

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2018
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Indic Collective Trust

...Petitioner

VERSUS

UNION OF INDIA & Ors.,

...Respondents

PAPER BOOK
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ADVOCATE FOR THE PETITIONERS: Ms. ANINDITA MITRA

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INDIC COLLECTIVE TRUST

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...Respondents

OFFICE REPORT ON LIMITATION

The Petition is within time.

New Delhi

Dated: __.09.2018

BRANCH OFFICER

LISTING PROFORMA
IN THE SUPREME COURT OF INDIA

SECTION PIL(W)

The case pertains to (Please tick / check the correct box):

| | | | |
|--------------------------|------------------------|---|----|
| <input type="checkbox"/> | Central Act (Title) | : | NA |
| <input type="checkbox"/> | Provision | : | NA |
| <input type="checkbox"/> | Central Rule (Title) | : | NA |
| <input type="checkbox"/> | Rule No(s) | : | NA |
| <input type="checkbox"/> | State Act | | NA |
| <input type="checkbox"/> | Provision(s) | : | NA |
| <input type="checkbox"/> | State Rule (Title) | : | NA |
| <input type="checkbox"/> | Rule No(s) | : | NA |
| <input type="checkbox"/> | Impugned Interim Order | : | NA |
| <input type="checkbox"/> | Impugned Final Order | : | NA |
| <input type="checkbox"/> | High Court | : | NA |
| <input type="checkbox"/> | Names of Judges | : | NA |
| <input type="checkbox"/> | Tribunal/Authority | : | NA |

| | | | |
|----|-------------------------|--------------------------|------------------------|
| 1. | Nature of Matter | <input type="checkbox"/> | Civil |
| 2. | (a) Petitioner No. 1 | : | Indic Collective Trust |
| | (b) Email ID | : | |
| | (c) Mobile Number | : | |
| 3. | (a) Respondent No. 1 | : | Union of India |
| | (b) Email ID | : | NA |
| | (c) Mobile Number | : | NA |
| 4. | Classification | | |
| | (a) Main category | : | |
| | (b) Sub classification | : | |

5.

Not to be listed before

:

NA
6.

Similar/Pending Matter

:

NA
7.

Criminal Matters

:

NA
8.

Land Acquisition Matters

:

NA
9.

Tax Matters

:

NA
10.

Special Category

:

NA
- ☐

Senior Citizen

☐

SC/ST

☐

Woman/Child
- ☐

Disabled

☐

Legal Aid

☐

In custody
11.

Vehicle Number

:

NA

(in case of Motor Accident Claim matters)
12.

Decided cases with citation

:

NA

Date :___.09.2018

Advocate on Record for Petitioners

Name : Ms. Anindita Mitra

Code :

E-mail :

SYNOPSIS

1. The instant Writ Petition is being preferred under Article 32 of the Constitution challenging the constitutionality and legality of the Circular No. DE.23(619)/Sch. Br./2017/2055 dated September 19, 2017 (hereinafter referred to as "the Impugned Circular") issued by the Respondent No. 1 citing the judgment delivered by this Hon'ble Court in *In re Noise Pollution* (2005) 5 SCC 733. The Petitioner herein is a registered trust under the Indian Trusts Act, 1882 with its registered office at 5E, Bharat Ganga Apartments, Mahalakshmi Nagar, 4th Cross Street, Adambakkam, Chennai – 600 088. The Petitioner is a collective of activists, intellectuals and civil liberties campaigners who are committed to the advocacy of Indic civil liberties through Constitutional and democratic means.

2. The Petitioner's Trustees, who come from various parts of India and also reside in the National Capital Region, are aggrieved by the Impugned Circular which relies on the *Noise Pollution* judgement. It is submitted that the Impugned Circular infringes the cultural and religious rights of Indic communities living in the National Capital Territory. Consequently, the Petitioner has the necessary *locus* to file the instant Petition seeking quashing of the Impugned Circular.

