

Item No. 02

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**Execution Application No. 11/2023(CZ)
In
Original Application No.76/2021(CZ)**

Dr. P.G. Najpandey & Ors.

Applicant(s)

Vs

State of Madhya Pradesh & Ors.

Respondent(s)

Date of Hearing : 19.10.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s):

Mr. Prabhat Yadav, Adv.

For Respondent(s):

None.

ORDER

1. Matter of regulation and use of fire crackers was taken up by Hon'ble Supreme Court of India in Arjun Gopal v. Union of India (2019)13 SCC 523 para 14 and vide orders dates 23.10.2018 while banning certain categories of fire crackers and directing regulation of the remaining, it was directed that on Diwali days or other festival fire crackers will be used strictly between a certain time only with different timings for some other festivals. Further, the Union of India was directed to regulate the community fire crackers with the suggestions of the Expert Committee as submitted and to ensure that there should not be any pollution above the permissible category.
2. Hon'ble Supreme Court of India in WP(C) 728/2015 vide order dated 29.10.2021 issued directions to take actions against those who sale banned fire crackers. Accordingly Home Ministry of Govt. of MP issued directions on 31.10.2021 to all Collectors and Superintendent of Police of MP for

inspection and testing of fire crackers and for taking an undertaking from sellers of fire crackers that they will abide the directions of MP Govt. But this circular of Govt. of MP became a white wash since undertakings were not taken from sellers of fire crackers during the year 2022-23 and also sampling and testing of fire crackers has not still been done.

3. The copy of the Government order issued on 31.10.2021 provides as follows:-

“मध्यप्रदेश शासन
गृह विभाग
मंत्रालय,
वल्लभ-भवन, भोपाल 462004

क्रमांक 3914/4040/2020/दो/सी-2

भोपाल, दिनांक 31/10/2021

प्रति,

1. समस्त जिला कलेक्टर ए मध्यप्रदेश।
2. समस्त पुलिस अधीक्षक,
मध्यप्रदेश।

विषय :-मान. सर्वोच्च न्यायालय के द्वारा W-P- (C) No- 728/2015 में दिनांक 29.10.2021 को जारी आदेश के पालन के संबंध में।

संदर्भ- इस विभाग का पत्र क्रमांक 142 /4040/2020 / दो सी-2 दिनांक 30.10.2021.

उपरोक्त संदर्भित पत्र द्वारा मान, सर्वोच्च न्यायालय के द्वारा W-P-(C) No- 728/2015 में दिनांक 29.10.2021 को जारी आदेश की प्रति संलग्न कर उक्त आदेश का पालन कड़ाई से किए जाने के निर्देश जारी किए है। अनुमत्य एवं प्रतिबंधित पटाखों के विषय में मान. सर्वोच्च न्यायालय क दिनांक 29.10.2021 के आदेश में विस्तृत उल्लेख है। **crackers with reduced emission (Improved crackers)** तथा **green crackers** अनुमत्य है। निम्नलिखित पटाखें एवं गतिविधियां प्रतिबंधित है-

- i. पटाखें जिनके निर्माण में **Barium salt** का उपयोग किया गया हो।
 - ii. लड़ी (जुड़ हुए पटाखें/series firecrackers) में बने पटाखे ।
 - iii. पटाखें जिनकी तीव्रता विस्फोट स्थल से मीटर की दूरी पर 125 कमेपइंस से अधिक न हो ।
 - iv. पटाखें जिनके निर्माण में **antimony, lithium, mercury, arsenic, lead, strontium, chromate** का उपयोग किया गया हो।
 - v. पटाखों का ई-कामर्स कंपनियां अथवा निजी व्यक्तियों द्वारा आनलाईन विक्रय तथा गैर लायसेन्सी विक्रय।
 - vi. घोषित शांति क्षेत्र (**notified silent zone**) के भीतर 100 मीटर दूरी तक।
 - vii. रात्रि 8 बजे से पहले तथा रात्रि 10 बजे के बाद पटाखें चलाना।
2. प्रत्येक जिला कलेक्टर जिले के समस्त पटाखा निर्माताओं, भण्डारकर्ताओं, लायसेन्सी विक्रयकर्ताओं से संलग्नानुसार अन्डरटेकिंग (परिशिष्ट चार) प्राप्त करेंगे। संदेहास्पद प्रतिबंधित पटाखों की स्थिति में सेम्पल

