



W.P.No.42034 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.42034 of 2016
and
W.M.P.No.35969 of 2016

Robusta (Hyglow Cafe)
Rep. by its Partner Vishal Dugar,
No.1179/8, Kodambakkam High Road, Nungambakkam,
Chennai – 34
*(cause title amended vide order dated 18.08.2022
made in W.M.P.No.11470 of 2019
in W.P.No.42034 of 2016)*

...Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai,
Office of the Commissioner of Police,
E.V.K.Sampath Salai,
Vepery, Chennai – 600 007.
2. The Inspector of Police,
G3, Police Station, Kilpauk,
Chennai – 600 010.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus forbearing the respondents forthwith from interfering with the running of the petitioner's business peacefully in



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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 dated 8.12.14.

For Petitioner : Mr.M.Madhu Prakash

For Respondents : Mr.L.S.M.Hasan Fizal, AGP

ORDER

This writ petition has been filed seeking to forbear the respondents forthwith from interfering with running of the petitioner's business peacefully 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 dated 08.12.2014.

2. According to the petitioner, they are running several restaurants / branches in the name and style of Robusta after getting required licence to run the same. The petitioner has specifically earmarked smoking area in their restaurants in accordance with the norms of the provisions of cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 in short referred to as "COTPA Act" and also the Prohibition of Smoking in



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Public Places Rules, 2008. As regards selling Hookah in their restaurants, the petitioner also attended an enquiry before the concerned police and also specified that the petitioner is selling flavored hookah by strictly following the norms prescribed under the COTPA Act. Whiles, the second respondent under the supervision of the first respondent, on 11.11.2016 entered the premises of the restaurants of petitioner and forced the petitioner to shut down the restaurants. Therefore, the petitioner has come forward with the present writ petition to forbear the respondents not to interfere with the peaceful conduct of the petitioner's business in selling the flavored hookah in their restaurants.

3. The learned counsel for the petitioner submits that the petitioner is carrying on the restaurant business in the name and style of Robusta after obtaining necessary statutory licence and permits. He would further submit that hookah is served in a designated smoking area to customers above the age of 21 years in accordance with all the norms laid down under the COTPA Act and the petitioner is also maintaining a separate area which is designated smoking zone and the personnel of the restaurants would allow



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the persons who are aged 21 years and above and the restaurant is also not situated within 100 yards of any industrial institutions. Therefore, the learned counsel submits that when the petitioner is running the restaurant and selling the hookah as per the norms and guidelines prescribed by COTPA Act, there is no jurisdiction on the part of the respondents to interfere with the business of the petitioner. Hence, the learned counsel would urge this Court to forbear the respondents from interfering with the business activities of the petitioner.

4. On the other hand, the learned Additional Government Pleader appearing for the respondents submit that though no separate licence is required for the sale of hookah in the restaurants, however taking into consideration that the hookah is very harmful than a pack of cigarettes and since the youth at tender age are being admitted with the consummation of hookah and time and again creating law and order problem in the restaurants, which prompted the respondent Police officials to interfere with the business activities of the petitioner.



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5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials placed on record.

6. Though it is contended that on behalf of the petitioner that COTPA Act is a central legislation and holds the field in regard to sale and regulation of such sale of cigarettes and other allied products that is tobacco products in its entity. It is pertinent to note that the word hookah does not find place in the provisions of COTPA Act, particularly in Section 3(p) of the Act which reads as under:

Sub Section 3(p):- “tobacco products” means the products specified in the Schedule.

7. Further, Section 6 of the COTPA Act permits the sale of cigarettes and other tobacco products by a person to any person above the age of 18 years and also in any area within the radius of 100 yards from any educational institution. Section 6 of the Act reads as under:

Section 6:- No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product-



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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.

8. A perusal of the above it is clear that though the petitioner as per the norms of Section 6 is permitted to sell cigarettes and any other tobacco products to any person who is above 18 years of age and in the area beyond the radius of 100 yards from educational institution, but it is pertinent to note that nowhere in the provisions of COTPA Act, the hookah is a permissible item for sale. Though the petitioner is claiming that the hookah is an allied product of tobacco, however, this Court is not inclined to permit the petitioner for sale of flavored hookah in their restaurants and it is for the State Government to consider the issue of permitting the sale of hookah in the restaurants since it is a well known fact that the hookah is very harmful than any of the tobacco products and it would have a considerable impact on the general public more particularly, the youth of tender age. Therefore this Court is not inclined to entertain the omnibus prayer sought for by the petitioner in this writ petition.



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WEB COPY 9. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

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