HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION Nos.3202, 5236, 6888, 34181, 15972 of 2014; 785, 5357, 8050, 42650, 36080, 40348 of 2015; 3772, 4739, 9551, 22430, 25411, 26128, 28167, 30111, 35389, 38905, 39075, 41347,41142,42137, 42195, 42235, 43316, 45123, 45241 of 2016 & 814 of 2017

COMMON ORDER:

1. Since the issue involved in all the above cases is one and the same, these writ petitions are heard together and are being disposed of by this common order.

2. These writ petitions are filed by the petitioners challenging the action of the respondents in interfering with the business being run by the petitioners in serving flavoured Hookahs at their Coffee Shops in adherence to the conditions stipulated by this Court while passing interim order in W.P.No.3772 of 2016 and other writ petitions.

3. The brief facts of the case are as follows:

The petitioners are the owners of their respective coffee shops and earlier, they filed writ petitions viz., W.P.No.3772 of 2016 and other writ petitions before this Court against the 3rd respondent herein. In most of the earlier writ petitions, this Court passed interim order in the following terms:

> "If the petitioners install video cameras, either open or concealed, record their operations and also undertake to preserve the recordings for a minimum of fifteen days period, so that the police, in case of suspicion or necessity, can replay the footage and examine as to whether any undesirable elements or young persons in conflict with law are frequently visiting the petitioners' shops for hookah, the petitioners' shops may be permitted to carry on their operations.

Learned Assistant Government Pleader for Home would suggest that :

(i) The hookah centers shall not be kept open beyond 11 p.m., for their customers;

(ii) They must necessarily exhibit the signboard that they are Hookah centers; and

(iii) They must also exhibit the notice board that children below the age of 18 years are not liable to be entertained as guests even for any other recreational purpose including consumption of coffee inside the Hookah centers.

Accordingly, it is directed that all the above conditions shall be strictly adhered to by the petitioners."

In some of the earlier writ petitions, this Court passed orders directing the police concerned not to interfere with the business of the petitioners therein in serving Hookahs in their shops. It is stated that the police officers from all the police stations have been visiting the shops of the petitioners for the past two to three months and they prevented the petitioners from selling hookahs. In some shops, the police seized the hookah pots in spite of strict adherence to the above earlier orders of this Court. All the petitioners have installed CCTV cameras and recording devices at their shops and they put up signboards as directed by this Court. The police officers under the orders of respondent No.3-Commissioner of Police, are harassing the petitioners and they are shutting down the shops illegally. The police officers have forced many owners of coffee shops to sign on affidavits stating that they are stopping to serve hookah on their own accord. The police officers are threatening the petitioners. Further, they are making the owners of the shops to sit in the police station for hours. The petitioners submitted their representations to respondents Nos.1 and 2 to direct the 3rd respondent and other police officers. After their representation, the police officers under the directions of the 3rd respondent

came to the shops of the petitioners and shut down their shops illegally and threatened the petitioners. Hence, they filed the present writ petitions.

4. The averments in the counter filed by the learned Government Pleader for Home for the State of Telangana are as follows:

(i) The present writ petitions are not maintainable. The petitioners cannot seek enforcement of interim orders passed in other writ petitions on the ground of rule of law. The petitioners have already filed contempt cases against the 3rd respondent herein. Further, all the petitioners submitted a common representation dated 4.11.2016 to respondent Nos.1 and 2 seeking the same relief sought in these writ petitions. But without waiting for the orders of the above respondents, they approached this Court by filing these writ petitions. The 2nd respondent on 25.11.2016 passed orders stating that the allegations leveled against the Commissioner of Police, Hyderabad-3rd respondent herein and other police officers are totally incorrect and baseless. The said order was communicated to the petitioners.

