ÖÞREPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A. NO.4
IN
WRIT PETITION (CIVIL) No.728 OF 2015

ARJUN GOPAL AND ORS. .. PETITIONER (S)
VERSUS
UNION OF INDIA & ORS. ..RESPONDENT (S)
ORDER
The petitioners have approached this Court seeking emergent reliefs in relation to the extreme air pollution in the National Capital Region (hereinafter â¬ SNCRâ¬ \235).
2. We have heard Mr. K.K. Venugopal and Ms. Vibha Datta Makhija, learned senior counsel for the petitioners and Mr. C.A. Sundaram, learned senior counsel for the respondent. The petitioner has sought wide ranging reliefs against the use of fireworks (including fire crackers), prevention of harmful crop burning, dumping of malba and further steps towards environmental purity. We have, however, restricted this order to grant of interim relief in respect of fireworks.
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3. The primary contention of the petitioners is that the use of fireworks in the NCR has posed a serious problem to the inhability of the air during Diwali and the wedding season. According to the petitioners, the problem has reached proportions in the NCR which are not tolerable and are causing immense harm to the peace, well-being and health both physical and mental. In fairness, we must say that there was no serious opposition to the impact of fireworks on the ambient air and the unhealthy effects of fireworks on it. The opposition was mainly about the total banning of fireworks in all circumstances.
4 . The onset of winter and the festival/marriage season this year, presented to the residents of NCR severe concerns regarding the air quality standards. According to reports, the air quality standards in early November of this year were the worst in the world. It is reported that the PM 2.5 levels recorded where â¬ Sbeyond scaleâ¬ \235 values [see Indiaâ¬ "!s air quality among worldâ¬ "!s worst over Diwali weekend: Report. November 4, 2016, Hindustan Times]. The report indicates that 24 hour average of PM 2.5 levels in South Delhi in 2016 were 38% higher than on the Diwali night of 2015. The day after Diwali, these levels were twice as high as the day after Diwali in 2015, crossing 650 Âµg/mÂ³, which is 26 times above the WHOâ¬ "!s standards or levels considered safe. Shockingly, on the morning of 1.11.2016, Delhi woke
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up to an average PM 2.5 level of over 700 Âµg/mÂ³â¬ some of the highest levels recorded the world over and 29 times above WHO standards. The report further states that the WHO guideline for 24-hour average PM 2.5 levels is 25 Âµg/mÂ³ and with an annual average PM 2.5 level of 122 Âµg/mÂ³, Delhiâ¬ "!s air is the worst among global megacities with dense populations. We have particularly referred to the PM 2.5 levels because of the extreme effects and near invisibility of this type of particulate matter. PM 2.5 or particulate matter 2.5 (PM2.5), refers to tiny particles or droplets in the air that are two and one half microns or less in width. It may be noted that the widths of the larger particles in the PM2.5 size range would be about thirty times smaller than that of a human hair. These particles primarily emanate from vehicle exhausts and other operations that involve the burning of fuels such as wood, heating oil or coal, and of course, use of fire crackers.
5. In India, air quality standards are measured in terms of the Air Quality Index (hereainafter â¬ ÜAQIâ¬ "!). The AQI was launched in India o n
17.10.2014 by the Ministry of Environment and Forests. According to the press release of the Press information Bureau of the same date, it consists of a comprehensive set of parameters to monitor and asses the air quality. The AQI considers eight pollutants (PM10, PM2.5, NO
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SO
2 , CO, O
3 , NH
3 , and Pb), and based on the levels of these pollutants six categories of AQI ranging from Good to Severe have been
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prescribed. The index also suggests the health effects of the pollution category wise. The gradation of AQI and its health impact is extracted below:
Table -1

4AQI Associated Health Impacts
Good
(0â¬ 50) Minimal Impact
Satisfactory
(51â¬ 100) May cause minor breathing discomfort to sensitive people.
Moderately polluted
(101â¬ 200) May cause breathing discomfort to people with lung disease such as asthma, and discomfort to people with heart disease, children and older adults.
Poor
(201â¬ 300) May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease
Very Poor
(301â¬ 400) May cause respiratory illness to the people on prolonged exposure. Effect may be more pronounced in people with lung and heart diseases.
Severe
(401-500) May cause respiratory impact even on healthy people, and serious health impacts on people with lung/heart disease. The health impacts may be experienced even during light physical activity.

