

Item Nos. 09, 13, 14 (PB) & 1(CZ, to be heard by PB)

Court No. 1

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

I.A. No. 368/2020

IN

Original Application No. 249/2020

Santosh Gupta

Applicant

Versus

Ministry of Environment, Forest &
Climate Change & Ors.

Respondent(s)

WITH

Original Application No. 254/2020

Shobhit Shukla

Applicant

Versus

Govt. of NCT of Delhi

Respondent(s)

WITH

Original Application No. 255/2020

Chirag Jain

Applicant

Versus

Govt. of NCT of Delhi

Respondent(s)

WITH

Original Application No. 93/2020(CZ)

Dr. P.G. Najpande & Anr.

Applicant(s)

Versus

State of M.P. & Ors.

Respondent(s)

Date of hearing: 04.11.2020

**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**

Applicant: Mr. Shobhit Shukla, in person in OA 254/2020
Mr. Chirag Jain, in person in OA 255/2020
Mr. Prabhat Yadaav, Advocate in OA 93/2020(CZ)

ORDER

1. Common question involved in these matters is remedial action against pollution by use of fire crackers during the time air quality is unsatisfactory with potential of severity of Covid-19 pandemic. We note that on 03.11.2020, the States of Odisha and Rajasthan have issued notifications prohibiting sale and use of fire crackers. The notifications are as follows:

**“Government of Odisha
Office of Special Relief Commissioner
No. 6218 /R&DM(DM) Date: 03-11-2020**

RDM-RLF-MISC-0290-2020

ORDER

Whereas, the State is passing through a critical stage of COVID-19 pandemic;

And whereas, the winter season is approaching during which the elderly, children, persons with co-morbidities and others develop respiratory problems;

And whereas, the Deepavali and Kartika Purnima festivals are approaching and people usually burn fire crackers during such occasions;

And whereas, it is a well-known fact that burning of the fire crackers releases copious amounts of harmful chemicals, which have severe impact on the respiratory health of vulnerable groups and such pollutants can further aggravate health conditions of COVID-19 positive persons besides persons staying in home isolation;

And whereas, the Technical Expert Committee of the State Government has recommended for prohibition of burning of fire crackers to protect the vulnerable groups like elderly, children, persons with co-morbidities and others;

And whereas, considering the potentially harmful consequences of burning of crackers amidst COVID-19 pandemic situation and approaching winter, the State Government have directed to prohibit the sale and use of fire crackers from 10th to 30th of November, 2020 in public interest;

Now, therefore, in exercise of the powers conferred under section 24(1) of the Disaster Management Act, 2005 read with rule 8(1) of the Odisha Disaster Management Rules, 2010, the undersigned hereby directs that the sale and use of fire crackers

shall remain prohibited in all parts of the State from 10th to 30th of November, 2020.

Any person found violating this order shall be punished under the provisions of the Disaster Management Act, 2005 and other relevant laws.

Chief Secretary,
Odisha”

“Home (Gr.V) Department
Notification
Jaipur, November 03, 2020

S.O.402 :-In continuation of this department's notification even number dated 03.05.2020, 12.05.2020, 21.05.2020, 27.07.2020 and 17.10.2020, in exercise of the powers conferred by section 11 of the Rajasthan Epidemic Diseases Act, 2020 (Act No. 21 of 2020), the State Government hereby authorizes all Executive Magistrates, all Police Officers not below the rank of Assistant Sub-Inspector, all officers of Municipal Corporation/ Council/Board not below the rank of Revenue Inspector, all Chief Executive Officers of Zila Parisad and all Block Development Officers, within their respective jurisdiction, to compound the offences committed under section 4 of the said Act, by violating the order or regulation **prohibiting the actions specified in column 2 of the schedule given below** for the amount specified against each of them in column 3 of the said schedule.

Schedule

S.No.	Offence	Amount in Rupees for which the offence is to be compounded
1	2	3
1.	Any shopkeeper selling any kind of fireworks.	Rs. 10,000/-
2.	Any person found using or allow the firing of any kind of	Rs. 2000/-

2. In OA 249/2020, Santosh Gupta vs. Ministry of Environment, Forest & Climate Change & Ors., the Tribunal considered the matter on 02.11.2020 and passed following 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 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.

¹ Para 5, 19 & 20

² Para 69 to 72

³ Para 48

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. 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.**"

3. Thereafter, on request of the applicant, cause title was corrected vide order dated 03.11.2020. Further, I.A. No. 368/2020 has been filed as follows:

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>

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/>

“Sir, I would like to Withdraw my Plea due to some unavoidable reason thus, in this context, kindly consider my request and to make necessary direction for removing my name (Santosh Gupta) in this case and other all mandatory documents.