3. The Impugned Circular violates the rights of Indic communities under Article 25(1) since it prevents the members of a particular community from celebrating Diwali as per customs

and therefore it creates a negative impression of an essential religious practice associated with the festival of Diwali and its variants. In doing so, the Impugned Circular places reliance on the *Noise Pollution* judgement presumably because in Paragraphs 156-157 of the *Noise Pollution* judgment, this Hon'ble Court proceeded to summarily hold that there is no nexus between the celebration of the festival of Diwali and the use of fireworks, which led to guidelines relating to special awareness campaigns in respect of firecrackers being issued in Paragraph 177(3) of the said judgement and several changes being effected to the regulatory framework that applies to firecrackers. In arriving at the said finding in *Noise Pollution*, there was no analysis or discussion undertaken with respect to the religious basis of the use of fireworks in the celebration of Diwali and no reference was made to any authoritative text to arrive at the said finding. In fact, the nexus appears to have been peremptorily denied merely because the submission was made on behalf manufacturers of fireworks, which is no reason to deny the nexus since it ought to have been tested on merits as it affects the rights of millions of members of Indic communities who are entitled to celebrate Diwali in accordance with their religious practices under Article 25(1). Simply stated, the *Noise Pollution* judgement's finding vis-à-vis absence of a nexus between fireworks and celebration of Diwali and its variants have been accepted as conclusive and have resulted in circulars and campaigns such as the aforementioned Impugned Circular. Since the Impugned Circular relies on the *Noise Pollution* judgement which arrived

at the finding of no nexus between bursting firecrackers and celebration of Diwali without applying the law laid down by this Hon'ble Court with respect to essential religious practices, the Impugned Circular is liable to be quashed. Further, it is the humble prayer of the Petitioner, that the Respondent No. 1 must be restrained from launching a similar campaign in the future so that the Petitioner is not denied its rights under Article 25 of the Constitution of India, 1950..

LIST OF DATES

| | |
|--------------|--|
| 1940 | Indian Explosives Rules enacted wherein a system of licensing was introduced for manufacture, possession and sale. The first organized factory of the fireworks industry set up at Sivakasi, Tamil Nadu. |
| 2005 | This Hon'ble Court in <i>Noise Pollution(V), In Re</i> , (2005) 5 SCC 733 laid down directions for use of fireworks to control their impact on Noise Pollution and held that uncontrolled use of firecrackers has a harmful impact on the environment through Noise and Air pollution. It was further held in Paragraph 157 that there is no nexus between use of fireworks and celebration of Diwali. In Paragraph 177(3), this Hon'ble Court directed that special awareness campaigns must be organised in relation to use of firecrackers for festivals. |
| 19.09.2017 | The Impugned Circular was issued by the Respondent No. 1 |
| ____.09.2018 | Hence, the present Petition under Article 32 of the Constitution of India seeking quashing of the Impugned Circular. |

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2015
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Indic Collective Trust

Registered office at
 5E, Bharat Ganga Apartments,
 Mahalakshmi Nagar,
 4th cross street, Adambakkam,
 Chennai- 600088

...**PETITIONER**

VERSUS

1. Government of National Capital Territory Delhi

Through the Secretary,
 Directorate of Education (School Branch)
 Old Secretariat,
 New Delhi- 110054

2. Central Pollution Control Board

Through the Secretary,
 Parivesh Bhawan,
 CBD-cum-Office Complex,
 East Arjun Nagar,
 New Delhi – 110032

3. Union of India

Through the Secretary,
 Ministry of Environment, Forests & Climate Change,
 Shashtri Bhawan
 New Delhi – 110001

4. Delhi Pollution Control Committee

Through the Secretary,
 6th Floor, ISBT Building,
 Kashmere Gate,
 Delhi – 110006.

4. The Delhi Police Licensing Unit

Through its Joint Commissioner of Police,
 1st Floor, Police Station, Defence Colony,
 New Delhi – 110040.

5. Petroleum and Explosives Safety Organization

Department of Industrial Policy and Promotion,
 Ministry of Commerce and Industry,
 Udyog Bhawan, Rafi Ahmed Kidwai Marg, Rajpath Area,
 Central Secretariat, New Delhi- 110011

6. Fireworks Research and Development Centre

Controller of Fireworks,
Near ESI Hospital, Sivakasi West,
Sivakasi, Tamil Nadu- 626124

7. National Environmental Engineering Research Institute

A-93-94, Industrial Area Phase I,
Naraina Industrial Area Phase 1,
Naraina, Delhi- 110028

....**RESPONDENTS**

**A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA FILED IN PUBLIC INTEREST**

To,

Hon'ble the Chief Justice of India and
His Companion Judges of the
Supreme Court of India

MOST RESPECTFULLY SHOWETH:

4. The instant Writ Petition is being preferred under Article 32 of the Constitution challenging the constitutionality and legality of the Circular No. DE.23(619)/Sch. Br./2017/2055 dated September 19, 2017 (hereinafter referred to as "the Impugned Circular") issued by the Respondent No. 1 citing the judgment delivered by this Hon'ble Court in *In re Noise Pollution* (2005) 5 SCC 733. The Petitioner herein is a registered trust under the Indian Trusts Act, 1882 with its registered office at 5E, Bharat Ganga Apartments, Mahalakshmi Nagar, 4th Cross Street, Adambakkam, Chennai – 600 088. The Petitioner is a collective of activists, intellectuals and civil liberties campaigners who are committed to the advocacy of Indic civil liberties through Constitutional and democratic means. The Petitioner's Trustees, who come from various parts of India and also reside in the National Capital Region, are aggrieved by the Impugned Circular which relies on the *Noise Pollution* judgement. It is submitted that the Impugned Circular infringes the cultural and religious rights of Indic

communities living in the National Capital Territory. Consequently, the Petitioner has the necessary *locus* to file the instant Petition seeking quashing of the Impugned Circular. A copy of the Impugned Circular is annexed herewith as **Annexure-P1**. A copy of the *Noise Pollution* judgement is annexed herewith as **Annexure-P2**.

5. The Respondent No. 1 is the Directorate of Education of the Government of National Capital Territory which issued the Impugned Circular. The Respondent No. 2 is the Central Pollution Control Board (CPCB) which is a statutory body constituted under the Water Act, 1974 and the Air Act, 1981. The Respondent No. 3 is that Ministry of the Union of India under which the Respondent No. 2 falls. The Respondent No. 4 is the nodal environmental agency for the Government of Delhi. The Respondent No. 5 is the licensing unit of the Delhi Police which has been vested with the power to grant temporary licenses for sale of fireworks. The Respondent No. 6 is the Petroleum and Explosives Safety Organisation (PESO) is the statutory authority which is entrusted with the administration of Explosives Act, 1884, Petroleum Act, 1934, Inflammable Substances Act, 1952 and the Rules framed under these Acts. The Respondent No. 7 is the Fireworks Research and Development Centre (FRDC) established by the Respondent No. 5 *"to fulfill the needs of the Indian fireworks Industry in safe manufacturing and handling of fireworks and thereby ensuring development of environment friendly and quality products by mechanization, through deployment of technology and training of human resources"*, as stated on its official website. The Respondent No. 8 is the

National Environmental Engineering Research Institute (NEERI) which is part of the CSIR's group of research institutions and whose stated mandate is to conduct research and developmental studies in environmental science and engineering.

6. The Impugned Circular violates the rights of Indic communities under Article 25(1) since it creates a negative impression of an essential religious practice associated with the festival of Diwali and its variants. In doing so, the Impugned Circular places reliance on the *Noise Pollution* judgement presumably because in Paragraphs 156-157 of the *Noise Pollution* judgment, this Hon'ble Court proceeded to summarily hold that there is no nexus between the celebration of the festival of Diwali and the use of fireworks, which led to guidelines relating to special awareness campaigns in respect of firecrackers being issued in Paragraph 177(3) of the said judgement and several changes to the regulatory framework that applies to firecrackers. Be that as it may, in arriving at the said finding, there was no analysis or discussion undertaken with respect to the religious basis of the use of fireworks in the celebration of Diwali and no reference was made to any authoritative text to arrive at the said finding. In fact, the nexus appears to have been peremptorily denied merely because the submission was made on behalf manufacturers of fireworks, which is no reason to deny the nexus since it ought to have been tested on merits as it affects the rights of millions of members of Indic communities who are entitled to celebrate Diwali in accordance with their religious practices under Article 25(1). Simply stated, the *Noise Pollution* judgement's finding vis-à-vis absence of a nexus between fireworks and celebration of

Diwali and its variants have been accepted as conclusive and have resulted in circulars and campaigns such as the Impugned Circular. Since the Impugned Circular relies on the *Noise Pollution* judgement which arrived at the finding of no nexus between bursting firecrackers and celebration of Diwali without applying the law laid down by this Hon'ble Court with respect to essential religious practices, the *Noise Pollution* judgement is a fit case for reference to a Constitution Bench under Article 145(3).

7. Following are the questions of law which arise for consideration by a Constitution Bench:

A. In light of the documentary evidence which demonstrates irrefutably and indisputably the essential and integral nexus between use of fireworks and celebration of Diwali and its variants, is the Impugned Circular unconstitutional and is the finding in Paragraphs 156-157 of *In re Noise Pollution* good in law?