लेकर म0प्र0 प्रदूषण नियंत्रण मण्डल की प्रयोगशाला में दिनांक 02.11.2021 से भेजना सुनिश्चित करें। उपरोक्त प्रयोगशालाओं द्वारा प्राप्त सैम्पल्स की जांच का कार्य कर सम्बन्धित जिले के कलेक्टर को शीघ्रता से रिपोर्ट प्रेषित की जावेगी। उक्त रिपोर्ट के आधार पर युक्तियुक्त विधिसम्मत कार्यवाही सुनिश्चित की जाये। प्रत्येक जिले में कम से कम 5 सैपल म0प्र0 प्रदूषण नियंत्रण मण्डल की प्रयोगशाला में भेजे जायें।

3. प्रयोगशालाओं एवं CSIR NEERI में पंजीकृत पटाखा निर्माताओं की सूची परिशिष्ट "एक" एवं "दो" पर संलग्न है तथा जिलेवार AQI की जानकारी परिशिष्ट "तीन" पर संलग्न है। मान सर्वोच्च न्यायालय द्वारा राज्यों के मुख्य सचिवों तथा गृह सचिवों की व्यक्तिगत जिम्मेदारी नियत की गई है। अतः उक्त आदेशों के पालन की स्थिति (status of compliance report) को दिनांक 03.11.2021 तक गृह विभाग, म0प्र0 शासन को pshome@mp.gov.in पर email करें। साथ ही दिनांक 06.11.2021 तक उक्त email पर Action Taken Report आवश्यक रूप से प्रेरित करें।

4. मान, सर्वोच्च न्यायालय के आदेश के पैरा-8 में स्पष्ट उल्लेख है कि पटाखों पर पूर्ण प्रतिबंध नहीं है तथा उक्त प्रतिबंध केवल प्रतिबंधित एवं स्वास्थ्य के लिए हानिकारक पटाखों पर लागू है।

5. गृह विभाग म0प्र0 शासन के दिनांक 30.10.2021 को जारी निर्देशों तथा इन निर्देशों का कड़ाई से एवं प्राथमिकता से पालन सुनिश्चित करें।

संलग्न- परिशिष्ट एक, दो, तीन एवं चार

(डा0 राजेश राज)
अपर मुख्य सचिव,
म0प्र0 शासन, गृह एवं जेल विभाग

पृ0कृ0 3915/4040/2020/ दो/सी-2

भोपाल, दिनांक /10/2021

प्रतिलिपि -

1. उप सचिव, मुख्य सचिव कार्यालय मंत्रालय, भोपाल।
2. अपर मुख्य सचिव, लोक स्वास्थ्य एवं परिवार कल्याण एवं चिकित्सा शिक्षा विभाग, मंत्रालय, भोपाल।
3. अपर मुख्य सचिव सचिव, पर्यावरण विभाग, मंत्रालय, भोपाल।
4. पुलिस महानिदेशक, म0प्र0, भोपाल।
5. प्रमुख सचिव, स्कूल शिक्षा विभाग, मंत्रालय, भोपाल।
6. प्रमुख सचिव, उच्च शिक्षा विभाग, मंत्रालय, भोपाल।
7. प्रमुख सचिव, जनसंपर्क विभाग, मंत्रालय, भोपाल।
8. समस्त संभागायुक्त, ग0प्र0
9. सचिव, म0प्र0 पर्यावरण नियंत्रण मण्डल भोपाल।
10. समस्त पुलिस महानिरीक्षक, म0प्र0
11. विस्फोटक आयुक्त, नागपुर (महाराष्ट्र)
12. मुख्य विस्फोटक नियंत्रक, पेट्रोलियम एवं विस्फोटक सुरक्षा संगठन, सब सर्किल कार्यालय, ई-7/41 लाला लाजपत सोसायटी, 12 नं. स्टाप के पास, अरेरा कालोनी, भोपाल। की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित।

अपर मुख्य सचिव
म0प्र0शासन, गृह एवं जेल विभाग

4. The contention of the applicant is that the undertaking and testing as narrated by directions issued by the M.P. Govt. have not been carried out, which resulted in violation of direction of Hon'ble Supreme Court and further aggravating the air quality index in the region, adversely affecting the health of the public.

