affect the health and cannot be allowed. Nobody has a right to carry on business at the cost of health of others. All licenses already given or which may be given are inherently subject to overriding requirement of preventing damage to the environment and the public health."

(e) There is yet another aspect of the matter, i.e., burning of firecrackers as part of 'Diwali' celebrations and the right to do business in such substances being constitutionally guaranteed under Article 19(1)(g) which is stressed by the counsel for the petitioners; this aspect has been fully addressed by the Apex Court at paragraphs 35 & 36 of *ARJUN GOPAL, supra* as under:

"35. It may be stressed that in Vellore Citizens' Welfare Forum case, 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 of 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.

36. 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."

In the above circumstances, this Writ Petition being devoid of merits, is liable to be dismissed and accordingly, it is, costs having been made easy.

The apprehension of the petitioners that with this judgment, their other business in the same premises may be disturbed by the official respondents stands allayed by the State Counsel's submission that the impugned orders that are now upheld being confined to the business of firecrackers, have nothing to do with other business being carried on by the petitioners.

Before parting with this case this court places on record its deep appreciation for the able research and assistance rendered by its official Law Clerk cum Research Assistant, Mr. Faiz Afsar Sait.

**Sd/-
JUDGE**

cbc