I sincerely apologies for this mistake of mine and would like to request you to kindly consider Withdrawing my Plea (Santosh Gupta) for above-mentioned application no. and pardon me for the inconvenience caused.”

4. In view of above, the cause title of the application be changed by substituting the applicant by “Tribunal on its own motion”. Since the issue does not involve only the applicant but was raised on behalf of the public, the applicant can be allowed to withdraw his name and not the issue concerning public generally. I.A. No. 368/2020 stands disposed of.

5. In O.A. No. 254/2020, *Shobhit Shukla vs. Govt. of NCT of Delhi*, the applicant has stated as follows:

“That the applicant herein most respectfully submits that the use of fireworks in Delhi has posed a serious problem to the quality of the air during the week of Diwali, which followed by usage of crackers during the weddings in the winter season. That the quality of air in the months of October, November and December since the time the applicant has shifted to Delhi has deteriorated to catastrophic levels. With each passing year the issue of extreme smog in Delhi is becoming more and more deadly. It is essential to highlight here that on 02.11.2020, Delhi’s air quality was in the “very poor” category, as per the data from the Central Pollution Control Board (CPCB). The capital recorded an Air Quality Index (AQI) of 310 at 7 am.

That in this regard, the, the situation has become more hazardous in 2020 because of the on-going corona pandemic. According to the Delhi state health department, 4,001 fresh cases were detected in Delhi in the last 24 hours, pushing the total tally more than 3.96 lakh. In fact, in the wake of the deadly coronavirus disease (Covid-19) pandemic and rising pollution in the national capital, the Delhi government has also launched an anti-firecracker campaign from November 3rd, 2020.

Under the campaign, 11 special squads of the Delhi Pollution Control Committee (DPCC) and city police will inspect firecracker manufacturing units to ensure that there is no old stock left. The government has also urged people to not burn crackers at all this year as the city battle surge in Covid-19 cases.

That however it is wishful and ideal that it is expected out of people that they shall themselves refrain from bursting crackers on the eve

of Diwali and other forthcoming festivities, it has been seen in the past years that the such voluntary restrictions do not translate into legitimate constraint on the usage of such fire crackers. This has shown extremely hazardous effects upon the air quality of the Delhi-NCR region.”

6. In O.A. No. 255/2020, *Chirag Jain vs. Govt. of NCT of Delhi*, the applicant has stated as follows:

“That currently we are undergoing an unprecedented time in our country with the ongoing pandemic of COVID-19, cases of which are sure to rise with the advent of winters in Delhi.

That it is now a common knowledge that the respiratory system is immensely adversely affected by the COVID-19 virus and that the same stress will increase manifold with the increase in the air pollution in the area of Delhi. It is also the view of the Government both of the NCT of Delhi as well as the Central Government. It has been stated in the media that the onset of winter season and rising air pollution in Delhi NCR shall aggravate the pandemic and may affect vulnerable groups and could lead to a drastic increase in the fatality rate in the country.

Delhi is encircled by Haryana from three sides and Uttar Pradesh on its eastern side. Delhi is a bowl state, in sense that, thickly populated cities like Noida, Ghaziabad, Faridabad and Gurugram encircle it and that the wind cycle from the areas surrounding the city coagulate the wind of the city. With the ongoing burning of stubble in the northern regions of the country the downwind brings all the smoke residue into the city due to which the entire region which is referred as NCR is predominated with high background dust, intensified industrial activities, high vehicular density, issues of re-suspension of dust etc. that are some of the primary causes of the deteriorating air quality in Delhi NCR.

The Air Quality Index (AQI) of Delhi and adjoining cities more or less is a testimony of the same. With the exception of monsoon season, AQI of the region more or less remains in the above 'Moderate' category. Therefore, there is an imminent need for actions to be taken for regulating various activities which have been identified as pollution contributors in the region.

As per the statement of the Health Minister of Delhi, an expert panel had been constituted by the Government which gave an indication that the COVID-19 cases in Delhi may go up to 15000 per day. This has been attributed on account of the onset of festival season, harsh winter conditions and rising air pollution levels.

AIIMS, a premier medical institution in the country has also issued advisories in view of anticipated conditions. Health Care Experts in other states have also released such medical advisories.