5. Learned counsel for the applicant has further relied on the news item of Times of India published on 01.02.2023 which says that *if you live in Madhya Pradesh your life will be five year shorter due to Air Pollution. M.P. is tenth (10th) most polluted State in India.* We do not express any opinion about reporting on the Times of India but that is a reporting which expressed the public opinion with regard to the pollution in the area.
6. It is further submitted that the order dated 27.01.2021 regarding use of fire crackers has not been complied with in-spite of the fact that two years has passed since issuing of these directions. Though the District Magistrates of Madhya Pradesh were allotted the duty to enforce the directions but due to reasons best known to the Administrative Authorities, the statutory duty to control the air quality index particularly in Gwalior, Indore, Bhopal and Jabalpur has not been done.
7. The applicant has given figure of the Diwali night on 25.10.2022 and air quality in the different cities are narrated as below :-

City	Air Quality Index
Jabalpur	241.00
Katni	240.00
Ratlam	237.00
Bhopal	232.00
Dewas	205.00
Ujjain	214.00
Indore	204.00
Gwalior	203.00

and it has been submitted that the noise pollution went up over the permissible limit at Jabalpur.

8. A reporting dated 26.10.2022 attached at Annexure A/2 reveals that due to use of fire crackers the wildlife near the vicinity of the District Jabalpur are in danger.
9. The reporting dated 26.10.2022 reveals that the pollution index increased in the year 2022 in comparison of the previous year and there was no effective control on the use of fire crackers.

10. It is to be noted that the matter of use of fire crackers was taken up by the Principal Bench of this Tribunal in O.A. No. 249/2020 and other connected matters and one of the matter O.A. No. 93/2020(CZ), *Dr. P.G. Najpande & Ors. v. State of M.P. & Ors.* was tagged with that original application, which was decided vide order dated 01.12.2020 with the direction and facts as follows :-

*1. Direction was also issued for **restricting use of fire crackers to green crackers in cities/towns where air quality was 'moderate' or below, only for two hours and only during festivals like Diwali, Chatt, New Year/Christmas Eve etc.**, as may be specified by the concerned State. The conclusion and directions in the said order are quoted below for ready reference:*

"VIII Conclusion and Directions

44. *In view of above, **having regard to increased adverse health impact of pollution by use of crackers on Covid-19, aggravating risk to lives and health which has led to ban by the Governments of Odisha, Rajasthan, Sikkim, UT Chandigarh, DPCC and by the Calcutta High Court on sale and use of crackers,, applying the 'Sustainable Development' and 'Precautionary' principles, a case is made out for issuing directions for banning sale and use of fire crackers during November 9 to 30 in areas where air quality is 'poor', 'very poor' and 'severe'.***

45. *Further, case is made out for restricting sale and use of fire crackers in areas with moderate and poor air quality where also on account of Covid-19, there will be serious adverse effects, though less than areas where air quality is poor and above. In such areas, unless covered by the ban or restrictions by the authorities, restrictions on the pattern of those imposed by the Hon'ble Supreme Court vide*

order dated 23.10.2018, (2019) 13 SCC 523, reproduced in para 32 above will apply i.e. only green crackers be sold and use of crackers will be allowed only for two hours during festivals and not on any other day during November 9 to 30.

48. Accordingly, we direct as follows:

- i. *At other places, ban/restrictions are optional for the authorities but if there are more stringent measures under orders of the authorities, the same will prevail.*
- ii. *The Chief Secretaries and DGPs of all the States/UTs may issue and circulate an appropriate order in above terms with appropriate enforcement guidelines to all the District Magistrates and Superintendents of Police, PCBs/PCCs.*
- iii. *The CPCB and the State PCBs/PCCs may regularly monitor the air quality during this period which may be uploaded on their respective websites. CPCB may compile information on the subject, including the status of compliance of this order from all the States/UTs and file a consolidated report with data compiled till filing of report, before the next date by e- mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.*

2. *The Hon'ble Supreme Court considered the matter the health impacts of air quality beyond norms were noted as follows¹:*

¹ in Arjun Gopal v Union of India, (2017) 1 SCC 413

Table 1

AQI	Associated Health Impacts
Good (0-50)	Minimal impact.
Satisfactory (51-100)	May cause minor breathing discomfort to sensitive people.
Moderately polluted (101-200)	May cause breathing discomfort to people with lung disease such as asthma, and discomfort to people with heart disease, children and older adults.
Poor (201-300)	May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease.
Very Poor (301-400)	May cause respiratory illness to the people on prolonged exposure. Effect may be more pronounced in people with lung and heart diseases.
Severe May (401-500)	May cause respiratory impact even on healthy people, and serious health impacts on people with lung/heart disease. The health impacts may be experienced even during light physical activity.

