

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 5084 of 2021**

1. M/s Nikhil Food And Beverages, A Proprietorship Firm, Through Proprietor Nikhil Tiwari S/o Shankar Tiwari, Aged About 30 Years Situated At Main Road, Telhibandha, Raipur, District Raipur Chhattisgarh
2. White Earth Through Operator Ravi Kumar Ahuja S/o Dhanraj Ahuja, Aged About 23 Years, Situated At 3rd Floor, Sheetal Complex, Marine Drive, Raipur, District Raipur, Chhattisgarh
3. Chitwan Maggi Point Through Operator Tilottama Swain D/o Naresh Kumar Swain, Aged About 29 Years, Situated At H. No. 204, In front Of New Delhi Sweets, Samta Colony, Raipur, District Raipur Chhattisgarh
4. The Bambz Cafe Through Operator Moh. Anish Khan Nizami S/o Moh. Raees Khan, Aged About 29 Years, Situated At Opposite Marine Drive, Telhibandha, Raipur, District Raipur, Chhattisgarh
5. Club Mithya Through Operator Bhuneshwar Gilhare S/o Amrit Lal Gilhare, Aged About 27 Years, Situated At V. I. P. Road, Raipur District Raipur, Chhattisgarh
6. M. P. S Kitchen And Caterers Through Operator Sagar Gulati S/o Late Surendra Gulati, Aged About 30 Years, Situated At Labhandi Beside Apollo Petrol Pump, Raipur, District Raipur, Chhattisgarh
7. The Living Room Cafe Through Operator Rahul Dhuppad S/o Vinod Dhuppad, Aged About 29 Years, Situated At V. I. P. Road, Raipur District Raipur, Chhattisgarh
8. M. K. Foods, Through Operator Sikander Khemani S/o Hanif Khemani, Aged About 29 Years, Situated At V. I. P. Road, Near Oyo Sri Hotel, Raipur, District Raipur, Chhattisgarh
9. Sky Lounge And Cafe Through Operator Kailash Chhabaria S/o Ramchand Chhabaria, Aged About 53 Years Situated At V. I. P. Road, Raipur, District Raipur, Chhattisgarh
10. Fill In The Blanks Restaurant (A Venture Of United Star Food Pvt. Ltd.) Through Operator Vimal Kashyap S/o Ramdas Kashyap,

Aged About 33 Years, Situated At Near Agrasen Dham, Behind VW Canyon Hotel, Raipur, District Raipur, Chhattisgarh

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Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. The Secretary, Department Of Excise, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
3. The Superintendent Of Police, Raipur, District Raipur, Chhattisgarh
4. Station House Officer, Telhibandha, Police Station Raipur, District Raipur, Chhattisgarh
5. Station House Officer, Saraswati Nagar Police Station, Raipur, District Raipur, Chhattisgarh
6. Station House Officer, Mandirhasaud Police Station, Raipur, District Raipur, Chhattisgarh

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For Petitioners	:	Mr. Kishore Bhaduri, Sr. Advocate along with Mr. Ankur Agrawal and Mr. Pankaj Singh, Advocates
For State	:	Mr. Rahul Jha, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

14.12.2021

1. The present writ petition has been filed seeking for the following reliefs:

- i) That the Honourable Court may kindly be pleased to issue appropriate writ/writs, order/orders to call for entire record even any order or notification if any passed by the State authorities for banning of hookah.
- ii) That, the Honourable Court may kindly be pleased to issue appropriate writ/writs, order/orders to quash the oral

directions by the respondent authorities for banning and prohibiting to serve hookah in the petitioner's premises to their customer and further to co-operate with the petitioner and allow the petitioner to serve hookah facilities to their customer without any hindrance in running the business.

2. A plain perusal of the relief clause itself would show that there is no order as such passed by the respondents which has been subjected to challenge by way of the present writ petition. The only contention of the petitioners is the alleged oral instructions received from the officers of the local administration so far as the operation of the petitioners' Cafe from where they are said to be serving fruit flavoured Hookah.
3. Learned counsel appearing for petitioners submits that under similar circumstances some of the cafe owners have been issued certain notices which have already been subjected to challenge in WPC No. 4884/2021 where there appears to be an interim protection on 01.12.2021. However, so far as the present petitioners are concerned, admittedly there are no notice or written instructions issued by the State authorities which can be subjected to challenge in the present writ petition.
4. The fact that the present is a writ petition under Article 226 of the Constitution of India it would mandatorily require for the petitioners to assail a particular action on the part of the respondents whereby any of the fundamental rights of the petitioners has been infringed. In the absence of any such order or action or notice issued by the respondents, this Court would find it difficult in entertaining a writ petition.
5. However, it goes without saying that even if it may be an oral

instruction issued by the local administration, it should always have a force of law flowing from a statute and issued under any of the said provisions of law under which regulatory steps can be taken by the local administration. It is also worthwhile to mention that under similar circumstances, this Court has already dealt with a writ petition i.e. WPC No. 1746/2020 decided on 16.09.2020.

6. The respondent authorities if at all if they intend to issue any instruction to the petitioners so far as the regulating of the Cafe that were serving Hookah, the instructions ought to be strictly in accordance with the statutory provisions governing the field as on date and also keeping in view the judgment rendered by this Court in WPC No. 1746/2020.
7. Accordingly, the present writ petition in the given factual matrix stands disposed of being not maintainable at this juncture.

**Sd/-
(P. Sam Koshy)
Judge**