

S/L 278
29.10.2021
Court No.8
SD/GB

WPA (P) 282 of 2021
With
CAN 1 of 2021
With
CAN 2 of 2021

(Via Video Conference)

Roshni Ali
Vs.
State of West Bengal & Ors.

Mr. Rachit Lakhmani
Mr. Indrajeet Dey
Mr. Arindam Paul
Mr. Saikat Pal

...for the Petitioner.

Mr. S.N. Mookherjee
Mr. Anirban Roy
Mr. Tapn Kumar Mukherjee
Mr. Raja Saha
Mr. Pranab Halidar

...for the State.

Mr. N.C. Bihani
Mr. Prithwish Kumar Basu

...for the Pollution Control Board.

Mr. Srijib Chakraborty
Mr. Arnab Sengupta
Mr. Hillol Saha Podder
Mr. Aditya Mondal

...for the proposed Added Parties.

By consent of the parties, CAN 1 of 2021 and CAN 2 of 2021 be treated to be on the day's list.

The contention of the writ petitioner is that the use or bursting of firecrackers of all classes will severely endanger the right to life of the citizens of the State, particularly in view of the worsening pandemic situation.

It is further contended that a coordinate Bench of this Court had previously passed an order whereby the use of all

firecrackers, including all types of sparklers and the like, whether or not the use or burning thereof involves any sound or light being generated, were banned from being used and only wax and/or oil-based *diyas* were permitted to be used during the festive season.

It is submitted that, keeping in view the larger interest of the citizens of the State, the smaller interest of the firecracker manufacturers and all concerned with such business might be overlooked.

Learned Advocate General points out that there are prevalent orders of the Green Tribunal as well as the Supreme Court, permitting restricted usage of green crackers during certain hours of the day/evening.

Learned counsel for the Pollution Control Board contends in similar tune.

Learned counsel appearing for the intervenor, which is a joint body comprised of firecracker manufacturers, contends that, as per the latest orders of the National Green Tribunal as well as the Supreme Court, the usage of green crackers have been permitted to a limited extent, confined to certain hours of the day.

It is further submitted that only such green crackers which are duly certified by the authorized agencies of the Central Government may be permitted to be used; otherwise, the manufacturers of the green crackers who have invested huge amounts or resources in such manufacture would be left in the lurch at the eleventh hour.

Upon going through the relevant materials on record and the orders of the Green Tribunal, we find that an order of the Telangana High Court imposing a blanket ban of all firecrackers was modified by the Supreme Court, which permitted the use of certain green crackers.

Learned counsel also places reliance on an order passed by the West Bengal Pollution Control Board dated October 26, 2021, wherein the Pollution Control Board permitted, in the State of West Bengal, use and sale of only green crackers and bursting of such crackers for certain specified hours during the Diwali festival, Chatt Puja, Christmas and New Year's Eve.

However, keeping in view the practical realities, we find nothing to establish that there is any mechanism in place at present to ascertain whether the crackers being sold or burst/lighted are only green crackers, complying with the norms as set in place by the relevant certifying Body.

That apart, it would be an impossible task for the police and/or law enforcement agencies to ascertain the veracity of the certificates of the crackers which are being used by the general public at the time of these festivals, irrespective of the classification under which they are sold.

Leaving the window open for green crackers to be used, would positively entail abundant abuse of such window and there is no mechanism in place, as mentioned earlier, to screen such abuse at this juncture, when the festive season is on the anvil.

In such view of the matter and keeping in mind the present pandemic situation, which is getting marginally worse by the day and in view of the fact that even moderate Air Quality Index (AQI) can cause severe difficulties for people suffering from respiratory problems and long exposure thereof may also affect otherwise healthy people, we are not convinced that firecrackers of any form, either green or of any other category, ought to be permitted to be used during the coming festive season.

Needless to say, the standards fixed by the Pollution Control Board regarding the composition of green crackers are not under challenge before us, but we are more concerned about the apprehended misuse of such composition by labelling firecrackers which do not fulfil such criteria to be passed off as green crackers.

Accordingly, we dispose of the WPA (P) 282 of 2021 along with CAN 1 of 2021 and CAN 2 of 2021 with the following observations:-

- i) The State should ensure that there is no use or display or bursting of firecrackers of any type at all during the oncoming Kali Puja, Diwali celebration as well as the following Chatt Puja, Jagadhatri Puja, Guru Nanak's Birthday and/or Christmas/New Year's Eve this year. For such purpose, only wax or oil-based *diyas* might be used;

- ii) The police shall maintain a strict vigil to ensure that there is no further sale or purchase of firecrackers and/or any use of such firecrackers during the coming festive season;
- iii) The police shall further make efforts to confiscate all firecrackers of any kind or like which have the potential to pollute the air; and
- iv) Appropriate measures may be taken by the police authorities in such regard at the earliest.

It is made clear that the expression “firecrackers”, shall cover all types of sparklers as well as other like material, whether or not the bursting/burning thereof involves any sound or light being generated.

There will be no order as to costs.

The parties as well as all concerned shall act on server copies of this order without insisting upon prior production of a certified copy thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Sabyasachi Bhattacharyya, J.)

(Aniruddha Roy, J.)