3. Air quality grading was noted as follows:

Table 2

AQI Category, Pollutants and Health Breakpoints								
AQI category (Range)	PM₁₀ 24-hr	PM_{2.5} 24-hr	NO₂ 24-hr	O₃ 8-hr	CO 8-hr (mg/m³)	SO₂ 24-hr	NH₃ 24-hr	Pb 24-hr
Good (0-50)	0-50	0-30	0-40	0-50	0-1.0	0-40	0-200	0-0.5
Satisfactory (51-100)	51-100	31-60	41-80	51-100	1.1-2.0	41-80	201-400	0.5-1.0
Moderately polluted (101-200)	101-250	61-90	81-180	101-168	2.1-10	81-380	401-800	1.1-2.0
Poor (201-300)	251-350	91-120	181-280	169-208	10-17	381-800	801-1200	2.1-3.0
Very poor (301-400)	351-430	121-250	281-400	209-748*	17-34	801-1600	1200-1800	3.1-3.5
Severe (401-500)	430+	250+	400+	748+*	34+	1600+	1800+	3.5+

4. Thereafter, vide order dated 23.10.2018, in Arjun Gopal v. Union of India, (2019) 13 SCC 523², while banning certain categories of fire crackers and directing

² Para 48

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. Further, the Union of India, Government of NCT of Delhi and the State Governments of NCR would permit community fire crackers only (for Diwali and other festivals, etc. as mentioned above), wherever it can be done. The operative part of the order is as follows:

“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, the directions issued and restrictions imposed

in the order passed by this Court on 18-7-2005 in Noise Pollution shall continue to be in force.

48.12 Directions 4 to 9 and 11 contained in the order dated 12-9-2017 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.

49. One clarification needs to be given at this stage. Our discussion pertaining to the arguments based on Article 19(1)(g), Article 25 as well as the argument of loss of substantial

revenue and unemployment, in cases the manufacture and sale of the firecrackers is totally banned, is prima facie and we have not given our conclusive determination. It is because of want of detailed studies on various aspects which have been mentioned and taken note of during discussion in this order. However, we also make it clear that, prima facie, we do not find much merit in these arguments for which we have given our reasons in brief.

50. Having regard to the overall circumstances, we have decided that, for the time being, a balanced approach to tackle this problem is needed, which may take care of the concerns of both the parties and, at the same time, provide a reasonable and adequate solution. When the picture would become clearer after the requisite studies/research is undertaken, more stringent measures can be adopted in future if the situation so warrants.”

5. While issuing the above directions, ‘Precautionary’ principle was invoked with the following observations:

“ xxx xxx xxx

37 The aforesaid findings are sufficient to negate the arguments of the opposite side that there is absence of scientific study about the adverse effect of firecrackers during Diwali. In environmental law, “precautionary principle” is one of the well-recognised principles which is followed to save the environment. It is rightly argued by the petitioners that this principle does not need exact studies/material. The very word “precautionary” indicates that such a measure is taken by way of precaution which can be resorted to even in the absence of definite studies. In Vellore Citizens' Welfare

as well as acute coronary syndrome, arrhythmia, myocarditis, and heart failure, were shown to be clinically dominant, leading to critical complications of COVID-19. Recent studies in China, the USA, as well as Europe indicate that patients with cardiovascular risk factors or established cardiovascular disease and other comorbid conditions are predisposed to myocardial injury during the course of COVID-19. From the available information, it thus follows that air pollution-induced inflammation leads to greater vulnerability and less resiliency, and the pre-conditions increase the host vulnerability. Air pollution causes adverse events through myocardial infarction and stroke, and it is an additional factor capable of increasing blood pressure, while there is emerging evidence for a link with type 2 diabetes and a possible contribution to obesity and enhanced insulin resistance. Bronchopulmonary and cardiovascular pre-conditions, including hypertension, diabetes, coronary artery disease, cardiomyopathy, asthma, COPD, and acute lower respiratory illness, all negatively influenced by air pollution, lead to a substantially higher mortality risk in COVID-19. Furthermore, it seems likely that fine particulates prolong the atmospheric lifetime of infectious viruses, thus favouring transmission. It is possible that future research will reveal additional pathways that mediate the relationship between air pollution and the risk of death from COVID-19.