With the onset of the festival season in the country, there shall be use of fire crackers in huge numbers that will aggravate the air pollution concern in Delhi NCR. Using green crackers (also known as environmentally friendly crackers) is also futile since they are neither emission free and nor noise free. Hon'ble Supreme Court is reviewing the proceedings and adjudication is presently focusing on substitution of the ingredients to minimize pollution levels referring as Green Crackers.

There is also no mention on the regulation of firecrackers in Graded Response Action Plan (GRAP) perhaps with the view that their use is for limited period. However, such a stand is not correct owing to the fact it is contrary to the Air Act and considering that post the Diwali Day, the sky is engulfed with smoke. Deepawali celebrations with Firecrackers is not an integral part of the traditional celebrations. Right to earning a livelihood at the cost of severe health risks and damage to the environment should not be treated as a constitutional right.

There has been plethora of literature that is publicly available to show that air pollution leads to several diseases and discomfort. According to study from Harvard T.H. Chan School of Public Health, people who live in regions with high levels of air pollution are more likely to die from the disease than people who live in less polluted areas. Therefore, there exists a clear nexus between the rising air pollution and COVID-19 related deaths.

Harsh winter periods in Delhi NCR also results in reduction in the mixing heights thereby locking the pollutants and leading to hazy and poor visibility conditions. The emissions from Delhi, Faridabad, Gurugram, Noida and Ghaziabad are almost identical and Delhi gets locked experiencing the most unbearable conditions. Undoubtedly, the community at large has to live under distressed conditions.

It is a well-established fact that fire crackers emit poisonous gases like SO₂, NO_X, CO as well as the metal besides creating noise. The Government of India and the Government of Delhi have accepted in Media that air pollution and the winter conditions will lead to a surge in the COVID-19 cases and the most vulnerable groups will be the ones that could potentially suffer from respiratory/pulmonary diseases, hypertension and other such ailments. They might also lack the financial resources to seek the help of any medical institution. This also places an additional burden on the healthcare system of the country that is already struggling with shortage of beds, lack of PPE kits etc.”

7. In O.A. No. 93/2020(CZ), Dr. P.G. Najpande & Anr. v. State of MP & Ors. which has been filed before the Bhopal Bench and transferred to this Bench, to be heard with connected matters, it is stated as follows:

“Therefore, the main grievance of applicants is that this smoke filled air will increase in mortality rate of corona

patients, it will lead to increase in number of corona patients.

Those patients who have recovered from the corona infection diseases may again be put to hazardous situation.

All above effects will be because of huge air pollution causes by bursting of crackers.

Hon'ble National Green Tribunal (CZ) Bhopal in OA No.113/2013 observed on 31.10.2013 to take necessary steps against bursting of crackers causing air pollution in Diwali Festival by State Pollution Control Board, District Administrations and State Govt. of Madhya Pradesh, Rajasthan and Chhattisgarh.

A complaint regarding sale of substandard crackers causing air and noise pollution was filled before Hon'ble M.P. human Right Commission on 26.10.2018. Hon'ble Commission had directed to Inspector General of Police Bhopal on 05.10.2018 to take an necessary action. But neither the State Govt., State Pollution Control Board, Inspector General of Police, nor the District Administrative Department took appropriate action to curb the menace of crackers.

This year a situation is still more disastrous, because of covid-19 situation, people are suffering and their "Rights to Life" enshrined under Article 21 of the Constitution of India is under threats and hence it will be hazardous if the bursting of crackers is not banned."

8. The case set out in O.A. No. 254/2020, O.A. No. 255/2020 and OA No. 93/2020(CZ) is identical to the issue raised in O.A. No. 249/2020 which is already scheduled for hearing tomorrow i.e. 05.11.2020 after notice to the concerned parties. These matters can also be considered tomorrow with the said matter.

9. However, having regard to further developments such as grievance being raised for the State of MP and States of Odisha and Rajasthan have banned use of fire crackers in the wake of unsatisfactory air quality, the scope of proceedings may need to be extended beyond NCR so as to suggest that in all the concerned States where air quality is not satisfactory may consider taking action on the pattern of action taken by the States of Odisha and Rajasthan. Further, with respect to non-attainment cities (where air quality as per record maintained by the

CPCB is generally beyond norms) which are 122 in number, as per record of CPCB, the Tribunal may have to consider direction to prohibit use of fire crackers during the period air quality is beyond a threshold (and beyond the norms notified under the Air Act) to protect the health of the vulnerable groups. The remedial action with regard to the said cities is being separately dealt with by this Tribunal in O.A. No. 681/2018, News item published in "The Times of India" Authored by Shri Vishwa Mohan titled "NCAP with multiple timelines to clean air in 102 cities to be released around August 15." List of the said cities is as follows:

"List of 122 Non-Attainment Cities (Air Pollution)"

Sl. No.	State	Sl. No.	City
1.	Andhra Pradesh	1.	Anantapur*
		2.	Chittoor*
		3.	Eluru*
		4.	Guntur
		5.	Kadapa*
		6.	Kurnool
		7.	Nellore
		8.	Ongole*
		9.	Rajahmundry*
		10.	Srikakulam*
		11.	Vijaywada
		12.	Vishakhapatnam
		13.	Vizianagaram*
2.	Assam	14.	Guwahati
		15.	Nagaon
		16.	Nalbari
		17.	Sibsagar
		18.	Silcher
3.	Bihar	19.	Gaya
		20.	Muzaffarpur
		21.	Patna
4.	Chandigarh	22.	Chandigarh
5.	Chhattisgarh	23.	Durg Bhilainagar
		24.	Korba
		25.	Raipur
6.	Delhi	26.	Delhi
7.	Gujarat	27.	Ahmedabad
		28.	Surat
		29.	Vadodara*
8.	Himachal Pradesh	30.	Baddi
		31.	Damtal
		32.	Kala Amb
		33.	Nalagarh
		34.	Paonta Sahib
		35.	Parwanoo
		36.	Sunder Nagar
9.	Jammu & Kashmir	37.	Jammu
		38.	Srinagar
10.	Jharkhand	39.	Dhanbad
11.	Karnataka	40.	Bangalore
		41.	Devangere
		42.	Gulburga
		43.	Hubli-Dharwad

Sl. No.	State	Sl. No.	City
12.	Madhya Pradesh	44.	Bhopal
		45.	Dewas
		46.	Gwalior
		47.	Indore
		48.	Sagar
		49.	Ujjain
13.	Maharashtra	50.	Akola
		51.	Amravati
		52.	Aurangabad
		53.	Badlapur
		54.	Chandrapur
		55.	Jalgaon
		56.	Jalna
		57.	Kolhapur
		58.	Latur
		59.	Mumbai
		60.	Nagpur
		61.	Nashik
		62.	Navi Mumbai
		63.	Pune
		64.	Sangli
		65.	Solapur
		66.	Thane*
		67.	Ulhasnagar
		14.	Meghalaya
15.	Nagaland	69.	Dimapur
		70.	Kohima
16.	Odisha	71.	Angul
		72.	Balasore
		73.	Bhubneshwar
		74.	Cuttack
		75.	Kalinga Nagar*
		76.	Rourkela
		77.	Talcher
17.	Punjab	78.	Amritsar
		79.	Dera Baba Nanak
		80.	Dera Bassi
		81.	Gobindgarh
		82.	Jalandhar
		83.	Khanna
		84.	Ludhiana
		85.	Naya Nangal
		86.	Patiala
18.	Rajasthan	87.	Alwar
		88.	Jaipur
		89.	Jodhpur
		90.	Kota
		91.	Udaipur
19.	Tamilnadu	92.	Trichy*
20.	Telangana	93.	Tuticorin
		94.	Hyderabad
		95.	Nalgonda
		96.	Patencheru
21.	Uttar Pradesh	97.	Sangareddy*
		98.	Agra
		99.	Allahabad
		100.	Anpara
		101.	Bareilly
		102.	Firozabad
		103.	Gajraula
		104.	Ghaziabad
		105.	Jhansi
		106.	Kanpur
		107.	Khurja
		108.	Lucknow
		109.	Moradabad
		110.	Noida
111.	Raebareli		
112.	Varanasi		
22.	Uttarakhand	113.	Dehradun*

Sl. No.	State	Sl. No.	City
		114.	Kashipur
		115.	Rishikesh
23.	West Bengal	116.	Asansol*
		117.	Barrackpore*
		118.	Durgapur*
		119.	Haldia*
		120.	Howrah*
		121.	Kolkata
		122.	Raniganj*

10. Accordingly, we consider it appropriate to issue notice to all the States/UTs where the above cities fall, in addition to notice already issued to the Governments of Delhi, Haryana and Uttar Pradesh. Notice need not be issued to the States of Odisha and Rajasthan in view of the notification issued by the said States. To all other States/UTs where the above cities fall, notice may be issued by e-mail to the concerned Chief Secretaries returnable for tomorrow.

List the matter already fixed for hearing tomorrow i.e. 05.11.2020.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

November 04, 2020
I.A. No. 368/2020 IN
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DV