B. In view of rights under Article 25(1), when firecrackers are admittedly neither the sole nor the biggest cause of pollution, can circulars and campaigns such as the Impugned Circular be issued/organized in connection with Diwali which discourage the practice of an essential religious ritual associated with the festival?

Each of the above questions has been dealt with in detail in the ensuing portions of the Petition.

A. In light of the documentary evidence which demonstrates irrefutably and indisputably the essential and integral nexus between use of fireworks and celebration of Diwali and its

variants, is the Impugned Circular unconstitutional and is the finding in Paragraphs 156-157 of *In re Noise Pollution* good in law?

8. It is submitted that the festival of Diwali has religious and cultural significance to the following Indic communities:
 - a. Hindus of the Sanathan Dharma variant
 - b. Hindus of the Arya Samaj variant
 - c. Sikhs
 - d. Jains

The festival is celebrated in the North and South of India based on different traditions, while retaining certain commonalities such as lighting of lamps, chanting of prayers, exchange of gifts and bursting of firecrackers. While in the North, the festival marks the celebration of the return of Lord Rama, in the South it is celebrated to commemorate the victory of Lord Krishna over Narakasura. These beliefs and the traditions which they have given rise to and which have been practiced for centuries, form part of the religious and cultural rights of Indic communities under Article 25(1).

9. It is further submitted that the National Capital Region belongs to all Indians, which is demonstrated by its cosmopolitan composition and demographics. Pertinently, Hindus of various traditions and from all parts of the country live in the NCR. At the very least, owing to the basis in the slaying of Narakasura by Lord Krishna, the bursting of firecrackers is certainly integral to the celebration of Deepawali by Hindus of the South who have lived in large numbers in several parts of NCR for generations together. The use of fireworks is not a mere merry-making

activity, but is, in fact, a ritual which finds mention in several authoritative Hindu texts. The significance of the ritual is that the use of fireworks is believed to show the spirit of ancestors the path to heavens, which is similar to the belief behind the Obon festival in Japan and the Ghost festival of China. Following are the documents the Petitioner relies upon in support of the factual position that there is indeed an essential and integral nexus between the use of fireworks and celebration of Diwali:

A. Extracts from Kartika Mahatmya of Hari Bhakti Vilasa-

Annexure-P3

B. Extracts from Smriti Kaustubha of Anant Deva, edited by Wasudev Laxman Sastri Pansikar- **Annexure-P4**

C. Extracts from Festivals, Sports and Pastimes of India by Dr. V. Raghavan, Vachaspati, Professor of Sanskrit, University of Madras- **Annexure-P5**

D. Extracts from History of Fireworks in India between A.D 1490 and 1900 by P.K.Gode- **Annexure-P6**

E. Extracts from Studies in Indian Cultural History, Volume 2, P.K.Gode- **Annexure-P7**

F. Extracts from The Cultural Heritage of India, Volume IV by The Institute of Culture of The Ramakrishna Mission- **Annexure-P8**

G. Extracts from Concise Encyclopaedia of India by K.R.Gupta and Amita Gupta - **Annexure-P9**

In view of the religious basis for use of fireworks and its long tradition, it is evident that the finding in mere eight lines in Paragraph 157 of the *Noise Pollution* judgement that there is no nexus between the bursting of firecrackers and the celebration of Diwali is factually incorrect.

10. Importantly, in arriving at the said conclusion, the Hon'ble Bench failed to apply the essential religious practice test as laid down by a seven-Judge Bench of this Hon'ble Court in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*. 1954 SCR 1005, which has been followed in several judgements subsequently in deciding whether a certain practice is entitled to protection as an essential religious practice under Article 25. The essential religious practice test requires rigorous examination of evidence, as opposed to relying on popular notions relating to a religious practice. In the *Noise Pollution* judgement, it is evident that no text was referred to arrive at the impugned finding. It was open to the Hon'ble Bench to take the view that no evidence was led in support of the contention that use of fireworks has a religious nexus to celebration of Diwali, instead of concluding summarily that there is no nexus. Clearly, the finding arrived at in Paragraph 157 is *per incuriam* and therefore merits a deeper consideration by a Constitution Bench as mandated by Article 145(3).

