

(1999) 10 CAL CK 0027
In the Calcutta High Court
Case No : C.O. No. 4303 (W) of 1995
In Re: Banning of Manufacture of Fire Works

Date of Decision : 14-10-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2000) CriLJ 2539

Hon'ble Judges : S.B. Sinha, Acting C.J.; R.K. Mitra, J

Bench : Division Bench

Advocate : M.C. Das and Gautam Mukherjee, for the Appellant; S.N. Mukherjee, P.K. Dutta, B. Mukherjee, V. Bhatia, G.P. Shaw for Mridula Narula and Rajkumar Narula Firework Dealers, P.K. Ghosh, J. Bagchi, T. Ghosh for Virendra Kumar Narula Fireworks Dealers and Laxmi Kumar Gupta, Debotosh Khan, Soumendra Kumar Ghosh, Rananjay Chatterjee and Kalyan Kumar Chakraborty, for the Respondent

Judgement

S.B. Sinha, Actg. C. J.

1. An application has been filed before this Court, on behalf of the Commissioner of Police and the Deputy Commissioner of Police, inter alia, for a direction upon the manufacturer of fire works banning, manufacture, storage and transportation of banned fire works within the State of West Bengal, Pradesh Adarshabadi Byabsayye Samity, Mridula Narula and Virendra Kumar Narula have also filed applications and/or affidavits wherein a prayer have been made for allowing them to transport the fire works manufactured by them to other States.

2. With a view to consider the prayers made in the respective applications, it is necessary to note the following fact.

3. A division bench of this Court in C.O. No. 4303 (W) of 1995 by an order dated 1-4-96 reported in Om Birangana Religious Society Vs. The State and Others, placed certain restrictions on the use of microphones" and loudspeakers throughout the State of West Bengal under the Police Act. By reason of an order dated 30th September, 1996 Pollution Control Board was directed to take suitable measure "to stop creating sound pollution by any means other than the

microphones" such as user of electric air horn of public vehicles, fireworks and other sources of sound nuisance.

4. On or about 28-10-98 the Member Secretary, West Bengal Pollution Control Board by a Memo provided that the fire works generating a noise above 65 decibels in the ambient atmosphere would be unfit for manufacturing, trading and use. A writ petition was filed which was marked as writ petition No. 2725 of 1996 but a learned single Judge of this Court by an order dated 1-11-96 refused to pass an interim order. Thereafter a Notification was issued by the Commissioner of Police, Calcutta on 2-11-96 purportedly in conformity with the orders passed in C.O. No. 4303(W) of 1995 prohibiting manufacture, possession, transportation, trading, sale, discharge and use of fire works generating noise level above 65 db.

5. On or about 19-3-97 this Court also passed an order relating to monitoring of use of microphones AIR-horns and banned fireworks in the said C.O. No. 4303 (W) of 1995. On or about 7-5-97 this Court directed that no permission should be given by the police authorities for manufacturing sound making crackers and other fire works and no licence should be granted without obtaining permission from the Pollution Control Board. However, an application for modification was filed by the manufacturer of fire works and by an order dated 23-5-97, the order dated 7-5-97 was modified stating :-

By our order dated 7th May, 1997 on the basis of a Report submitted by the police authorities we observed that by putting a simple level that "not for Sale in West Bengal", would not serve the purpose as there is very chance of the packages and the stocks being diverted in the State of West Bengal for use. It was directed that a constant check is necessary for the purpose of ascertaining the correct position so that no such fire works are manufactured or stored or sold to be used in the State of West Bengal.

Accordingly on the prayer made by Mr. Kapoor it is made clear that the manufacturing of fire works is banned for the purpose of using it in the State of West Bengal but it can be sold to outside West Bengal. It can also be manufactured for the purpose of export outside the State of West Bengal and for that purpose Mr. Kapoor on behalf of his client undertakes that the entire production of fire works is exported putting a level on the same and maintaining a register of manufacturers and name of the person to whom it is sold and exported outside the West Bengal so that the same can be verified if any occasion arises. The police authorities shall have the liberty to ensure that none of the banned fire works are sold within the State of West Bengal but are in fact being sold outside the State of West Bengal. The West Bengal Pollution Control Board and the police authorities are directed to see that the order passed by this Court regarding banned fire works or prohibited fire works could not be used or diverted to the State of West Bengal by the manufacturers, it is also made clear that in case of any violation of this order the Police authorities shall immediately take steps and shall report the matter to this Court for taking necessary steps in

accordance with law against them including seizure and confiscation of manufacturing of fire works and raw materials. The applicant shall intimate to the Pollution Control Board regarding their supply, place of storage and manner of transportation outside the West Bengal for looking into the matter.

(Underlining is mine for emphasis)

5. By another order dated 10-6-97 the said order dated 23-5-97 was clarified and/or modified to the extent that the expression "manufacturer" would also include the dealers and traders on condition that the manufacturer shall inform in advance the West Bengal Pollution Control Board the names and addresses of the dealers and/or traders who would be engaged in exporting goods outside the West Bengal. The Dealers and Traders were directed to maintain registers in terms of the order dated 23rd May, 1997 and the other terms and conditions. The conditions applicable to the case of manufacturer were also directed to apply in their case.

