

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.6561/2021
(@ SLP (C) NO.17993/2021 @ DIARY NO. 26640/2021)

GOUTAM ROY & ANR.

..APPELLANT(S)

VERSUS

**THE STATE OF WEST BENGAL
& ORS.**

..RESPONDENT(S)

WITH

CIVIL APPEAL NO.6562/2021
(@ SLP (C) No.17991/2021)

CIVIL APPEAL NO.6563/2021
(@ SLP (C) NO.17994/2021 @ DIARY NO. 26789/2021)

CIVIL APPEAL NOS.6564-6566/2021
(@ SLP (C) NOS.17995-97/2021 @ DIARY NO. 26790/2021)

ORDER

1. SLP (C) No.17994/2021 @ Diary No.26789/2021 and SLP (C) Nos. 17995-97/2021 @ Diary No.26790/2021 are mentioned and taken on board.

2. These appeals emanate from the common judgment of the High Court of Calcutta dated 29.10.2021. The same were first

taken up at 11.00 am today when following order was passed:

“These matters were taken up at 11.00 a.m. today and following order was passed:

It appears that advance copy of the petition(s) has already been served on the Standing Counsel for the State of West Bengal as well as on the West Bengal Pollution Control Board. However, no appearance is made on their behalf. We permit learned Counsel for the petitioners to intimate the Standing Counsel for the State of West Bengal as well as the West Bengal Pollution Control Board, that the matters will be taken up again at 3.00 p.m. through video conferencing and to make themselves available with appropriate instructions as may be necessary.

Matters be called out again at 3.00 p.m. today.”

The matters were accordingly taken up at 3.00 p.m. today. Notice has been given to the respondents, who are represented by their counsel.

- 3.** Permission to file Special Leave Petition is granted.
- 4.** Leave granted.
- 5.** Heard learned counsel for the parties.
- 6.** During the course of argument, it transpired that the High Court passed a complete ban order departing from the decisions of this Court relied upon by the parties and also adverted to in the impugned judgment, being influenced about the practical

realities and also because of lack of mechanism provided for by the State as to how the sale/bursting/lighting of only green crackers, which are duly certified, can be allowed. This aspect, it is stated before us, was never debated during the course of argument before the High Court. Mr. Anand Grover, learned senior counsel, on instructions, submits that had the Court called upon the parties to explain that position, the State Government as well as the West Bengal Pollution Control Board (for short, “the Board”) would have brought all aspects of the matter to the attention of the Court to dissuade the Court to depart from the consistent view taken by this Court on the subject matter. Our attention was also invited to the mechanism already in place as noted in SLP (C) No.17991 of 2021, which reads thus:

“.....

That apart, regarding the question/issue of ascertainment by police and/or law enforcement agencies whether the crackers are green crackers or not, comprehensive directions and guidelines are available on the web portals of CSIR-NEERI and PESO and also the green firecrackers contains green logos of CSIR-NEERI and PESO as well as QR codes engrafted on the boxes which can be easily scanned on the NEFRI mobile app to verify the contents used in making those crackers. Moreover, the list of manufacturers, those which are engaged with the manufacturing of only green firecrackers along with their relevant certificates are also available for online verification, on real time basis, on the web portals of CSIR-NEERI and PESO. As such, the apprehension posed by the Hon'ble High Court at Calcutta to the effect that there is no

mechanism in place at present to ascertain whether the crackers being sold or burst/lighted are only green crackers, complying with the norms as set in place by the relevant certifying body, and further it would be an impossible task for the police and/or law enforcement agencies to ascertain the veracity of the certificates of the crackers which are being used by the general public at the time of these festivals, irrespective of the classification under which they are sold, is completely vague and baseless, without any rational and reasonable basis.
....”

7. We do not deem it necessary to dilate on this aspect as we are of the view that if the High Court wanted to impose a complete ban, it should have called upon the parties to offer explanation about the aspects which were weighing with it (not specifically pleaded or argued) requiring such extreme order and departure from the consistent directions given by this Court amongst others vide orders dated 29.10.2021 in IA No.44727 of 2021 in Writ Petition (C) No.728 of 2015 and dated 13.11.2020 in SLP (C) D.No.24650 of 2020, both passed during the pandemic period taking note of the prevailing situation. This Court in fact had reiterated the regime delineated by the National Green Tribunal (for short, “NGT”) in respect of manufacture and sale of fire crackers. It is stated across the Bar by the learned Counsel for the Board that there are no manufacturing entities in the State of West Bengal. The fire

crackers are imported from other States and sold by wholesale/retail dealers across the State. The appellants are representing dealers only.