Table -2
AQI Category, Pollutants and Health Breakpoints
AQI Category (Range) PM 10 24-hr PM 2.5 24-hr NO 2 24-hr O 3 8-hr CO 8-hr (mg/m 3) SO 2 24-hr NH 3 24-hr Pb 24-hr
Good (0-50) 0-50 0-30 0-40 0-50 0-1.0 0-40 0-200 0-0.5
Satisfactory (51-100) 51-100 31-60 41-80 51-100 1.1-2.0 41-80 201-400 0.5 â¬ 1.0
Moderately polluted

(101-200) 101-
250 61-90 81-18
0 101-16
8 2.1- 10 81-380 401-80
0 1.1-2
.0
Poor
(201-300) 251-
350 91-12
0 181-2
80 169-20
8 10-17 381-80
0 801-12
00 2.1-3
.0
Very poor
(301-400) 351-
430 121-2
50 281-4
00 209-74
8* 17-34 801-16
00 1200-1
800 3.1-3
.5
Severe
(401-500) 430
+ 250+ 400+ 748+* 34+ 1600+ 1800+ 3.5+

6. Reports indicate that the AQI in Delhi was much above the severe standard, shooting off the AQI 500 mark on many days this November. On the day after Diwali, it was more than 14 times the safe limits [see Delhiâ¬ "!s pollution levels peaks at 14-16 times safe limits, 31.10.2016, The Hindu]. The adverse health effects of these hazardous levels of pollution are only too evident from the table given above. We do not intend to refer to the multiplicity of reports and data on this front.

7. The hazardous levels of air pollution in the last few weeks has spared very few from its ill effects. The life of the citizens of NCR was

brought to a virtual standstill, not to speak about the plight of the thousands of mute flora and fauna in NCR. Schools were declared shut, denizens of the city advised to stay indoors, construction activities stopped, power stations shut and ban imposed on burning of garbage and agricultural waste. The fall in air quality has had a significant impact on peopleâ¬ "!s lifestyle as well. The rising costs to protect against air pollution are substantial. It has come to our notice that people are queuing up to purchase protective masks and air purification systems in the wake of dense smog all over the NCR. In short, the capital was â¬ Üsmoggedâ¬ "! into an environmental emergency of unseen proportions.

8. The adverse effects of these extreme levels of air pollution spare no one- the young, the old, the infirm and even the future generations. A study of the data of the Global Health Depository of the World Health Organization reveals that India has the worldâ¬ "!s highest death rate from chronic respiratory diseases and that about 1.5 million people in India die annually due to indoor and outdoor pollution [see Delhi Wakes up to an Air Pollution Problem It Cannot Ignore, 15.2.2015, The New York Times]. The Kolkata-based Chittaranjan National Cancer Institute (CNCI), in a study commissioned and handed over to the Central Pollution Control Board, found that key indicators of respiratory health, lung function to palpitation, vision to blood pressure, of children in Delhi, between four and 17 years of age, were

worse off than their counterparts elsewhere. It also found that more than 40 percent of the school children suffer from lung damage [see Landmark Study Lies Buried, 2.4.2015, The Indian Express]. We note with apprehension that there are nascent studies that suggest that pollution can lower childrenâ¬ "!s I.Q. , hurt their test scores and incre ase

