



WEB COPY



W.P.No.2541 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.2541 of 2024
and WMP No.2784 of 2024

M/s.BLISS CAFE
Rep.by its Proprietor D.Praveen Kumar
S/o.G.Dhanapathiraja
No.52, Kakkan Street
Potheri, Chengalpattu.

... Petitioner

.Vs.

- 1.The Commissioner of Police
Tambaram City Police
Sholinganallur
Chennai-600 119.
- 2.The Assistant Commissioner of Police
Guduvancherry Police Station
Guduvancherry
Chengalattu District.
- 3.The Inspector of Police
Maraimalai Nagar Police Station
Maraimalai Nagar
Chengalattu District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents and their subordinate officers from interfering with the conduct and functioning of the petitioner's business at No.52, Kakkan Street, Potheri, Chengalpattu 603 203, carrying on in the name and



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style of 'BLISS CAFE', having restaurant with separate smoking area for serving herbal flavored hookah without any content or trace of Tobacco or Nicotine.

For Petitioner : Mr.C.Umashankar

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This writ petition has been filed to forbear the respondents from interfering with the business of the petitioner and having a separate smoking area for serving herbal flavoured hookah.

2.Heard Mr.C.Umashankar, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for the respondents.

3.The issue involved in this writ petition is covered by the earlier order passed by this Court in CrI.OP.No.1076 of 2024, dated 18.1.2024 and the relevant portions are extracted hereunder:

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.

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.

4.The above order will squarely cover the facts of the present case also. The petitioner cannot seek for permission to have a separate smoking area for serving herbal flavoured hookah, without questioning the total prohibition that has been introduced under Section 4A of the Act. However, in the absence of running such hookah bar, the respondent police cannot interfere with the running of the restaurant by the petitioner. It is therefore made clear that the petitioner can *per se* run the restaurant and he cannot have the hookah bar. If this is complied with, the respondent police need not interfere with the business.



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KP

5. This writ petition is disposed of in the above terms. No costs.
Consequently, connected miscellaneous petition is closed.

01.02.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

- 1.The Commissioner of Police
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- 3.The Inspector of Police
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Chengalattu District.
4. The Public Prosecutor,
High Court, Madras

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