6. The said application was disposed of but two application, one by Mohan Fire Works;, and another by Chandan Mal Golcha were filed with a prayer for stay of the Memo No. 1039 dated 28th October, 1996 as well as Police Notification dated 2nd November, 1996 and to permit or allow manufacture, sell, dealing and/or trading and storing of fire works without any restriction. The said two applications were disposed of by a Judgment dated 26th September, 1997 which has since been reported in 1997 2 CAL LJ 468.

7. In the main Judgment delivered in the matter i.e. in Om Birangana Religious Society Vs. The State and Others, this Court considered the contention as regard the effect of the said Notification and further took into consideration of the submissions made on behalf of the applicants therein that the standard/norms fixed by the West Bengal Pollution Control Board and the Commissioner of Police Calcutta were issued without keeping in mind the distinction between ambient noise level and impulsive noise level and further the user of crackers would not come within a purview of the word "sound pollution" under Air (Prevention and Control Pollution) Act, 1981 and Environment (Protection) Act, 1986 and the Rules framed thereunder.

8. The Court upon further considerations of the recommendations made by a committee constituted for the said purpose, inter alia, observed :

Excepting laying down the Ambient Noise Quality Standards in respect of Noise in four different zones, no attempt has yet been made by the Law Making Authority or the Rules Making Authority to lay down any standard for Impulsive Noise Level.

9. The learned Judges lamented that in India no such law has been framed. Emphasising the role of the Court in its power to make law, the Court held that it has such a power. The Court expressed strong displeasure to the course of action taken by the Pollution Control Board as restriction was imposed without strictly following the order of this Court and directed the Pollution Control Board to

strictly follow the orders and take a decision in compliance of the order passed by this Court. The Court stated :-

This Court records its appreciation to the actions of the fire works manufacturers and dealers in not trying to storage or sell of the noisy fire works which was banned in an irregular manner and consequently for the Fast 1 year there was very little and/or negligible cases of use of fire works.

10. Despite taking into consideration the fact that it take place in devastating fires by reason of use of fire-works causing serious loss of property and further taking into consideration the fact Calcutta is congested with very high population density, the Court observed that manufacture of fire works in the City of Calcutta need to be totally banned. It held that use of fire works must also be restricted to maximum limit. The Court opined

The reasons for putting such restriction on manufacturing, storing and selling of fireworks without restriction on sound level should not be allowed as Calcutta is one of the most densely populated and accident would cause heavy loss of life and damage of property.

Secondly, it is stated that the available road area in the city is 6% with heavy road and if accidents occur it would aggravate the situation.

Thirdly, the fire works manufacturers may test the products causing noise pollution.

Fourthly, Calcutta experienced some devastating explosions and fire from the storage of chemicals in the past.

11. The Court held that nobody has a fundamental or inherent right to manufacture, sell and deal with fire works which create sound beyond permissible limits and a citizen of the country must be allowed to live in society peacefully.

12. Thereafter an order was passed by the West Bengal Pollution Control Board fixing maximum permissible noise level of the fire works at 90DB(A) impulse noise at 5 meters from the source and banned user or sale within the State of West Bengal any fire works which produces or creates noise at the time of bursting more than 95 decimals. A list of the banned fire works was appended to the said Notification, which is as follows :-

- 1) Chocolate Bomb,
- 2) Chain Crackers,
- 3) Loose Crackers,
- 4) Dhani Patka,
- 5) Kali Patka,

- 6) Dodoma,
- 7) Seven Shot,
- 8) Rocket Bomb

And

Similar any other noise making fire works by any name.

13. Mr. Roy, the learned Senior Counsel appearing on behalf the Police Authority, submitted that it has become impossible for the police authorities to take preventive measures. According to the learned Counsel, the police authorities have not only a duty to prosecute the persons violating the law but also a duty to see that such violation does not take place.

14. Mr. S.N. Mukherjee, Mr. Pradip Ghosh and Mr. Lakshmi Gupta, the learned Counsels appearing on behalf of Mridula Narula, Virendra Narula and the Pradesh Adarshabadi Byabsayee Samity on the other hand, submitted that what was banned, was user of fire works and despite the fact that this Court had granted permission to the manufacturers to continue the manufacture works and export the same to the States other than the State of West Bengal, the police authorities are seizing huge quantities of fire works and lodging First Information Reports against the manufacturers, dealers and others on the alleged ground of violation of this Court's order. According to the learned Counsel, their clients had all along been and still are ready and willing to co-operate with the Police Authorities in all possible manner so that they make remove the stocks outside the State of West Bengal held by them. According to the learned counsel all concerned despite notice issued to the West Bengal Pollution Control Board did not get any clarification as to what was meant by "similar other noise making fire works by any other name" and despite the fact that they had all along been co-ordinating with the authorities, the police authorities and the West Bengal Pollution Control Board were acting at their whims and caprice. It is alleged that the petitioners had informed the Pollution Control Board about location of the godown, shop and the quantity of banned fireworks in its possession. However, despite the same the Commissioner of Police in his capacity as an Executive Magistrate for the Metropolitan area of Calcutta issued a Prohibitory Order u/s 144 of the Code of Criminal Procedure restricting use, sale, transportation, trade and possession of the banned fireworks contrary to the said orders passed by this Court. Even persons were arrested on the alleged ground for storing a huge quantity of banned fire works although the police was silent about the quantum of seizure nor is there any allegation that there has been any violation of Indian Explosives Act or the Rules framed thereunder as the part of the manufacturers/dealers.