B. In view of rights under Article 25(1), when firecrackers are admittedly neither the sole nor the biggest cause of pollution, can circulars and campaigns such as the Impugned Circular be issued/organized in connection with Diwali which discourage the practice of an essential religious ritual associated with the festival?

11. In the judgements dated September 12, 2017 (**Annexure-P10**) and October 9, 2017 (**Annexure-P11**) delivered in W.P(C) No.

728/2015, *Arjun Gopal & Ors v. Union of India & ors.*, this Hon'ble Court itself had recognized that there are multiple factors which cause pollution in the National Capital Region, with use of fireworks being only one of them and not the biggest contributor. Even the Impugned Circular recognizes the pollution caused by crop-burning. Such being the case, it is indeed surprising that the entire exercise of addressing pollution in the National Capital Territory is limited to a discussion relating to fireworks and that too only with respect to the celebration of Diwali without there being even a remote discussion on the rights of Indic communities under Article 25(1). Even in the judgement of November 11, 2016 delivered in *Arjun Gopal*, the use of fireworks during Diwali has been merely referred to as a "time honoured" way of celebrating Diwali as opposed to examining if this time-honoured way is rooted in religion and tradition. Further, in the judgement of September 12, 2017 in *Arjun Gopal*, in Paragraph 51, this Hon'ble Court itself observed that the extent of air pollution caused by bursting fireworks is not clear in the absence of empirical data. Such being the case in 2017, it is evident that this Hon'ble Court did not have sufficient data or evidence in 2005 to proceed to truncate the rights of Indic communities under Article 25(1) without commissioning a comprehensive study on the correlation between the use of fireworks during Diwali and pollution. Such a study ought to have been commissioned in light of the fact that it is not the case of experts or expert bodies that they do not possess the tools to undertake such a study for this Hon'ble Court's benefit so that it may take an informed decision with respect to the same.

12. It is further submitted with respect to the application of the precautionary principle in such cases, that the shift from the Assimilative Capacity rule to Precautionary Principle in environmental jurisprudence is largely a consequence of rise of uncertainty as an essential aspect of environmental policy making. In other words, in situations where existing scientific tools are incapable of drawing a correlation between a certain activity and its effects on environment, erring on the side of caution would be the norm under the Precautionary Principle. However, it has been no one's case that there exist no scientific tools or methodologies which are adequate to establish a correlation between the use of fireworks during Diwali and air pollution. Such being the case, there is no reason for the application of the Precautionary Principle. Until a comprehensive scientific study is commissioned with the necessary inputs and the scientific study throws up results which are inconclusive and which point to the spectre of uncertainty, there is no basis in facts and in law to invoke and apply the Precautionary Principle. After all, the Principle cannot be invoked arbitrarily by taking an alarmist position which does not in any manner address the year-round high average baseline/datum of pollution in the NCR and by limiting the enquiry to a specific occasion and a specific cause which admittedly is neither the sole nor the biggest cause of pollution either during the time of Diwali or the rest of the year. Surely, it cannot be anybody's case that the right to breathe pollution-free air comes alive only on the festive occasion of Diwali and remains buried under the smoggy and hazy layers of pollution in NCR for the rest of the year.

13. It is submitted that since the ostensible object in imposing restrictions on the use of fireworks is to give effect to the right to breathe pollution-free air, presumably not just during Diwali, the scope of the enquiry with respect to pollution must necessarily be expanded so that meaningful measures may be taken to address the various causes of pollution. After all, a holistic approach to tackling pollution too is the mandate of environmental jurisprudence especially when there is consensus that (a) there is no one cause which is solely responsible for pollution and (b) use of fireworks is certainly not the sole or primary cause. In this regard, reliance is placed on the 2018 Report (**Annexure-P12**) on air pollution in the NCR, prepared by the Parliamentary Standing Committee on Science & Technology, Environment & Forests. Para 1.7 of the said Report contains a table which captures the various sources of pollution in the NCR during summer and winter seasons. What is pertinent to note is that use of firecrackers is not one of them. The portions of the Report which deal with firecrackers are Paragraphs 9.1-9.3, which are extracted below:

"9.1 As has already been brought out in the report, since the last few years, the quality of air nosedives in Delhi and NCR with the onset of winters, the situation further deteriorates every year after Diwali when the quality of air goes from worse to worst. The situation was such during the last few years that Delhi was sheeted in a toxic smog that forced the closure of schools, power stations, construction sites, etc. As a result of this, in June 2017, the Supreme Court banned the sale of firecrackers in Delhi during the upcoming Diwali festival in an effort to prevent the usual spike in toxic air pollution levels that follow the festival.