8. Be that as it may, for departing from the elaborate directions delineated by the NGT and also this Court on the subject matter, tangible fact situation needs to be pointed out including about the inaction or collusive approach of the Executive at the ground level. The learned Counsel for the State of West Bengal as well as for the Board, on the other hand, submit that the officials are taking necessary steps as are required to ensure that the directions issued by this Court in the aforementioned orders are complied with in its letter and spirit. If there is any inaction on the part of the official concerned, appropriate remedial and corrective steps will be taken in the matter. We accept this assurance given on behalf of the State of West Bengal as well as the Board.

9. Learned counsel appearing for the writ petitioner were at pains to persuade us that the order, as passed by the High Court, need not be interfered with. However, for the reason already noted above, it is not possible to accept this submission. Instead, we set aside the impugned order and permit the writ

petitioner or any person interested in doing so to approach the High Court by placing all relevant facts and material on record and on the basis of the foundation so laid in that proceeding, the High Court after giving opportunity to the State of West Bengal as well as the Board, may proceed to pass directions as may be advised.

10. For the time being, we only restate the position stated in the orders passed by this Court as referred to above, which shall be fully adhered to by the Authorities concerned in its letter and spirit. Additionally, the State of West Bengal may explore the possibility of ensuring prevention of import of banned fire crackers or related items within the State of West Bengal at the entry point itself. That mechanism can be strengthened, if need be. Further, the State shall ensure strict supervision and verification at other places including where the trading of fire crackers occur as well as its use.

11. Mr. Anand Grover, learned senior counsel has requested us to record his grievance that the High Court did not call upon the State to explain about the practical realities and ineffective mechanism to verify the crackers imported or traded/sold within the State nor any party had advanced such argument before the

High Court. At the same time, we note that this grievance has not been refuted by the learned counsel for the writ petitioner before us. Mr. Rachit Lakhmani, learned counsel appearing for the writ petitioner, who had also appeared before the High Court, however, submits that even though the High Court did not specifically ask the parties on these issues or the learned counsel appearing for the State as well as for the Board, but did mention during the course of hearing that there is no assuring arrangement in place, which can ensure prevention of import of other than green fire crackers and use thereof within the State of West Bengal. We need not dilate on this aspect any further.

12. Accordingly, we dispose of the appeals in the above terms.

13. Applications for intervention/impleadment, if any, are allowed. Pending application(s), if any, shall also stand disposed of.

.....**J.**
(A.M. KHANWILKAR)

.....**J.**
(AJAY RASTOGI)

NEW DELHI;
01st NOVEMBER, 2021

(FURTHER PROCEEDINGS AT 3.00 P.M.)

ITEM NO.1+2 Court 3 (Video Conferencing) SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

ITEM 1

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 26640/2021

(Arising out of impugned final judgment and order dated 29-10-2021 in WPA(P) No. 282/2021 passed by the High Court At Calcutta)

GOUTAM ROY & ANR. Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL & ORS. Respondent(s)

(IA No. 142244/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 142243/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT IA No. 142371/2021 - INTERVENTION/IMPLEADMENT
IA No. 142370/2021 - INTERVENTION/IMPLEADMENT
IA No. 142242/2021 - PERMISSION TO FILE PETITION

ITEM 2

SLP (C) No(s). 17991/2021

(IA No. 142368/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

SLP (C) No.17994/2021 @ Diary No.26789/2021 (MENTIONED)

SLP (C) Nos. 17995-97/2021 @ Diary No.26790/2021 (MENTIONED)

Date : 01-11-2021 These matters were called on for
hearing/mentioned today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s) Mr. Siddharth Bhatnagar. Sr. Adv
Ms. Malvika Trivedi. Sr. Adv
Mr. Rahul Arya. Adv.
Ms. Bhargavi Kannan. Adv.
Ms. Easha Manchanda. Adv.
Ms. Pracheta Kar. Adv
Mr. Aditya Sidhra. Adv.
Mr. Madhav Bhatia. Adv.
Ms. Susrea Mitra. Adv.

Mr. Nadeem Afroz. Adv.
Mr. Yogesh Sharma. Adv.
Mr. Alok Tripathi, AOR

Mr. Srijib Chakraborty, Adv
Mr. Kuldeep Rai, Adv
Mr. Arnab Sengupta, Adv
Mr. Deborshi Dhar, Adv
Mr. Ranjan Nikhil Dharnidhar, AOR

For Respondent(s) Mr. Rachit Lakhmani, Adv
(R-2 in D.No.26640/ Mr. Avinash Jha, Adv
2021, R-9 in Mr. Ashok Bannidinni, AOR
SLP (C) NO.17991/21 Mr. Indrajeet Dey, Adv
Mr. Arindam Paul, Adv
Mr. Saikat Pal, Adv

For Impleaders in Ms. Malvika Trivedi, Sr. Adv.
I.A. No. 142370/2021 Mr. Rahul Arya, Adv
142371/2021 Mr. Ashish Choudhury, Adv
Ms. Bhargavi Kannan, Adv
Mr. Dhruv Surana, Adv
Mr. Saurabh Kumar, Adv
Mr. Madhav Bhatia, Adv
Mr. Sankalp Narain, Adv
Mr. Rohit Amit Sthalekar, AOR

State of W.B. Mr. Anand Grover, Sr. Adv.
Mr. Suhaan Mukerji, Adv
Mr. Vishal Prasad, Adv
Mr. Nikhil Parikshith, Adv
Mr. Abhishek Manchanda, Adv.
Mr. Sayandeep Pahari, Adv.
PLR Chambers & Co.