(ii) The coffee shops are primarily established and run with the intention to provide smoking services through Hookah Tobacco. Section 4 of Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short, 'COTP Act'), a restaurant having a seating capacity of 30 persons or more shall make a separate provision for smoking area/space. Though the intention of the law makers is to provide a smoking area for those who wants to smoke, a branded chain of Hookah centre have emerged providing Hookah Tobacco Smoking as a service under the guise of Coffee shops/restaurants. Majority of the customers attracted to these centres are youth only. These centres have become

hangouts/dens for the school/college going children. As per the Act, running of Hookah bars is prohibited under the law.

(iii) As per the instructions of the Deputy Commissioners of various circles of GHMC, the Assistant Medical Officer Health Circles of GHMC, have conducted Inspections and found the following common violations:

(a) Smoking area is not designated separately,
(b) Smoking area is not physically separated from "no smoking area"
(c) Smoking areas are not surrounded by full height walls on all four sides;
(d) Smoking areas do not have an entrance fitted with an automatically closing door normally kept in closed position;
(e) Smoking areas do not have an air flow system for effective exhaust;
(f) Food and beverages are served in the smoking area;
(g) No sign boards indicating smoking area and non-smoking area have been displayed;
(h) No health warning signs such as "smoking kills" "Tobacco Kills" have been displayed;
(i) No pictorial representations of ill effects of Tobacco use have been provided;
(j) No separate pass through to the customers from smoking area to reach non-smoking area has been provided;
(k) No sign board with a warning "Sale of Tobacco products to the person below the age of 18 years is punishable" is displayed in English, Urdu & Telugu languages. The board of size of minimum of 60 cms., x 30 cms was not displayed;
(l) Proof of evidence of age is not collected from the customers;
(m) Smoking area is more than 30% of the total floor area;
(n) Non-smoking area does not have a sign board with a warning "No Smoking Area –Smoking here is an offence". The board of size of minimum of 60 cms., x 30 cms was not displayed.;
(o) Educational Institutions are situated within 100 yards in case of some of the Hookah centers;
(p) Hookah centres are operated beyond 11 P.M.

(q) No VAT License/TIN number has been secured in case of most Hookah centres;

(r) No Trade License has been secured in case of most Hookah Centres;

(s) Establishments are located in residential areas;

(t) No sufficient place for parking of vehicles;

(u) Establishments are run in portion of buildings constructed unauthorizedly.

(iv) The petitioners violated the conditions stipulated by this Court in earlier writ petitions. The action taken by the police to regulate the business undertaken by the petitioners in serving Hookah is not arbitrary and it is strictly in accordance with rules, regulations and the directions issued by this Court earlier. At no point of time, the respondents violated the orders of this Court. As there are numerous complaints from various quarters against the Hookah centres/coffee shops regarding the violations, the police are keeping surveillance over all the coffee shops/Hookah centres to check. The police are conducting regular checking against Hookah centres.

(v) The respondents-police received reliable information that some hookah centres in Hyderabad city have been serving flavoured Hookahs by attracting youth including minor children, exposing them to smoke for unlimited period and thereby, making them to addict for smoking. It is the bounden duty of the police to curb such activities, otherwise there is every chance of spoiling the bright carrier of the students including young girls. The petty cases booked against the petitioners show that the petitioners run their business activities after 11 p.m., intentionally by violating the interim orders passed by this Court earlier and hence, the respondents-police acted in accordance with law.

(vi) The main object of the petitioners in filing these writ petitions is to prevent the police from taking any legal action against their illegal activities and that the act of the police in filing of charge sheets against the petitioners in some of the criminal cases, cannot be construed as if the police are harassing the petitioners and interfering with their business activities intentionally. In fact, taking advantage of the interim orders of this Court, the petitioners are trying to conduct unlawful activities in their premises by preventing the police from entering into their premises. The petitioners have not approached this Court with clean hands and therefore, the writ petitions are liable to be dismissed.