9.2 The Committee further observes that each year during Diwali, cheap firecrackers are burst, often manufactured using toxic chemicals, turning Delhi in to a 'Gas Chamber'. The Hon'ble Supreme Court in the year 2017 has directed to suspend and not renew the licences for possessing, stocking and selling of fire crackers in Delhi. The Committee appreciates the efforts made by the Central Government and the Government of NCT of Delhi in this direction in the form of banning the import of Chinese crackers and confiscating the available stocks.

9.3 The Committee, however, feels that much more needs to be done in this regard. The Committee, therefore, recommends that the Central Government in consultation with the concerned State Governments should chalk out a mechanism whereby the cracker manufacturers are allowed to manufacture only low polluting crackers. The Committee also recommends that the Central Government should also consider issuing firm guidelines with regard to the chemicals to be used in crackers by the manufacturers for minimising their adverse impact on the environment and human health."

14. It is pertinent to note that according to the Report, firecrackers do not turn the quality of air from good to worst, but worse to worst. This supports the Petitioner's position that the high average of baseline pollution, which the Report refers to as "worse" especially during winters, should be addressed first in a holistic manner instead of adopting a narrow piecemeal approach which limits the scope of such a critical enquiry only to the use of fireworks during Diwali. Further, the Report recommends banning

of import of Chinese firecrackers and use of low polluting crackers, but does not recommend blanket ban on firecrackers.

15. In addition to the above, the Petitioner places reliance on the research publications authored by Dr. Hiren T. Jethva and his team which shed light on the effect of crop burning on the pollution levels in the NCR. Dr. Jethva is a Research Scientist with the Universities Space Research Association (USRA) and the Goddard Space Flight Center of the National Aeronautics and Space Administration (NASA), USA. His brief biography is annexed herewith as **Annexure-P13**. In a research paper published in 2018 (**Annexure-P14**) and titled "*Agricultural Burning and Air Quality over Northern India: A Synergistic Analysis using NASA's A-train Satellite Data and Ground Measurements*", Dr. Jethva and his team have concluded as follows:

"Scientific significance, societal relevance, and relationships to future missions: The traditional practice of crop residue burning post-harvest over northwestern India causes hazardous levels air pollution over the populous northern India. In addition to its climatic impacts, extreme levels of particulate matter and trace gases emitted from crop fires during post-monsoon poses a serious threat to the human health of millions living in the region. While the increasing amounts of crop production ensure nation's food security, the lack of an effective crop residue management system has led farmers resorting to burning the waste that has played a major role in deteriorating regional air quality during post-monsoon. Willingness and partnership between the government and the agricultural sector is crucial for

the adoption and enforcement of the viable alternatives to burning. Owing to its long-term record, NASA's A-train satellites have helped in tracking the temporal evolution of fires and resulting aerosol amounts over the region making possible to quantify the trends and spatial patterns. Currently in-orbit VIIRS instrument on board NASA-NOAA joint satellite mission Suomi-NPP will continue the record of fires and aerosol detection at higher spatial resolution."

16. It is evident from the above that crop-burning post-monsoon contributes significantly to deterioration in air quality and increase in particulate matter. Based on his analysis, Dr. Jethva has concluded that the increase in PM_{2.5} levels around the Diwali festive period coincides with crop burning in Punjab and Haryana which affects not just the NCR, but the entire Indo-Gangetic Plain.

17. In a research paper titled "Short-term degradation of air quality during major firework events in Delhi, India" authored by Shivani et al (**Annexure-P15**) in April 2018, following were the observations of the study as captured in the Abstract:
"The effect of firework events on air quality was assessed from ambient fine particulate matter (PM_{2.5}) collected during the Diwali period in two consecutive years, i.e., November 2015 and October 2016. The extensive firework activities led to the short-term degradation of air quality during the Diwali days. PM_{2.5} samples were chemically characterised for elements, water-soluble ionic species, organic carbon (OC) and elemental carbon (EC). Ba, K, Sr, S, Mg and Na showed significant increases in