15. In article by Aparna Banerjea titled 'After studies, it's clear that air pollution contributes to Covid mortality: ICMR' Mint, 27 October 2020', it is mentioned that the ICMR studies have proved that long-term exposure to air pollution has been linked to an increased risk of dying from Covid-19. It is further stated that there have been studies from Europe and US, where they have looked at polluted areas and have compared mortality during lockdown and correlation with pollution. "It is found that pollution is contributing to mortality in COVID, that's well established by studies," said Dr. Balram Bhargava, DG ICMR, in a health ministry briefing today.

According to a study, published in Cardiovascular Research, scientists estimated that about 15% of deaths worldwide from COVID-19 could be attributed to long-term exposure to air pollution. In Europe the proportion was about 19%, in North America it was 17%, and in East Asia about 27%.

- 7. There is a statement by Jharkhand chapter of Indian Medical Association (IMA) that smoke from firecrackers during Diwali can turn out to be fatal for Covid-19 patients. The report particularly mentions the names of the State President Dr. A.K. Singh and Dr. Pradeep Bhattacharjee. It is also further mentioned that winter dry air can aggravate breathing difficulties, especially among those suffering from lung ailments. Smoke from crackers can turn out to be recipe for disaster. Pollutants released will remain suspended in cool air for a long duration.*
- 8. I.A. No. 112/2020 has been filed in OA No. 93/2020(CZ), Dr. P.G. Najpande & Anr. vs. State of M.P. & Ors., by the applicant stating that inspite of order of this Tribunal, the bursting of fire crackers took place at Jabalpur, Bhopal, Indore and Gwalior. As a result, there was increase in Covid cases in Madhya Pradesh after Deepawali.*
- 9. 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 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.

10. We have already quoted the air quality norms. We may also note the standards of noise level, prescribed under Rule 3 read with the Schedule to the Noise Pollution (Regulation & Control) Rules, 2000 (Noise Control Rules) as follows:

“SCHEDULE
(see rule 3(l) and 4(l))

Ambient Air Quality Standards in respect of Noise

Area Code	Category of Area/Zone	Limits in dB(A) Leq*	
		Day Time	Night Time
(A)	Industrial area	75	70
(B)	Commercial area	65	55
(C)	Residential area	55	45
(D)	Silence Zone	50	40

Note:-

1. Day time shall mean from 6.00 a.m. to 10.00 p.m.
2. Night time shall mean from 10.00 p.m. to 6.00 a.m.
3. Mixed categories of areas may be declared as one of the four above mentioned categories by the competent authority.

*dB(A) Leq denotes the time weighted average of the level of sound in decibels on scale A which is relatable to human hearing.

A "decibel" is a unit in which noise is measured.

"A", in dB(A) Leq, denotes the frequency weighting in the measurement of noise and corresponds to frequency response characteristics of the human ear.

Leq : It is an energy mean of the noise level, over a specified period.”

11. As per the Noise Control rules, the responsibility for enforcement of noise pollution control measures is of the ‘authority’, which includes authorized officers, District Magistrates, Police Commissioner or any officer not below the rank of Deputy Superintendent of Police designated for the maintenance of air

quality standards in respect of noise. There is further provision that any loudspeaker or sound producing instrument /equipment can be used **only after obtaining written permission**. Festive occasions are defined as **notified National or State functions, including the Republic Day, the Independence Day, State Day or other notified day**.

12. Remedial action against violation of noise level norms as well as air quality norms has been subject matter of judgements of the Hon'ble Supreme Court. Reference may be made to the judgment of the Hon'ble Supreme Court dealing with the noise pollution in Re: Noise Pollution- implementation of the Laws for Restricting Use of Loudspeakers and High- Volume Producing Sound Systems, (2005) 5 SCC 733.

