

WEST BENGAL HUMAN RIGHTS COMMISSION

Purta Bhavan, 2nd Floor, Salt Lake, Kolkata – 700 091

Ref: No. 193/WBHRG/SMC/20

Dated, the 2nd November, 2020

The pandemic caused by corona virus has remained unabated. Durga Puja is finally over without any significant relief. . The medics are farther apprehensive of severe damage likely to be caused by the crackers during the ensuing Diwali/Kali Puja. Front line the Hindu.com published on 31 October 2020 referred to a letter dated 30th October by which the joint platform of doctors requested the CM stating “in the last six weeks the spread of Covid 19 and number of deaths in the state has been increasing. It is with great sadness that we are seeing West Bengal emerging as one of the worst affected states in the country..... . In this present situation, we appeal to you to ensure that air pollution causing crackers and fireworks are not burst, and thereby save the people of the state from danger and serve as an example to other state.”¹. The air quality index has already breached the 200 mark-entering the poor zone on Wednesday for the first time since the end-March reported Times of India.Indiatimes.com on 29 October 2020. “There is no debate as to whether the degrading air quality would make the Covid-19 battle more difficult” felt Suman Mallick, head, radiation oncology, Narayana super speciality hospital.² Same views were echoed under the caption দেহে করোনার প্রবেশ প্রশস্ত করতে পারে বাজির দূষণ by the Ananda Bazar Patrika dated 31.10.2020.⁵

The West Bengal pollution control board represented by the member secretary Rajesh Kumar said “we will go by the recommendation of the government. As of now, we will launch a crackdown on firecrackers exceeding permissible sound threshold ”³ . Member, West Bengal Human Rights Commission spoke personally with Dr. Rajesh Kumar, Member-Secretary, West Bengal Pollution Control Board who suggested that there should be a ban on manufacturing and sale of firecracker causing air pollution between PM 2.5 to PM 10 as well as sound pollution of 90 decibels and above.

Times of India.Indiatimes.com updated on 6 October 2020 reported the views of the respiratory diseases specialists. A board of four doctors was constituted by the SMS hospital Jaipur with the object of giving suggestions to the state government on the use of crackers. The doctors in

their report opined “crackers generate aerosols, which may transmit Covid virus more rapidly.” Pulmonologists are advising “people should avoid crackers this year”⁴.

A writ petition W.P (C) 8398/2020 Chetan Hasija and another versus government of NCT of Delhi and others was presented to the Delhi High Court seeking a ban on the bursting of crackers which was disposed of on 23 October 2020 by directing Delhi government’s disaster Management authority and CPCB to decide the plea in accordance with law.

The pollution control board of the state has already indicated that it shall abide by the recommendations of the state.

Section 5 of the Environment Protection act 1986 provides as follows:-

5. POWER TO GIVE DIRECTIONS:-

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, or authority shall be bound to comply with such directions.

Explanation- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct –

- (a) The closure, prohibition or regulation of any industry, operation or process; or*
- (b) Stoppage or regulation of the supply of electricity or water or any other service.*

The central government has delegated its power under section 5 quoted above to the state governments. Such delegation to the state of West Bengal was made vide notification NSO408 (E) dated 6 June 1989; ⁶ published in the gadget number 319 dated 6 June 1989. The power under the aforesaid section 5 can thus be exercised by the state of West Bengal for the purpose of closure of all manufacturing activities of the crackers throughout the state of West Bengal with immediate effect. Such an order can be passed without affording an opportunity of hearing under subrule(5) of rule (4) of the environment protection rules 1986.

(5) In case where the Central Government is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction. It may, for reasons to be recorded in writing, issue directions without providing such an opportunity.

There is already enough evidence to show that storage and selling of crackers is injurious to the health of the infirm and the affected and is a potential threat to the health of the community as a whole. In consequence thereof sale, storage, exchange, possession or gift of crackers should be prohibited in exercise of power under Section 133(b)(ii) and Section 144(4) of Cr.P.C.

The commission as such makes the following recommendations: –

- (a) all manufacturing activities of crackers be prohibited with immediate effect until further orders or as may be considered appropriate by State Government;
- (b) possession, ^{import,} sale, transfer, gift, exchange of any cracker of any size which generates smoke or air pollutant between PM 2.5 to PM 10 be prohibited with immediate effect until further orders or as may be considered appropriate by State Government;
- (c) any violation of the order be prosecuted in accordance with law.

(Justice Girish Chandra Gupta)

Chairperson

3/11/2020

(Naparajit Mukherjee)

Member

The joint secretary is directed to authenticate the recommendation and to send the same to the Chief Secy of the State of West Benga in course of the dayl. A compliance report be called for within a month.

Annexure: 1. Front line dated 31.10.2020

2. Times of India. Indiatimes.com dated 29.10.20

3. Outlook India.com dated 01.11.20

4. Times of India. Indiatimes.com updated 6th October, 2020

5. News item published in the Ananda Bazar Patrika Dt. 31.10.2020 দেহে করোনার
প্রবেশ প্রশস্ত করতে পারে বাজির দূষণ

6. Notification No. SO408(E) Ministry of Environment and Forests (Made available by Manupatra)