the risks of autism , epilepsy , diabetes and even adult-onset diseases like multiple sclerosis [see Holding Your Breath in India, 29.5.2015, The New York Times].
9. It has been brought to our notice that the severe air pollution in the NCR is leading to multiple diseases and other health related issues amongst the people. It is said that the increase in respiratory diseases like asthma, lung cancer, bronchitis etc. is primarily attributable to the worsening air quality in the NCR. The damage being caused to peopleâ¬ "!s lungs is said to be irreversible. Other health related issues like allergies, temporary deafness are also on the rise. Various experts have pointed towards multiple adverse effects of air pollution on human health like premature deaths, rise in mortality rates, palpitation, loss of vision, arthritis, heart ailments, cancer, etc.
10. When we refer to these extreme effects, we are not merely referring to the inconvenience caused to people, but to abject deprivation of a range of constitutionally embedded rights that the residents of NCR ought to have enjoyed. Needless to state, the grim
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situation of air quality adversely affected the right to education, work, health and ultimately, the right to life of the citizens, and this Court is constitutionally bound to address their grave concerns. May we remind ourselves, that this is not the first time that this court was impelled into ensuring clean air for the citizens of the capital region [see M.C. Mehta vs. Union of India: 1998(6) SCC 60 and 1998(9) SCC 589; M.C. Mehta vs. Union of India 1998 (8) SCC 648; M.C. Mehta vs. Union of India 1998(8) SCC 206].
11. During the festival- marriage season in Delhi, that is between October and February, a report suggests that more than 40 recognized and other dangerous forms of firecrackers are used [see Fireworks make Diwali a Dangerous Festival for All, 4.11.2015, Down to Earth]. These fireworks release a deadly concoction of fumes into an almost-still winter air in Delhi, causing extreme air pollution during this time. These fire crackers apart from causing acute air pollution also cause severe noise pollution. A study suggests that fireworks emit fine particles of various elements like Copper, Barium, Strontium, Magnesium and Potassium, all of which are used to provide the colour and glitter to fireworks [see The Impact of Fireworks on Airborne Particles, Atmospheric Environment, Volume 42, Issue 6, 2008, pages 1121-1132].
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12. The latest report 1 by the Central Pollution Control Board (CPCB) on the ambient air quality during the Diwali period shows that air pollution across the capital has reached record levels and has become intolerable. We find that the air quality in NCR is mostly poor as per the standards prescribed by the Government of India, but it becomes much worse during Diwali. The concentrations of PM 2.5 and PM 10 which are indicators of air quality have shown considerable increase in the region. The following tables show the actual PM 2.5 and PM 10 levels in Delhi during the Diwali 2016 period according to the CPCB report.
TABLE - 3
PM 10 (in Âµg/mÂ³) LEVELS IN DELHI
STATION PRE - DIWALI DIWALI DAY
2015 2016 2015 2016
ITO 166 203 531 878
PITAMPURA 161 368 460 1297
JANAKPURI 119 213 554 902
PARIVESH BHAWAN 166 324 593 1183
DILSHAD GARDEN NA NA NA NA
SHADIPUR NA NA NA NA
NSIT, DWARKA NA NA NA NA
R K PURAM NA 346 NA 454
MANDIR MARG NA 236 NA 428
PUNJABI BAGH NA 236 NA 779

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CPCB Deepawali Monitoring Report, 2016
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ANAND VIHAR NA 644 NA 1084
AVERAGE 153 321.25 534.5 875.62
TABLE - 4
PM 2.5 (in Âµg/mÂ³) LEVELS IN DELHI
STATION PRE - DIWALI DIWALI DAY
2015 2016 2015 2016
ITO NA 104 NA 797
PITAMPURA 117 102 435 1238
JANAKPURI 84 96 459 842
PARIVESH
BHAWAN 96 84 474 958
DILSHAD GARDEN 78 119 192 602
SHADIPUR 108 62 121 474
NSIT, DWARKA 191 118 99 457
R K PURAM NA 144 NA 285
MANDIR MARG NA 92 NA 296
PUNJABI BAGH NA 108 NA 402
ANAND VIHAR NA 178 NA 430
AVERAGE 112.33 109.72 296.67 616.45

13. The CPCB report indicates that air pollution levels across the region rises by about 4â¬ 5 times on Diwali as a consequence of burning of fireworks. Numerous accidents take place due to unregulated manufacture, storage and transport of fireworks resulting in substantial damage to life and property. Further, unsupervised bursting
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of fireworks also leads to many accidents where unfortunately most victims are children. They are a source of both, air pollution and noise pollution. Something that is meant to be a celebration seems to be destroying the peace and tranquility which is necessary for rest.

14. Grievance was made before us about the thousands, even a lakh of crackers on one string going off at night; and several such strings going off in the neighborhood, totally unmindful of the aged, the tender and the ill. All this firework, even that which is not noisy, leaves the ambient air thick with noxious particles. Marriage processions, barats, passing through an area generated the same kind of noise and leave behind the same kind of air, by the use of fire crackers. It is not necessary to speculate if those who suffer send their good wishes for the event, or to those â¬ Ücelebratingâ¬ "! Diwali in this way.

15. We are conscious that we are dealing with time honoured ways of celebrating certain occasions. The petitioners and every member of the Bench and the Bar also celebrate in the same way. But does that justify the continuance of this manner of celebration, when the quality of air in the region is so poor and injurious to health and well being and is destroying essential components of the freedom to live a healthy life? In any case till the quality of air improves we do not pronounce finally on this question at this stage.
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16. It is however certain that, now, when the Air Quality Index in the NCR is abysmally and threateningly severe, allowing free trade in fireworks which is a major source of noise and air pollution and is causing immense harm to the lives and health of citizens, and allowing availability of such fireworks or explosives constitutes a serious invasion of the Freedoms and Rights conferred on citizens by Part III of the Constitution of India. Such an invasion is all the more deleterious towards the rights and freedom of the poor and the underprivileged who must breathe such air without any means of protecting themselves.