15. Mr. Mukherjee contends that the manufacturers having been granted licence under the Indian Explosives Act by the appropriate licensing authority, the same can be cancelled by the said authority only if it is found that any contravention of

the provision of the Indian Explosives Act or the Rules framed thereunder has taken place on the part of the licensee. But despite the same, a report has been filed before this Court on 21-9-98 for cancellation of the licence of the petitioner issued under the provisions of the Indian Explosives Act.

On 23-9-98 a Division Bench of this Court directed :-

The fireworks traders are, however, directed to furnish to the Pollution Control Board the list of banned fireworks items including places of storage of the same and the quantity of the stock within two weeks from this date. Copy of such list will be Simultaneously forwarded to the Commissioner of Police, Calcutta who is directed to enforce the directions of the Court strictly regarding the fire-works.

16. The said direction had been communicated to all the fellow dealers and an advertisement was also published in two local dailies. But despite the same, further search and seizure had been made. According to the learned Counsel, therefore, the result and effect of such actions are :-

For three years in succession 1996, 1997 and 1998 petitioner was restrained for some reason or the other to dispose of their stock of banned fire works to the States where, "No such ban" is imposed in gross violation of the directions given by this Hon"ble Court.

1998 - Petitioners not allowed to participate in "Bazi Mela" - even non-banned fireworks were not allowed to be sold.

Harassment of the petitioner and Employees in spite of adhering to all the directions of this Hon"ble Court and the other authorities.

Enormous loss of money due to blockage of funds, and absolute embargo on trading activity.

17. Before we advert to the question raised by the learned Counsel for the parties, we may take note of the fact that although one Mohan Fire Works had questioned the vires of the said circulars and Notifications issued by the West Bengal Pollution Control Board and the Commissioner of Police, the parties have argued before us on the basis of the existing order.

18. From the order passed by the Division Bench of this Court from time to time as indicated hereinbefore, there cannot be any doubt that this Court has not issued any direction banning manufacture of explosives. Such a direction having not been issued, the petitioners cannot be allowed to stop manufacturing of crackers, the consequences whereof would be that they can also store the same temporarily only for the purpose of export thereof to the other States, such storage must conform to the provisions of Indian Explosives Act, and the Rules framed thereunder and/or any other law for the time being in force or may be applicable in future. It has categorically been stated by Mr. Mukherjee that, on each box was being sealed separately and marked "not. for sale in the State of West Rengal." Apart from such precaution, the opposite parties must carry out

the undertakings given by them before this Court as mentioned hereinbefore.

19. It is not. necessary for this Court to deliberate in respect to the modus of the police authorities in their compliance of the orders made by this Court. They have a duty to enforce the law as the same is the foundation of maintenance of rule of law.

20. For the aforementioned purposes an appropriate mechanism has to be worked out and fortunately the learned counsel for the parties have agreed that all such banned fire works by whatever name it may be understood, the maximum sound limit whereof at the time of its explosion would exceed 90 db. shall be exported out of the State of West Bengal. The manufacturers and the dealers shall segregate such type of fire works and keep the same at separate places. The particulars of stocks of such fire works held by the manufacturer/dealer shall be intimated to the appropriate police authorities who would be entitled to visit, inspect and verify the same. The manufacturers/dealers shall intimate the concerned police authorities with a notice in writing at least seventy two hours before transporting any consignment of the fire works etc., out of this State. The police authorities shall thereupon carry out further inspection and monitor the transportation out of this State. The manufacturers and dealers shall bear all expenses of the police authorities in that respect. The concerned police authorities as also the authorities of the West Bengal Pollution Control Board shall also be entitled to keep watch over the transportation of such crackers from the State of West Bengal to other States which, in our opinion, should be done in a planned manner. For the said purpose the manufacturers/dealers shall intimate the police authorities in advance the date and time on which the crackers are to be leaded and the type and the registration number of the vehicle which are being used. They shall also inform the authorities about the quantities sought to be exported at one time. The manufacturers/dealers shall also hand over a copy of the challan to the police authorities for the use thereof for future reference.

21. Each box may be sealed separately and the seals shall not be broken anywhere within the State of West Bengal but at its destination only.

22. The manufacturers and dealers, of the fire-works and crackers, having agreed to render co-operation with the police authorities, shall fully co-operate with them to ensure that no part of it is sold by unauthorised dealers.

23. Attempt should be made by the manufacturers and dealers to avoid bulk export on a particular day, so that proper inspection and verification by the police authorities in terms of the order may not be rendered cumbersome or inconvenient

24. These applications are disposed of with the aforementioned directions.

Ronojit Kumar Mitra, J.

25. I agree.