13. This Tribunal in O.A No. 519/2016, Hardeep Singh & Ors. v. SDMC & Ors. dealt with the steps for enforcement of the directions of the Hon'ble Supreme Court on the subject of noise pollution. Noise pollution is an offence under the Noise Control Rules as also under IPC Sections 268, 285, 286, 290, 291 etc. Noticing large scale violation of Noise norms, this Tribunal required CPCB to lay down compensation regime. After expert studies, report dated 12.06.2020 was filed which was considered by this Tribunal vide order dated 11.08.2020. The compensation regime suggested by the CPCB is as follows:

Sr. No.	Violation of Noise Rules	Compensation (in Rupees) to be paid by defaulter		Action to be taken by designated authority
1.	Xxx	Xxx		Xxx
2.	Xxx	Xxx		Xxx
3.	Xxx	Xxx		Xxx
4.	Bursting of Firecrackers beyond the prescribed time limit prescribed (Hon'ble Supreme Court and Clause 5A (2) and 6 (iv) 7- 8			
		Residential / Commercial / Mixed Zone Silence Zone	Silence Zone	
4(1)	Violation by Individual/ Household	1,000	3,000	

4(2)	Violation during Procession a. Public Rallies b. Barat during marriage Religious event	10,000	20,000	Fine to be paid by Organizer
4(3)	First Violation within a fixed Premises: a. Function organized by RWA, b. Marriage Function c. Public Function d. Institution function e. Banquet Hall f. Open ground functions	20,000		Fine to be paid by Organizer and Owner of the place.
4(4)	Second Violation within a fixed Premises: a. Function organized by RWA, b. Marriage Function c. Public Function d. Institution function e. Banquet Hall Open ground Function	40,000		
4(5)	More than Two Violation within a fixed Premises: a. Function organized by RWA, b. Marriage Function c. Public Function d. Institution function e. Banquet Hall Open ground function	1,00,000 and action under EP Act.		Sealing of Premises

Note:

xxx xxx xxx

7. Sound emitting fire crackers shall not be burst in silence zone or during' night time in each zone.”

8. xxx xxx xxx

9. It may be noted that imposition of fine for notification of Rule 5A (1) falls within the purview of Motor Vehicle Rules, 2019”

14. Accordingly, the above needs to be followed against violation of prohibition/restriction on bursting of crackers. Apart from the scale of compensation, applicable for noise, equal amount of compensation is liable to be paid for

violation of air norms. Thus, the rate of compensation has to be double of the above scale. The word 'fine' is infact compensation. Polluter pays principle is part of environmental law not only under section 20 of the NGT Act but also has to be applied by law enforcing agency to enforce environmental norms. For second violation and more than two violations, deterrent amount in the form of double compensation will be payable for cases covered by Para 4(1) & 4(2) of the above table also. Further, it is clarified that 'second' violation does not mean second day. Second violation includes violation on same day or continuous violation.

The amount of compensation collected may be credited to a separate account to be called 'District Environment Compensation Fund' to be maintained by the District Magistrate.

Directions

15. 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 Court³.

- 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. 681/2018⁴ to coordinate with the District Magistrates.⁵ 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*

³ (2019) 13 SCC 523 para 48.14

⁴ *The said order is as follows:*

“15. xxx xxx xxx

i. xxx xxx xxx

ii. *The Action Plans may be prepared by six-member committee comprising of Directors of Environment, Transport, Industries, Urban Development, Agriculture and Member Secretary, State Pollution Control Board or Committee of the concerned State. The Committee may be called Air Quality Monitoring Committee (AQMC). The AQMC will function under the overall supervision and coordination of Principal Secretary, Environment of the concerned State/Union Territory. This may be further supervised by the Chief Secretaries concerned or their counterparts in Union Territories by ensuring intra-sectoral co-ordination.”*

⁵ *The District Environment Committee has been directed to be constituted by this Tribunal to prepare and execute District Environment Plan vide order dated 15.07.2019 in OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjanhanpur & Ors.*