17. There is no doubt that protecting citizens (including those who use fireworks) by making these unavailable in the market would require the suspension of trade of a miniscule section of the population. Maybe they have acquired stocks for sale or obtained credit for their business. We are however of the view, that balancing

the vital interests of the vast majority of citizens against the commercial interests of a few, the balance must heavily tilt in favour of citizens in general.
18. We are aware that we are only issuing interim directions, and much is left to be heard, discussed and said about the rival claims and contentions. What is however indisputable is that the harmful effects of fireworks on the ambient air and the lungs, eyes and ears of people.
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What is also obvious is the extreme nuisance, noise the fireworks cause to citizens particularly the ailing and the aged. Therefore, though much can be argued as always about the significance and even joy of bursting fireworks. But at the same, prima facie, a just constitutional balance, must overwhelmingly prioritize the harmful effects of this hazardous air on present and future generations, irreversible and imperceptible as they are, over the immediate commercial constraints of the manufacturers and suppliers of fireworks. Secondly, this court recognizes that the duty to ensure a healthy environment not only falls on the State in terms of Article 48-A of the Constitution of India but also on all citizens under Article 51 A
(g) of the Constitution. This Court has previously held that fundamental duties in Part IV A of the Constitution could be a guiding factor in testing the reasonableness of restrictions under Article 19(2)-(6) of the Constitution of India [See State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534; para 58] The principle of inter-generational equity, recognized and applied by this Court in a number of decisions, beaconing us to the health and needs of the future generation, also favours the issuance of interim directions. Lastly, the precautionary principle, affirmed by this court in Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647, mandates that where there are threats of serious and irreversible
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damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
19. We thus consider it inappropriate that explosives which are used as fireworks should be available in the market in the NCR till further orders. The mechanism of the law in this regard is clear. Rule 118 2
of
the Explosive Rules, 2008, framed under the Explosives Act, 1884 provides for the manner in which licenses issued under the Explosives Act to store and sell explosives could be suspended or cancelled. Sub-Rule(5) thereof specifically confers on the Central Government a power to suspend or cancel a license if it considers that it is in public interest. This provision also makes it clear that an opportunity to hear
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. Suspension and revocation or cancellation of licence .â¬ (1) Every licenc
e granted
under these rules shallâ¬ (I) stand cancelled, ifâ¬ (a) the licensee has ceased to have any
right for the lawful possession over the licensed premises; (b) the licensee is convicted and sentenced under any criminal offences or ordered to execute under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974), a bond for keeping peace for good behaviour. (II) stand cancelled, if the no-objection certificate is cancelled by the authority issuing the sam
e
or District Magistrate or the State Government in accordance with rule 115. (III) be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the Act or these rules or of any condition contained in such licence, or by order of the Cen
tral
Government, if it is satisfied that there are sufficient grounds for doi
ng so: Provided that
before suspending or cancelling a licence under this rule, the holder of the licence sh
all be
given an opportunity of being heard. (2) The suspension or cancellation shall take effect
from the date specified therein. (3) An order of suspension or revocation of a licence shall
be deemed to have been served if sent by post to the address of the licensee entered in the

licence. (4) The suspension of a licence shall not debar the holder of the licence from applying for the renewal. (5) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of the licence before his licence is suspended or cancelled in casesâ¬ (i) where the licence is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules or of any conditions contained in such licence and in his opinion such violation is likely to cause imminent danger to the public: Provided that where a licence is so suspended, the licensing authority shall give the holder of the licence an opportunity of being heard before the order of suspension is confirmed; or (ii) where the licence is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State, such opportunity should not be given. (6) A licensing authority or the Central Government suspending or cancelling a licence shall record its reason for so doing in writing.

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the licensee could be dispensed with if the Central Government considers that in public interest. This Court finds that the grave air quality situation in NCR is one such case, where this Court, can intervene and suspend the licenses to store and sell fireworks in the NCR. 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.

20. In addition to the above, we direct the CPCB to study and prepare a report on the harmful effects of the materials which are currently being used in the manufacture of fireworks. The report shall be submitted within a period of three months to this Court.