R-6,7 Ms. Madhumita Bhattacharjee, AOR
Ms Srija Choudhury, Adv
Mr. Anant, Adv

Mr. Gopal Sankaranarayan, Sr. Adv.
(# appearance not given)

Diary 26789/2021 Mr. Hari Shankar Jain. Adv
Mr. Vishnu Shankar Jain. AOR (mentioned by)
Mr. Pankaj Kumar Verma. Adv

Dairy 26790/2021 Ms. Mamta Tiwari, Adv
Ms. Taruna Ardhendumauli Prasad, AOR
(mentioned by)
Mr.Nirmal Ambhastha, Adv
Mr. Mukesh Singh, Adv

UPON hearing the counsel the Court made the following
O R D E R

SLP (C) No.17994/2021 @ Diary No.26789/2021 and
SLP (C) Nos. 17995-97/2021 @ Diary No.26790/2021 are
mentioned and taken on board.

Permission to file Special Leave Petition is
granted.

Leave granted.

The appeals are disposed of in terms of the
Signed Order.

Applications for intervention/impleadment, if
any, are allowed. Pending application(s), if any, shall
also stand disposed of.

(Geeta Ahuja)
Court Master

(Renu Bala Gambhir)
Court Master

(Signed Order is placed on the file)

ITEM NO.1+2 Court 3 (Video Conferencing)

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

ITEM 1

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 26640/2021

(Arising out of impugned final judgment and order dated 29-10-2021 in WPA(P) No. 282/2021 passed by the High Court At Calcutta)

GOUTAM ROY & ANR.

Petitioner(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

(IA No. 142244/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 142243/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 142371/2021 - INTERVENTION/IMPLEADMENT

IA No. 142370/2021 - INTERVENTION/IMPLEADMENT

IA No. 142242/2021 - PERMISSION TO FILE PETITION

ITEM 2

SLP (C) No(s). 17991/2021

(IA No. 142368/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 01-11-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE AJAY RASTOGI

For Petitioner(s)

Mr. Siddharth Bhatnagar. Sr. Adv

Ms. Malvika Trivedi. Sr. Adv

Mr. Rahul Arya. Adv.

Ms. Bhargavi Kannan. Adv.

Ms. Easha Manchanda. Adv.

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Mr. Aditya Sidhra. Adv.

Mr. Madhav Bhatia. Adv.

Ms. Susrea Mitra. Adv.

Mr. Nadeem Afroz. Adv.

Mr. Yogesh Sharma. Adv.

Mr. Alok Tripathi, AOR

Mr. Srijib Chakraborty, Adv

Mr. Kuldeep Rai, Adv

Mr. Arnab Sengupta, Adv

Mr. Deborshi Dhar, Adv

For Respondent(s) Mr. Ranjan Nikhil Dharnidhar, AOR
(R-2 in D.No.26640/2021, R-9 in SLP (C) NO.17991/21) Mr. Rachit Lakhmani, Adv
Mr. Avinash Jha, Adv
Mr. Ashok Bannidinni, AOR
Mr. Indrajeet Dey, Adv
Mr. Arindam Paul, Adv
Mr. Saikat Pal, Adv

For Impleaders in I.A. No. 142370/2021 142371/2021 Ms. Malvika Trivedi, Sr. Adv.
Mr. Rahul Arya, Adv
Mr. Ashish Choudhury, Adv
Ms. Bhargavi Kannan, Adv
Mr. Dhruv Surana, Adv
Mr. Saurabh Kumar, Adv
Mr. Madhav Bhatia, Adv
Mr. Sankalp Narain, Adv
Mr. Rohit Amit Sthalekar, AOR

UPON hearing the counsel the Court made the following
O R D E R

These matters were taken up at 11.00 a.m. today and following order was passed:

It appears that advance copy of the petition(s) has already been served on the Standing Counsel for the State of West Bengal as well as on the West Bengal Pollution Control Board. However, no appearance is made on their behalf. We permit learned Counsel for the petitioners to intimate the Standing Counsel for the State of West Bengal as well as the West Bengal Pollution Control Board, that the matters will be taken up again at 3.00 p.m. through video conferencing and to make themselves available with appropriate instructions as may be necessary.

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