Supreme Court dated 23.10.2018.⁶

- 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.*

11. Hon'ble the Supreme Court of India in (2017) 16 SCC page 280 para 72 held that the health of the people must take precedence over any commercial or other interest of the applicant or any of the permanent licensee and therefore a greater regulation is necessary which could eventually result in a prohibition.
12. The provisions as contained in Rule 15 relating to marking on exclusives and packages and Rule 84 relating for temporary shops for possession and sale of fireworks during festivals of the explosive rules shall be strictly enforced.
13. It was further directed that the public authorities and the District Magistrate concerned will ensure that fireworks are not burst in silence zones, i.e. an area of 100 mtr. Away from the hospitals, nursing homes, primary, district health care centers, education institutions, courts, religious places or any

⁶ Order dated 23 10.2018 (2019) 13 SCC 523

other area that may be declared as silence zone by the authorities concerned.

14. The department of education was directed to formulate a plan of action, in not more than 15 days to reach out to schools to the school stops, volunteer and NGOs to sensitize and educate school children on the health hazards or ill effects of breathing polluted air, including i.e. air polluted due to fireworks.
15. The school children should be encouraged to reduce, if not eliminate, bursting of fireworks, as part of any festivities. The manufacture, sale and use of joint fire crackers (series crackers or laries) was banned as the same was used to cause air, soil and solid waste problems.
16. In light of the directions issued by the Hon'ble Supreme Court of India the State has already banned the barium salts in fireworks.
17. 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 fire cracking 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 fire cracking 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 fire cracking.

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.

18. 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, aluminum, 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 aluminum, barium and iron used in the manufacture of firecrackers.
19. 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 banned 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 mislabeling on the boxes

and even the QR codes provided on the boxes of 'green crackers' are alleged to be fake.

20. 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.

21. 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.

22. Issue notice to the respondents, returnable within four weeks. Respondents are directed to submit their reply within two weeks through E-filing portal, preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.
23. Applicant is directed to take necessary steps for service to the respondents by both ways and also on available email.
24. Applicant is directed to supply the copy of the application and relevant documents to the Respondent(s) within two days and after compliance of service, the applicant has to submit an affidavit that the notice and copy of the application have been served upon the respondent(s).
25. In view of the above facts, we direct -
 - i. That the order passed by Hon'ble Supreme Court of India in *Arjun Gopal v. Union of India* (2017) 16 SCC 280, W.P. 728/2015 order dated 29.10.2021 and order passed by this Tribunal in original application no. 249/2020(PB) & in original application no. 76/2021(CZ) must be complied with.
 - ii. Directions issued by the State of M.P. vide letter no. 3914/4040/2020/2/C-2 dated 31.10.2021 must be strictly complied with.
 - iii. We direct 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 festival or occasion will continue. Such festivals will be specified by the

States/District Magistrates. 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 the local conditions of impact on public health. The District Magistrate will take into account 24-hour average air quality with regard to PM_{2.5} and PM₁₀ on the corresponding date of the previous year.

iv. The District Magistrate on a complaint or otherwise will assess and recover compensation from violators of the above directions on the parameters already mentioned above. Any victim of pollution, apart from other remedies, can approach the District Magistrate for compensation, by showing evidence of individual damage, out of the compensation fund available and if no such claim is made for six months after collection of the compensation, the amount can be spent for restoration of the environment in the District.

26. Respondents are directed to ensure that the prohibited fire crackers like series fire crackers and in which barium salt has been used should be restricted and necessary legal action be initiated against the use of barium salt crackers.

27. In view of the order of passed by Hon'ble Supreme Court of India in *Arjun Gopal vs. Union of India* dated 29.10.2021 quoted above, we further direct the authorities of the State and respondents to strictly comply the directions issued by the Hon'ble Supreme Court in above quoted case and in light of the order dated 31.10.2021 be communicated to all the District Magistrates of District of Madhya Pradesh.

28. The District Magistrate, Gwalior, Indore, Bhopal and Jabalpur are further directed to periodically monitor the air quality and in case of below the standard as prescribed, the necessary action must be initiated to maintain the air quality in the area.

29. Copy of the order be communicated to the Chief Secretary of the State of M.P. and Director General of Police and District Magistrates for compliance and filing the status report.

List it on **08th November, 2023.**

Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

19th October, 2023
EA No. 11/2023 (CZ)
PN