



W.P.No.3117 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.3117 of 2023

and

W.M.P.No.3190 of 2023

M/s. Aariyan Foods
Rep by its Proprietor,
Mr.Pramod Kumar,
No.198/201, 1st Floor, Sowdha Plaza,
Purasaiwalkam High Road,
Purasaiwalkam,
Chennai – 600 007.

... Petitioner

Vs.

1. The Commissioner of Police,
No.132, EVK Sampath Road,
Veppery, Chennai – 600 007.
2. The Assistant Commissioner of Police,
G1 Veppery Police Station,
Veppery, Periyamet,
Chennai – 600 007.
3. The Inspector of Police,
G1 Veppery Police Station,
Veppery, Periyamet,
Chennai – 600 007.

...Respondents



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PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Mandamus, forbearing the respondents forthwith from interfering with the peaceful conduct of the Petitioner's restaurant business carried out in the name and style of “18-KAFE at No.198/201, 1st Floor, Sowdha Plaza, Pursaiwalkam High Road, Purasaiwalkam, Chennai – 600 007” along with hookah in a designated smoking zone in pursuance of the order passed by the Hon'ble Supreme Court in Civil Appeal NO.10846 of 2014 (arising out of SLP (Civil) No 8143 of 2014.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.S.Santhosh

Government Advocate (Crl.Side)

ORDER

The Writ Petition has been filed forbearing the respondents forthwith from interfering with the peaceful conduct of the Petitioner Restaurant business carried out in the name and style of 18-KAFE at No.198/201, 1st Floor, Sowdha Plaza, Pursaiwalkam High Road, Purasaiwalkam, Chennai – 600 007” along with hookah in a designated smoking zone in pursuance of the order passed by the Hon'ble Supreme Court in Civil Appeal NO.10846 of 2014 (arising out of SLP (Civil) No 8143 of 2014.



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2.The learned counsel for the petitioner submitted that petitioner is given permission for running restaurant in the name of “Aariyan Foods”. It has seating capacity for more than 30 persons. Petitioner Hotel has separate zone for smoking. Petitioner Hotel provides hookah services. Respondent Police is unnecessarily harassing the petitioner.

3. In response, learned Government Advocate (Crl. Side) submitted that petitioner is not giving access to the respondent to inspect the premises. When the respondent police visited the petitioner's premises on 04.02.2023, respondent police was denied entry into the petitioner's premises.

4. Considered the rival submissions and perused the records. **Section 4 of Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce Production Supply and Distribution) Act, 2003** ((hereinafter referred to as “Cigarettes Act” reads as follows:

“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 an in the airports, a separate provision for smoking area or space may be made”



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5. This provision is to be read in consonance with rules made in

“Prohibition of Smoking in Public Places Rules, 2008” (hereinafter referred to as “Rules”). The Rule (2) defines what is a smoking area. Rules

(2) reads as follows:

(a) “hotel” shall mean a building or a part of a building where lodging, with or without board or other services, is provided by way of business for consideration monetary or otherwise and includes boarding house and guest house.

(b) "restaurant" shall mean any place to which the public has access and where any kind of food or drink is supplied for consumption on the premises by any person by way of business for consideration monetary or otherwise and shall include the open space surrounding such premises and includes:

(i) refreshment rooms, banquet halls, discotheques, canteen, coffee house, pubs, bars, airport lounge, and the like.

(c) 'open space' mentioned in section 3(1) of the Act shall not include any place visited by the public such as open auditorium, stadium, railway station, bus stop/stand and other such places.

(d) 'public place' defined in section 3(1) of the Act shall also include work places, shopping malls, and cinema halls.



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(e) 'smoking area or space' mentioned in the proviso to section 4 of the Act shall mean a separately ventilated smoking room that:

(i) is physically separated and surrounded by full height walls on all four sides;

(ii) has an entrance with an automatically closing door normally kept in close position;

(iii) has an air flow system, as specified in Schedule I,

(iv) has negative air pressure in comparison with the remainder of the building.