5. Learned Counsel for the petitioners submitted that the COTP Act does not restrict business in cigarettes or other tobacco products, except providing safeguards under Sections 4 and 6 of the Act. He further submitted that the interference of the respondents in the business being carried out by the petitioners is not based on statutory sanction and such interference cannot be made even by any executive instructions. He further submitted that the statutory scheme of COTP Act does not restrict sale/service of hookah at a hotel/restaurant or at any other place providing such services. He further submitted that if there is any violation of trade licenses by the petitioners, it is in the realm of the GHMC officials to enforce compliance of such trade licenses and it is not the prerogative of the police officials to interfere with the business/trade of the petitioners on the pretext of enforcement of trade licenses granted by GHMC. He further submitted that if the petitioners have violated any provisions of COTP Act, the authorities concerned ought to have issued notices to them and that the action of the respondents without any sanction of law is arbitrary.

6. Learned Government Pleader submitted his contentions by reiterating the grounds raised in the counter filed on behalf of respondents 1 and 2.

7. Admittedly, the writ petitions are filed by the petitioners challenging the action of the respondents in interfering with the business of the petitioners in serving flavoured Hookas at their Coffee Shops without any statutory sanction. The respondents filed the counter pointing out the deficiencies and certain violations at paragraph No.9, with regard to running of shops/restaurants by the petitioners. The deficiencies pointed out by the authorities concerned lead to draw an inference that the petitioners' shops are not being run within the parameters of Sections 3 and 4 of the COTP Act.

8. It is relevant to extract the relevant provisions of the COTP Act. Section 3(b) & (n) of the COTP Act defines "Cigarette and Smoking" as under:

"Cigarette includes---- (i) any roll of tobacco wrapped in paper or in any other substance not containing tobacco; (ii) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to or purchased by, consumers as cigarette, but does not include beedi, cheroot and cigar.

'Smoking' means smoking of tobacco in any form whether in the form of cigarette, cigar, beedis or otherwise with the aid of a pipe, wrapper or any other instruments."

Section 4 of the COTP Act reads as follows:

"Prohibition of smoking in a public place:- No person shall smoke in any public place.

Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made."

Section 6 of the COTP Act:

"Prohibition on sale of cigarettes or other tobacco products to a person below the age of eighteen years and in particular area---- No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product------

(a) to any person who is under eighteen years of age, and

(b) in an area within a radius of one hundred yards of any educational institution."

9. The COTP Act and the Rules were introduced because the tobacco is one of the major public health hazards for human life. The smoking of tobacco in any form of cigarettes, cigars, beedies, or otherwise with the aid of a pipe, wrapper or any other instrument is prohibited at a public place under the Act. Section 4 of the Act says, in case of service at public place like hotel, restaurants and airports, smoking may be permitted in the manner as prescribed in the Act in specified area. Rule 4(3) of Prohibition of Smoking in Public Places Rules, 2008 says that a smoking area or space shall be used only for the purpose of smoking and no other services shall be allowed.

10. The Act as a whole does not contemplate any prohibition with regard to the serving of hookah and at the same time, it does not contemplate the grant of any such license for running such serving of hookas in the restaurants. In the judgment reported in R & L Vyapari Association, Bhopal Vs. State of M.P. and others[1], it is observed as follows:

"The hotel and restaurant owners cannot be permitted to offer Hookah or use of tobacco products by pipe or by "any other instrument" on each and every table under the garb of service. In fact it can be permitted in a smoking area or space only. However, it is directed that smoking may be permitted in hotel and restaurants only in the "smoking area or place", otherwise action may be taken in accordance with law."

---

[1] 2016 (2) M.P.L.J. 522

11. In the light of the above judgment coupled with the facts and circumstances of the case and violations pointed out by the learned Government Pleader for Home in the counter, it can be said that the action of the police is in consonance with the provisions of the Act as they are endowed with powers to regulate the prohibition of smoking in a public place in a specific place and in a specific manner as provided under Section 4 of the Act.