â¬ ¦â¬ ¦â¬ ¦â¬ ¦â¬ ¦ .â¬ ¦.....â¬ ¦..CJI
[T.S. THAKUR]

.....â¬ ¦â¬ ¦â¬ ¦J.
[A.K. SIKRI]

.....â¬ ¦â¬ ¦â¬ ¦J.
[S.A. BOBDE]

NEW DELHI,
NOVEMBER 11, 2016

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ITEM NO.301 COURT NO.1 SECTION PIL(W)

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

RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No.728/2015

ARJUN GOPAL AND ORS. Petitioner(s)

VERSUS

UNION OF INDIA AND ORS. Respondent(s)

(with appln. (s) for impleadment and directions and ex-parte stay and office report)

With

W.P.(C) No.891/2016

(Office report)

W.P.(C) No.895/2016

W.P.(C) No.899/2016

(With appln.(s) for permission to appear and argue in person)

W.P.(C) D 37665/2016

Date : 11/11/2016 These petitions were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s) Mr. K. K. Venugopal, Sr. Adv.

Ms. Pooja Dhar,Adv.
Mr. Zeeshan Diwan, Adv.
Ms. Sharda Deshmuk, Adv.
Mr. Vijeth, Adv.
Mr. Gopal Subramanian, Sr. Adv.
Mr. Gagan Gupta, Adv.
Mr. Rahul Gupta, Adv.
Mr. Shekhar Gupta, Adv.
Ms. Ira Gupta, Adv.
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Mr. Anantap Mishra, Adv.
Mr. Yoginder Handoo, Adv.
Mr. Sachin Mittal, Adv.
Ms. Neha, Adv.
Mr. Parvesh, Adv.
Ms. Pranchi, Adv.
Petitioner-in-Person

M/s Manoj Swarup & Co.

For Respondent(s) Mr. C. A. Sundram, Sr. Adv.
Ms. Rohini Musa,Adv.
Mr. Zaffar Inayat, Adv.
Mr. N.K. Kaul, ASG
Ms. Vimla Sinha, Adv.
Ms. Binu Tamta, Adv.
Mr. B.K. Prasad, Adv.

Ms. Vibha Datta Makhija, Adv.
Mr. Anubhav Kumar, Adv.
Ms. Disha Vaish, Adv.
Mr. S. Wasim A. Qadri, Adv.
Mr. Ajay Sharma, Adv.
Mr. G.S. Makkar, Adv.
Mr. Vijay Panjwani,Adv.
Mr. Vibhu Shanker Mishra, Adv.
Mr. D. S. Mahra,Adv.
M/s Corporate Law Group
Mr. Chirag M. Shroff,Adv.
Mr. Debojit Borkavati, Adv.

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UPON hearing the counsel the Court made the following

O R D E R

Issue notice in W.P.(C) Nos. 891/2016, 895/2016, 899/2016 & W.P.(C) D 37665/2016.

At the request of the learned counsel for the petitioners, Chief Controller of Explosives, Petroleum and Explosives Safety Organization (PESO), Government of India be added as party respondents in W.P.(C) No.728 of 2015 .

I.A. No.3/2015 in W.P.(C) No.728/2015

Issue notice.

I.A. No.4 in W.P.(C) No.728/2015 -
(for directions)

In terms of the signed order certain directions were passed by this Court:-

â¬ S19.We thus consider it inappropriate that explosives which are used as fireworks should be available in the market in the NCR till further orders.

The mechanism of the law in this regard is clear. Rule 118 of the the Explosive Rules, 2008, framed under the Explosives Act, 1884 provides for the manner in which licenses issued under the Explosives Act to store and sell explosives could be suspended or cancelled. Sub-Rule(5) thereof specifically confers on the Central Government a power to suspend or cancel a license if it

considers that it is in public interest. This provision also makes it clear that an opportunity to hear the licensee could be dispensed with if the Central Government considers that in public interest. This Court finds that the grave air quality situation in NCR is one such case, where this Court, can intervene and suspend the licenses to store and sell fireworks in the NCR. We direct the Central Government to:-

(i) Suspend all such licenses as permit sale of fireworks, wholesale and retail within the territory of NCR.

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(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.

20. In addition to the above, we direct the CPCB to study and prepare a report on the harmful effects of the materials which are currently being used in the manufacture of fireworks. The report shall be submitted within a period of three months to this Court.â¬ \235

Post the matter after receipt of report from CPCB which is directed to file the same within a period of three months.

(RASHMI DHYANI) (VEENA KHERA)
SR.P.A. COURT MASTER

(Signed reportable order in I.A. No.4 in W.P.(C) No.728/2015 is placed on the file)

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