(f) Words and expressions used herein and not defined in these rules but defined in the Act shall have the meanings, respectively, assigned to them in the Act.

6. Rule (4) deals with smoking area or space and the conditions required for having smoking area in the Hotels, Restaurants and Airports and it reads as follows:



4. Hotels, restaurants and airports -

(1) The owner, proprietor, manager, supervisor or in-charge of the affairs of a hotel having thirty or more rooms or restaurant having seating capacity of thirty persons or more and the manager of the airport may provide for a smoking area or space as defined in rule 2(e).

(2) Smoking area or space shall not be established at the entrance or exit of the hotel, restaurant and the airport and shall be distinctively marked as "Smoking Area" in English and one Indian language, as applicable.

(3) No service shall be allowed in any smoking area or space provided for smoking.

(3-A) The owner, proprietor, manager, supervisor or in charge of the affairs of the hotel, restaurant or airport, shall display a board at the entrance of the smoking area or space of minimum size of 60x30 cm with a white background and having the message in English and one Indian Language as applicable in black colour that-

- 1. tobacco smoking is harmful to your health and the health of non smokers; and*
- 2. entry of person below the age of eighteen years is prohibited.*

(4) The owner, proprietor, manager, supervisor or in-charge of the affairs of a hotel having thirty or more rooms may designate separate smoking rooms in the manner prescribed as under:

(a) all the rooms so designated shall form a separate section in the same floor or wing, as the case



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may be. In case of more than one floors/wings the room shall be in one floor/wing as the case may be.

(b) all such rooms shall be distinctively marked as 'Smoking rooms' in English and one Indian language, as applicable.

(c) the smoke from such room shall be ventilated outside and does not infiltrate/permeate into the non-smoking areas of the hotel including lobbies and the corridors.

7. The combined reading of Rule 2(e) and Rule (4) makes it clear that following conditions are required to have ***smoking area or space*** in a hotel or restaurant

1. smoking area or space should be a separately ventilated smoking room that:

(I). is physically separated and surrounded by full height walls on all four sides;

(II). has an entrance with an automatically closing door normally kept in close position;

(III). has an air flow system, as specified in Schedule I,

(IV). has negative air pressure in comparison with the remainder of the building.



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2. *Words and expressions used herein and not defined in these rules but defined in the Act shall have the meanings, respectively, assigned to them in the Act.*

3. *Smoking area or space shall not be established at the entrance or exit of the hotel, restaurant and the airport and shall be distinctively marked as "Smoking Area" in English and one Indian language, as applicable.*

4. *No service shall be allowed in any smoking area or space provided for smoking.*

5. *The owner, proprietor, manager, supervisor or in charge of the affairs of the hotel, restaurant or airport, shall display a board at the entrance of the smoking area or space of minimum size of 60x30 cm with a white background and having the message in English and one Indian Language as applicable in black colour that-*

1. tobacco smoking is harmful to your health and the health of non smokers; and

2. entry of person below the age of eighteen years is prohibited.

8. In the light of these rules, smoking areas or space should confirm the rule 2(e) and rule 4 of **“Prohibition of Smoking in Public Places Rules, 2008”**. If the petitioner hotel has such a smoking area or space, then



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the respondent police cannot interfere with the Hookah Services provided by the petitioner. Violation of any provision under the act would entitle the respondent police to initiate action against the petitioner in the manner known to law.

9. With the above observations and directions, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed.

06.02.2023

Index :Yes/No
Internet:Yes/No
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G.CHANDRASEKHARAN, J.

Sma

To

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No.132, EVK Sampath Road,
Veppery, Chennai – 600 007.
2. The Assistant Commissioner of Police,
G1 Veppery Police Station,
Veppery, Periyamet,
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G1 Veppery Police Station,
Veppery, Periyamet,
Chennai – 600 007.
5. The Public Prosecutor,
High Court of Madras.

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