12. The contention of the learned counsel for the petitioners that even if there are any violations on the part of the petitioners of the trade licences granted to them by the Greater Hyderabad Municipal Corporation, it is in the realm of G.H.M.C officials to take any such action, cannot be accepted as granting of license differs from running the business activities of that particular hotel/restaurant. At the same time, it should not be lost sight of the fact that under Section 149 Cr.P.C, the police are empowered to prevent the commission of any cognizable offence. While providing place for smoking, the petitioners are required to observe the compliance of Section 4 of the Act. The Act says that the smoking is permissible in a specific place provided therein. Further, the main object of the Act is to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by Article 47 of the Constitution of India, which deals with the duty of the State to protect the public health.

13. Further, the proviso to Section 4 of the Act that a separate place is required to be made for smoking in restaurants, which have the capacity of 30 seats, does not confer any right to the petitioners to convert their restaurants as a place for smoking hookah. The licenses granted by the authorities concerned are only to run the restaurants.

14. It is evident from the counter and also the arguments submitted by the learned Government Pleader for Home that under the guise of licenses obtained by the petitioners to run the restaurants and under the shadow of enabling proviso to Section 4 of the Act, which says that a specific place for smokers may be provided, most of the petitioners are converting the nature of such restaurants as a place for the purpose of hookah only while allowing the youngsters to smoke hookah. If the restaurants are converted as a place for the purpose smoking hookah, certainly licensing authority and the police have ample power to enquire with the same. Further, contrary to the conditions in the licenses given for running restaurants, if the persons are allowed only for the purpose of smoking hookah in the restaurants, the authorities have a right to cancel the licenses also. In any event, this Court is of the view that the petitioners do have any right to change the nature of the restaurants into the place of smoking hookah.

15. In view of the object and the provisions of the Act coupled with Section 149 Cr.P.C and taking into consideration the violations pointed by the respondents-police, this Court is of the view that serving of hookah in the restaurants of the petitioners without complying the provisions of the Act and the Rules and without displaying statutory and pictorial warnings and notices, amounts to violation as pointed out by the police.

16. Insofar as the interference of the police are concerned, it is pertinent to note that the provisions of Section 12 of the COTP Act confer powers to the police not below the rank of Sub Inspector of Police or any officer of the State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub Inspector of Police authorized by the Central Government or by the State Government, may, if he has any reason to suspect that any provision of this Act has been or is

being contravened, enter and search in the manner prescribed at any reasonable time at factory, building, business or any other place.

17. In the light of this provision and Section 149 Cr.P.C., the contention of the learned Counsel for the petitioners that the acts of the Police amount to infringement of fundamental rights and that the police are not the competent authority, but it is only the G.H.M.C that is competent to interfere with the business of the petitioners, who are serving Hookhas, does not have any force. Therefore, this Court is of the view that under Section 12 of the Act and Section 149 Cr.P.C., the police including the other authorities as authorized by both Central and State Governments have ample powers to inspect the business premises of the petitioners. In this regard, the learned Counsel for the petitioners has failed to place any such authority, under which, the G.H.M.C is only competent to inspect the business of the petitioners in serving Hookah.

18. In view of the foregoing discussion, this Court is of the view that the action of the respondents-police is in accordance with law and any interference by this Court with the powers of the police in this regard by exercising the powers under Section 226 of the Constitution of India, is not warranted.

19. Further, the Director General of Police, Telangana State, is directed to take appropriate action against the officers for their inaction in respect of the restaurants being used as hookah centres and also to take action against the high-handed acts of the officers, who interfered with the restaurants, which are being run without there being any violations.

20. Accordingly, all the above Writ Petitions are dismissed. No Costs. Miscellaneous petitions pending, if any, shall stand dismissed.

Dated 27th January, 2017 **RAJA ELANGO, J**

Nn.

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION Nos.3202, 5236, 6888, 34181, 15972 of 2014; 785, 5357, 8050, 42650, 36080, 40348 of 2015; 3772, 4739, 9551, 22430, 25411, 26128, 28167, 30111, 35389, 38905, 39075, 41347,41142,42137, 42195, 42235, 43316, 45123, 45241 of 2016 & 814 of 2017

27th January, 2017

Nn.