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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P No.1076 of 2024
and W.M.P No.1135 of 2024

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

...Petitioner

Vs.

- 1.The Joint Commissioner of Police,
O/o. the Commissioner of Police,
No.132, EVK Sampath Road,
Vepery,
Chennai – 600 007.
- 2.The Assistant Commissioner of Police,
O/o. the Assistant Commissioner of Police,
Jermiah Road,
Vepery, Periyamet,
Chennai – 600 007.
- 3.The Inspector of Police,
G-1, Police Station,
Jermiah Road,
Vepery, Periyamet,
Chennai – 600 007.

...Respondents



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PRAYER : Petition under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the respondents for with from interfering with the peaceful conduct of petitioner restaurant business carried out in the name and style of “18 - KAFE” located at No.198/ 201, 1st floor, Sowdha Plaza, Purasawalkam High Road, Chennai - 7 having restaurant with separate smoking area for serving herbal flavor hookah without any content or trace of tobacco / Nicotine.

For Petitioners : Mr.R.Prabhakaran

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This writ petition has been filed to forbear the respondents with the conduct of the restaurant business by the petitioner wherein, the petitioner is having separate smoking area for serving herbal flavour hookah.

2.The learned counsel for the petitioner submitted that on an earlier occasion, this Court had granted protection under similar circumstances in W.P.No.26551 of 2023 by an order dated 14.09.2023 and that the petitioner is also entitled for a similar protection.



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3.The learned Additional Public Prosecutor submitted that Section 4A has been inserted under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. Under this provision, no person can have or run any hookah bar or serve hookah to the customers in any place including a eating house. The learned Additional Public Prosecutor submitted that in the light of this prohibition, the relief as sought for by the petitioner is not maintainable.

4.In the considered view of this Court, the earlier order was passed in W.P.No.26551 of 2023, dated 14.03.2023, without being aware of the prohibition that has been introduced under Section 4A of the Act. Hence, that order cannot be shown as a precedent more particularly when the attention of this Court has been drawn to the amendment made to the Act. In view of the same, this Court has to correct itself and should not follow the earlier order passed and this Court has to go by the provision that has been introduced which completely prohibits hookah bar in any place including a eating house.



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5. Since there is a complete prohibition, unless the same is put to challenge in the manner known to law, the relief as sought for in this writ petition cannot be granted by this Court. A mandamus can never be issued by restraining an authority from performing his statutory duty. The law on this issue is too well settled.

6. In the result, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

18.01.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
ssr

To

1. The Joint Commissioner of Police,
O/o. the Commissioner of Police,
No.132, EVK Sampath Road,
Vepery, Chennai – 600 007.
2. The Assistant Commissioner of Police,
O/o. the Assistant Commissioner of Police,
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3. The Inspector of Police,
G-1, Police Station,
Jermiah Road,
Vepery, Periyamet,
Chennai – 600 007.

4. The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

SSR

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