

S/L 1 & 284
03.11.2021
Court No.8
SD/GB

WPA (P) 282 of 2021
With
CAN 3 of 2021

Roshni Ali
Vs.
State of West Bengal & Ors.

With
WPA (P) 292 of 2021

Sabuj Mancha & Anr.
Vs.
State of West Bengal & Ors.

(Via Video Conference)

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

...for the Petitioner[in CAN 3 of 2021].

Mr. Raghunath Chakraborty
Ms. Amrita De

...for the Petitioner[in WPA (P) 292 of 2021].

Mr. S.N. Mookherjee
Mr. Anirban Roy
Mr. Tapn Kumar Mukherjee
Mr. Pranab Haldar
Ms. Soheli Mukherjee
Ms. Debdooti Dutta

...for the State.

Mr. N.C. Bihani
Mr. Prithwish Kumar Basu
Mr. Soumyajit Ghosh
Mr. Soumya Mukherjee

...for the Pollution Control Board.

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

...for the proposed Added Parties.

Re: CAN 3 of 2021:-

This application has been filed by the writ petitioner, claiming liberty having been reserved by the order of the Hon'ble Supreme Court in SLP No.17993 of 2021 dated November 1, 2021.

This Court is of the view that since WPA (P) 282 of 2021 has been disposed of by the by the coordinate Bench, the Supreme Court has permitted the petitioner to file a comprehensive fresh writ petition, with a further direction on that Court that all necessary parties particularly the State and the Pollution Control Board as also the firecracker manufacturers must be heard. The petitioner may, therefore, institute a fresh proceeding which shall be dealt with after hearing of all stakeholders and after considering all material brought on record.

CAN 3 of 2021 shall stand disposed of without any further orders.

Re: WPA (P) 292 of 2021:-

The instant writ application has been filed since after the order of the Hon'ble Supreme Court (supra). The main thrust of challenge is directed against the order of the West Bengal Pollution Control Board dated October 26, 2021.

The writ petitioners, supported by Ms. Roshni Ali have prayed before this Court for interim relief. It is prayed that the bursting of firecrackers in the streets ought to be banned. It is also prayed that areas must be designated by

the State which are otherwise non-residential for burning firecrackers during the festivities.

Paragraph 9 of the order of Supreme Court (supra) is set out hereinbelow:-

“9. Learned counsel appearing for the writ petitioner were at pains to persuade us that the order, as passed by the High Court, need not be interfered with. However, for the reason already noted above, it is not possible to accept this submission. Instead, we set aside the impugned order and permit the writ petitioner or any person interested in doing so to approach the High Court by placing all relevant facts and material on record and on the basis of the foundation so laid in that proceeding, the High Court after giving opportunity to the State of West Bengal as well as the Board, may proceed to pass directions as may be advised.”

The manufacturers and traders' association of firecrackers represented by Mr. Srijib Chakraborty are added as party respondents to WPA (P) 292 of 2021.

The Diwali festival is taking place tomorrow.

This Court notes that the directions contained in the decision of the Hon'ble Supreme Court in the case of **Arjun Gopal and Others vs. Union of India and Others** reported in **(2019) 13 SCC 523** appear to have been substantially complied with and applied in the impugned order. The Pollution Control Board appears to have specified timings and restrictions on the use of firecrackers on the festive days.

It further appears to this Court that the State has also provided for as mandated, in the *Arjun Gopal case (supra)*, inter alia, dated October 29, 2021 and November 1, 2021 that only green firecrackers would be allowed to be used during the festive season.

Mr. Srijib Chakraborty on behalf of his clients, some of whom are present in Court, has specifically undertaken that no crackers except green firecrackers shall be sold by his clients. He further submits that his clients have ensured that a QR code is available and displayed on each box of firecrackers manufactured. The said QR code can be accessed through mobile phones and if the code is scanned, the licence and certification of the NEERI and PESO would automatically appear in the screen. This, according to Mr. Chakraborty's clients, is the way for identification whether the crackers being sold is green or not. The public at large may be made aware of this by all the stakeholders.

The responsibility of enforcement of the orders of the Supreme Court (*supra*) and the NGT has already been fixed on the Home Secretary and the Commissioners and Superintendents of Police of the concerned districts in the State.

This Court is conscious of the fact that it is not possible to inspect and ensure that green crackers are being used at every nook and corner of the State. However, all necessary efforts must be made by the State to ensure that

only green crackers are used and the sincerity of the State would be reflected in enforcement mechanism.

The importance and need for maintaining clean environment and clean air cannot be overstressed and is the responsibility of one and all. All citizens must follow and ensure that even the green firecrackers used do not cause discomfort to others. Suitable awareness campaigns must be undertaken by all stakeholders in this regard; through the available media. Self-imposed restrictions must be aggressively encouraged.

It is expected that the State and the Pollution Control Board as also the manufacturers' association would come up with appropriate suggestions including the steps already taken by them to comply with the orders of the Hon'ble Supreme Court and the National Green Tribunal in letter and spirit. Rights under Article 21 of the Constitution are required to also factor in rights under Article 19(1)(g) of the Constitution of India.

Let affidavit-in-opposition be filed by all respondents within a period of four weeks; reply thereto, if any, be filed two weeks thereafter.

Let this matter stand adjourned and be listed six weeks hence before the appropriate Bench, subject to its convenience.

The petitioners and also all parties shall be at liberty to seek for the matter to be specially fixed for being heard on priority.

(Kesang Doma Bhutia, J.) (Rajasekhar Mantha, J.)