concentration on Diwali days compared to pre-Diwali days which revealed their association with firecrackers. Concentration of SO_4^{2-} , NO_3^- , Cl^- , K^+ and NH_4^+ ions contributed to the increases in $\text{PM}_{2.5}$ concentration on Diwali days. Higher OC/EC ratios indicated the formation of secondary organic carbon during the Diwali period. This study concludes that the high $\text{PM}_{2.5}$ level during Diwali 2016 was a result of contribution from fireworks on the Diwali night, trans-regional movement of pollutants due to crop residue burning, low wind speed (0.15 m s^{-1}), and high humidity. It was observed that short-term exposure to Diwali is plausible to generate 1.3% increase in non-carcinogenic hazard index due to elements Al and Ba during Diwali 2016, whereas no significant variation was observed for the carcinogenic risk due to Pb. However, in 2015, the increase in non-carcinogenic hazard index was appreciably lower as compared to 2016.”

It is clear from the above that the effect of crop residue burning around the Diwali period has a significant and adverse bearing on the air quality in NCR which cannot be lost of sight of. Therefore, a scientific discussion which calls for nuance and a holistic approach cannot be reduced to a Diwali-centric discussion if the object is to find a viable lasting solution for year-round air quality woes in NCR.

18. It is further submitted that by making Diwali the focal point of the discussion on the issue of air pollution especially in schools, without addressing the year-round causes which have contributed to increase in the baseline of pollution in NCR, the Impugned Circular and similar campaigns initiated by the Respondent No. 1 placing reliance on the guidelines issued in

Noise Pollution, have effectively led to creating a negative perception about the festival of Diwali itself in the younger generation. This has a bearing on the rights of Indic communities under Article 25(1) since such a lopsided discussion has stigmatized the celebration of Diwali. Critically, such an approach does not help the discourse surrounding pollution either since the goal must be to create constructive awareness relating to all causes of pollution, especially those which are not seasonal but are prevalent all through the year. Since the *Noise Pollution* judgement's peremptory approach to religious rights is the root cause, it is a textbook case for reference under Article 145(3).

16. It is humbly stated that the exercise of rights under Article 25(1) is contingent on the availability of fireworks and therefore if its use itself is actively stigmatized, it will result in completely defeating rights under Article 25(1). This is akin to defeating the right of a reader to consume published information, which will be defeated if reading the book itself is systematically looked down upon through a state-sponsored campaign. Therefore, for good or bad, the rights invoked by the Petitioner are tied to the rights of manufacturers under Article 19(1)(g). This, by itself, cannot dilute the Petitioner's position or its rights under Article 25(1).
17. It is humbly submitted that a perusal of the legal framework that applies to manufacture, distribution, sale of fireworks would reveal that the industry is heavily regulated in all aspects by Acts, Rules, Notifications and Judgements. Enumerated below in brief are the Acts, Rules, Notifications and Judgements which apply to the industry:

- A. Explosives Act, 1884
- B. Explosives Rules, 2008
- C. Noise Pollution Regulation and Control Rules, 2000
- D. The Factories Act, 1948
- E. Environment Protection Rules, 1986
- F. Notification No. D-18018/05/2007-08/Plan/SVK/PESO, dated 7th March 2008 to implement the *Noise Pollution* judgement regulating manufacture of firecrackers generating noise level exceeding 125 decibels.

It is manifest that the fireworks industry is a regulated one and the scope of regulation has progressively increased. In view of this, it is possible to regulate it further not just with respect to its manufacture, but also its use by consumers through the following measures which have been recommended in several scholarly publications such as “*Ambient Air Quality during Diwali Festival over Kolkata – A Mega-City in India*” Chatterjee et al., *Aerosol and Air Quality Research*, 13: 1133–1144, 2013 (**Annexure-P16**):

- i. Promotion of firecracker display as a community entertainment
- ii. Prohibition of firecracker burning on roads/lanes and earmarking of large open spaces, away from residential areas, for firecracker display
- iii. Crackers, exploding at a higher elevation (higher than the normal skyline of the locality) may be encouraged for a better dispersion.

18. The Petitioner is also placing on record regulations which are in force in the UK (**Annexure-P17**) and in the EU (**Annexure-**

P18) with respect to manufacture, sale and use of fireworks. By adopting the above measures and by mandating the use of low polluting chemicals, it is certainly possible to strike a balance between the right to breathe pollution-free air under Article 21, the right to celebrate Diwali in accordance with Indic faiths and traditions under Article 25(1) and the right of the fireworks industry under Article 19(1)(g) to which are tied to the rights under Article 25(1). A campaign which actively promotes a “no firecracker Diwali” would only prove that the system has proven itself incapable of regulation through proper enforcement and is therefore resorting to an undesirable alternative. If such a precedent were to be set, it would pave the way for discouraging and banning several activities which the Executive has failed to strictly regulate. For instance, since the Prevention of Corruption Act has failed to eliminate corruption in Public Servants and in public life, people must be discouraged for aspiring for the post of public servants. Since the ban on the use of loudspeakers in places of worship has not been effectively enforced, people must be dissuaded from visiting such places of worship. Since the meat industry and the leather industry are admittedly the biggest causes of pollution of the River Ganga, people must be dissuaded by the State from eating meat or using leather. Clearly, stigmatising an activity, which is amenable to regulation, is no solution since it only reflects poorly on the competence of the enforcement infrastructure. What is called for is a balanced approach to the legitimate rights of all stakeholders and a holistic approach to the issue of pollution. Therefore, since the *Noise Pollution* judgement has completely and summarily dismissed the existence of rights under Article 25(1) without applying the law

and without examining the evidence of a nexus between use of fireworks and celebration of Diwali, it warrants reference to a Constitution Bench under Article 145(3) and the Impugned Circular is liable be quashed.

19. The cause of action arose in favour of the Petitioner when the Impugned Circular was issued by the Respondent No. 1 in September 2017 relying upon the *Noise Pollution* judgement. In fact, the Impugned Circular itself states that every year an anti-firecrackers campaign is organized by the Respondent No. 1 pursuant to the guidelines issued by this Hon'ble Court in the *Noise Pollution* judgement. Therefore, the cause of action shall continue as long as the Respondent No. 1 is required to comply with the *Noise Pollution* judgement.
20. The present Writ Petition is being filed on the following grounds and without prejudice to one another:

GROUND

- A.** THAT the Impugned Circular, which relies on the *Noise Pollution* Judgement, violates the rights under Article 25(1) of Indic communities living in the NCT;
- B.** THAT the Impugned Circular is based on the *Noise Pollution* Judgement which failed to apply the essential religious practice test as laid down by this Hon'ble Court in several landmark judgements in so far as the finding in Paragraph 157 of the Judgement is concerned;

- C.** THAT the Impugned Circular stigmatizes the celebration of Diwali and its variants in accordance with traditions and rituals which are protected by Article 25(1);
- D.** THAT this Hon'ble Court is the only forum that the Petitioner can approach and crave interference in the interest of protecting guaranteed fundamental rights under Article 25(1).

21. PRAYER

It is most respectfully prayed that this Hon'ble Court be pleased to:

- (a) Quash the Impugned Circular No. DE.23(619)/Sch. Br./2017/2055 dated September 19, 2017 issued by the Respondent No. 1;
- (b) Restrain the Respondent No. 1 from launching a similar campaign in the future;
- (c) Direct the Respondents to undertake a comprehensive study of causes of pollution in the NCT as well as contribution of fireworks to the same and place the same before this Hon'ble Court for appropriate directions to be passed in accordance with the law;
- (d) Pass such other and further orders as are deemed fit and appropriate in the interest of justice.

DRAWN BY:

FILED BY

J. SAI DEEPAK
Advocate

Ms. ANINDITA MITRA
ADVOCATE FOR PETITIONER

Drawn On : __.09.2018
Filed On : __.09.2018

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2018

IN THE MATTER OF:

INDIC COLLECTIVE TRUST

...Petitioners

VERSUS

UNION OF INDIA & Ors.

...Respondents

AFFIDAVIT

I, Ashish Dhar, S/o Mr. Lakshmi Nath Dhar, aged about 37 years, residing at M-20, Lajpat Nagar-II, New Delhi- 110024, do hereby solemnly affirm and state as under:

1. That I am the Authorised Signatory of the Petitioner Trust and being well conversant with facts and circumstances of the Petition, I am competent to swear the present Affidavit on behalf of the Trust.
2. That the contents of the Synopsis and List of Dates from pages B to E and those of Paragraphs 1 to 20 of the Writ Petition from Page Nos.1 to ____ are facts true to my knowledge and belief, while Paragraphs 21(a) to (d) are the prayers made to this Hon'ble Court.
3. That the Annexures filed along with the Writ Petition are the true copies of their respective originals.

DEPONENT

VERIFICATION

I, the above-named Deponent, do hereby solemnly affirm and verify that the contents of this affidavit are true to best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT