

M/S.Forget Me Not Cafe vs The State Of Telangana on 15 November, 2023

THE HONOURABLE SRI JUSTICE C.V. BHASKAR REDDY

WRIT PETITION Nos.8223/2013, 3427/2015, 45742/2022, 46505/2022, 152, 1127, 1809, 1935, 2729, 2735, 2954, 3124, 3758, 3784, 4150, 4297, 4304, 4330, 4562, 4680, 5084, 5097, 5147, 5149, 6510, 6523, 7189, 7297, 7485, 7504, 7949, 7963, 8117, 8226, 8246, 8268, 8498, 8509, 8564, 9558, 10122, 10241, 10425, 10775, 10814, 11008, 11213, 11463, 12360, 12482, 14129, 14134, 15706, 16172, 16839, 17917, 18351, 18829, 19005, 19051, 19742, 22288, 22292, 22305, 23738, 23892, 24696, 25044, 25836, 26172, 27223, 27761 and 30952 of 2023

COMMON ORDER:

Since the issue involved in all these Writ Petitions is intrinsically interconnected, they are being taken up and heard together and disposed of by this common order.

2. As the respondents have filed consolidated counter affidavit in Writ Petition No.46505 of 2022, the said Writ Petition is taken up as a leading case.

3. W.P.No.46505 of 2022 is filed under Article 226 of the Constitution of India, seeking the following relief:

"to pass an order, direction or a Writ particularly in the nature of Writ of Mandamus directing the respondents herein to allow the petitioner herein to serve hookah in his establishment freely as long as he follows the "Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade Commerce Supply and Distribution) Act, 2003 and rules and that the petitioner be allowed to serve hookah in open areas and smoking zones and to issue necessary directions to the effect that no coercive action of any nature ought to be initiated against the petitioner or his establishment namely "Resign Sky Bar" located in Madhapur."

4. The case of the petitioner is that he is running the restaurant under the name and style 'Resign Sky Bar' since many years and also obtained trade license from the Greater Hyderabad Municipal Corporation, Hyderabad. It is further case of the petitioner that owners of certain restaurants had filed Writ Petition No.3202 of 2014 and batch on the file of this Court, wherein this Court vide common order dated 27.01.2017, allowed the petitioners therein to serve Hookah as long as they follow rules and regulations and also the conditions stipulated therein like having CCTV cameras and not serving to minors etc.,. It is further case of the petitioner that even though the restaurant owners are following the rules and regulations as prescribed under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade Commerce Supply and Distribution) Act, 2003 (for short "COTP Act, 2003"), the task force police under the control of

respondent No.2 are visiting the business place and foisting false cases with a malafide intention to force the owners of the business establishments to shut down the hookah sales and usage. It is further case of the petitioner that the owners of the restaurants again approached this Court and filed Writ Petition W.P.Nos.22060 and 23213 of 2017 and this Court vide common order dated 02.08.2017 disposed of the said Writ Petitions and ordered that the restaurant owners are free to run their restaurants as per rules and regulations and that if police takes any steps, the petitioners therein were given liberty to approach the Director General of Police/Commissioner of Police and lodge complaint regarding illegal interference of officers. It is further case of the petitioner that even though restaurant owners are running hookah Centres strictly in conformity with the directions issued by this Court, the respondents-police are raiding the hookah Centres and registering false cases under Sections 188, 270, 272 and 328 IPC. It is further case of petitioner that cases under aforesaid Sections cannot be filed against the restaurant owners if they serve hookah to their customers and that there is no general ban on selling tobacco and tobacco products. It is further case of the petitioners that owners of the restaurants filed Criminal Petitions vide CrI.P.No.5619 of 2020 and batch on the file of this Court seeking to quash the proceedings in respective Crimes/Calendar Cases/ Sessions Cases registered for the offences under Sections 188, 269, 270, 272, 273, 328, 336 & 420 read with 34, 149, 511 of IPC; Sections 3(m), 20(2), 21(1), 21(2), 22, 7(3) and 7(5) of the COTPA Act, 2003 and Sections 58 and 59(i) of the Food Safety and Standards Act, 2006 (for short 'FSS Act'). This Court vide common order dated 10.06.2022, allowed the said Criminal Petitions, quashing the proceedings in the respective Crimes/Calendar Cases/Sessions Cases in terms of the common order, dated 05.07.2021 passed in Mohd. Jameel Ahmed vs. State of Telangana 1. It is further case of the petitioners that since there is no prohibition under COTPA Act, 2003 to serve hookah, interference by the respondents-police amounts to violation of the rights guaranteed under Article 19(1)(g) of the Constitution of India and also the provisions of COTPA Act, 2003.

5. A consolidated counter affidavit has been filed by the respondent Nos.1 to 5 in W.P.No.46505/2022, wherein inter alia it is stated that the petitioners are seeking to give a direction to permit running of "Hookah Parlour" and serving of Hookah in Restaurants beyond the areas designated by the statute. It is further stated that the details of those Hookah Centres/Hookah Parlours/Hookah Bars are conspicuously missing. The petitioners without mentioning that they are complying with various statutory provisions of COTPA Act, 2003, have simply averred that they are serving hookah in their premises. It is further stated that no statute or regulation refers to Hookah Centres/Hookah Parlours/Hookah bars. In the counter affidavit, the respondents have referred various constitutional provisions relating to health and right to life. It is stated by the respondents that as per Article 21 of the Constitution of India, it is the responsibility of the Government to direct its policy towards 2022 CriLJ 642 securing tender age children and give them opportunities to develop in a healthy manner. It is further stated that World Health Organization Framework Convention on Tobacco Control (WHO FCTC) and its guidelines provide the foundation for countries to implement and manage tobacco control. The WHO has introduced MPOWER measures which correspond to one or more articles of the Framework Convention, to assist in reducing the demand for tobacco products at country-level. It is further stated that hookahs are smoked in a closed cabins or rooms and persons who smoke, sit for hours together and inhale much more smoke than those who smoke cigarette for 3 to 4 minutes. It is further stated that Hookahs sometimes

called 'water pipes' and they are used to smoke specially made tobacco that is available in a variety of flavors, such as apple, mint, cherry, chocolate, coconut, licorice, cappuccino, and watermelon. It is further stated that Hookah smoking is typically practiced in groups, with the same mouthpiece passed from person to person. Water pipe smoking delivers the addictive drug nicotine and it is as toxic as cigarette smoke and due to the mode of smoking including frequency of puffing, depth of inhalation, and length of the smoking session, hookah smokers may absorb higher concentration of the toxins found in cigarette smoke. It is further stated that a typical one hour long hookah smoking session involves inhaling 100- 200 times the volume of smoke inhaled from a single cigarette. Hookah smokers are at risk for the same kinds of diseases that are caused by cigarette smoking, including oral cancer, lung cancer, stomach cancer, cancer of the esophagus, reduced lung function, and decreased fertility. Hookah smoking is NOT a safe alternative to smoking cigarettes. The charcoal used to heat tobacco in the hookah increases the health risks. Even after it has passed through water, the smoke produced by a hookah contains high level of toxic compounds, including carbon monoxide, heavy metals, and cancer causing chemicals and thus prayed to dismiss the writ petitions.

6. Heard both sides and perused the record.

7. The learned counsel for the petitioner submitted that the respondents-police are frequently interfering with the petitioner's business activity of serving hookah in the designated smoking area in the restaurant and preventing the petitioner from doing trade. It is further submitted that the action of the respondents in asking the petitioner to stop offering hookah in the absence of any material to show that the business is in violation of the guidelines prescribed by the Apex Court in *Narinder S. Chadha v. Municipal Corporation of Greater Mumbai* 2 and the COTP Act, 2003, amounts to (2014) 15 SCC 689 infringement of fundamental rights and the same is illegal and improper. Learned counsel submits that continuous interference of the respondents is causing irreparable damage and harassment to the petitioner and to the reputation of business. Learned counsel further submitted that in catena of cases, this Court has clearly in unambiguous terms stated that police under the guise of implementing the regulation shall not resort to cause inconvenience or any harassment to the customer/person present there or to the owner of the restaurant, when the business is lawful and legal, there cannot be any prohibition. It is further submitted that the petitioner is holding all the required licenses such as GST, Sales Tax, Food, Trade, Labour etc., and also paid advance tax. It is further submitted that the respondents are not having power to interfere with the petitioner's business activity as long as he follows the guidelines issued by the Hon'ble Supreme Court in *Narinder S Chadha's case* (supra) and also the provisions of COTP Act and the regulations made thereunder. Thus the learned counsel prayed this Court to allow the writ petitions as prayed for.

8. On the other hand, the learned Special Government Pleader for Home appearing for the respondents opposed the writ petition and relied upon the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 17 and 18 of COTP Act, 2003. He argued that COTP Act, 2003 has not only included cigarettes like Cigarettes (Regulations of Production, Supply and Distribution) Act, 1975 but also brought all other forms of tobacco products (both smoking and smokeless); Prohibition of smoking in public places; Imposing nationwide public smoking ban and specified particular places as

non-smoking zones; Ban on tobacco advertising and sponsorship; Ban on sale to minors and in an area within radius of 100 yards of any educational institution; Displaying of pictorial health-warning labels; That the specified health warnings must occupy at least 40% of the principal display area on the front panel of the packets, and shall be rotated every 12 months; that the law also prohibited more than two languages from being used on the pack to ensure that specified warning is legible and prominent. It is further submitted that with effect from 2nd October, 2012, the Government began screening two anti-tobacco advertisements in movie theatres and television. Nicotine and Tar contents of all tobacco products must be clearly displayed on the packs. Producers of tobacco products must ensure that these harmful contents are within the maximum permissible limits as prescribed by the rules. The learned Special Government Pleader further submitted that Rule 4 of the Prohibition of Smoking in Public Places Rules, 2008 (for short "Rules, 2008") mandates that 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). As per Rule 4(3), no service shall be allowed in any smoking area or space provided for smoking. Therefore, no ash trays, lighters, matches or other things to facilitate smoking are to be provided in a public place as per Rule 3(c) of the Rules, 2008. It is further submitted that as per Rule 4 (4)(a), smoking in public places is completely banned and for a person visiting a Restaurant or a Hotel satisfying the statutory requirement, the Hotel or Restaurant may designate a separate area or space as per the definition of smoking area in Rule 2(e) and such a person visiting the hotel or a Restaurant is free to smoke in the designated smoking area. The Restaurant or the Hotel will not provide any smoking apparatus or anything that aids smoking. It is further submitted that Rule 3 (1)(c) specifically places a bar on the owner, proprietor, manager, supervisor or incharge of the affairs of public place to ensure that no ashtrays, matches, lighters or other things designed to facilitate smoking are provided in the public place, therefore the necessary corollary that would follow is that, there cannot be active participation of the persons incharge of managing a restaurant or a hotel to provide smoking aids. As such smoking of hookah cannot be aided by the restaurant or a hotel merely since it has a smoking room attached to it. It is further submitted that what cannot be permitted in the public area of a restaurant cannot be stretched to mean that it can be provided in the smoking area. It is further submitted that the Trade licences obtained by the petitioners from the Greater Hyderabad Municipal Corporation, does not disclose that they have been issued after a declaration that they are running "Hookah Centres". The learned Special Government Pleader relied upon Section 521 of GHMC Act, which specifically states that no person shall without licence keep, in or upon any premises, for sale or for other than domestic use, any article specified in Part III of Schedule P. It is further submitted that Charcoal, which is used to facilitate the smoking of the Hookah is an Article mentioned in Part III of Schedule P. The use of charcoal for the purpose of Hookah smoking is very dangerous and can pose a risk of fire accidents apart from creating a nuisance to the persons who may visit the Restaurant or Hotel. It is further submitted that the licences of the petitioners do not disclose that they have filed declaration that they intended to use Trade Licences to permit Hookah smoking. There is no occasion for the Municipal authorities to consider this aspect. The learned Special Government Pleader further submitted that even though earlier batch of cases have been disposed of by this Court, the issues raised in these writ petitions are not specifically adverted and this Court has not taken into consideration that Hookah is also a Tobacco product and the provisions of COTPA Act, 2003 apply. It is further submitted that prayer sought in these writ

petitions is in the nature of restraining the authorities from inspecting the premises where Hookah centres are being run and in fact as per the provisions of Hyderabad City Police Act, 1345 Fasli, the police has power to inspect any public place for the offences committed under the said Act, i.e., exposing of body in indecent manner, possession of suspected articles, indecent acts in streets etc., committing nuisance in or near public place. It is further submitted that since the observations made in the earlier batch of cases does not specifically restrain or declare the powers exercised by the police officers as illegal, the police officers are entitled to supervise and inspect, seize and seal the petitioners establishments if any violation is being found under Section 12 of COTP Act. Since the orders passed in the earlier writ petitions, does not give blanket protection or recognizes the independent existence of "Hookah Centres", the judgments relied upon by the petitioners are not helpful to the case of the petitioners and therefore, the learned Special Government Pleader prayed for dismissal of the writ petitions.

9. It is apt and appropriate to extract some of the relevant provisions of COTP Act, 2003, which are as follows:

"3. Definitions.-In this Act, unless the context otherwise requires,-

(a) "advertisement" includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas;

(b) "cigarette" includes,-

(i) any roll of tobacco wrapped in paper or in any other substance not containing tobacco,

(ii) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to, or purchased by, consumers as cigarette, but does not include beedi, cheroot and cigar;

(c) "distribution" includes distribution by way of samples, whether free or otherwise;

(d) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(e) "foreign language" means a language which is neither an Indian language nor the English language;

(f) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(g) "Indian language" means a language specified in the Eighth Schedule to the Constitution, and includes any dialect of such language;

(h) "label" means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;

(i) "package" includes a wrapper, box, carton, tin or other container;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "production", with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include-

(i) packing, labelling or re-labelling, of containers;

(ii) re-packing from bulk packages to retail packages; and

(iii) the adoption of any other method to render the tobacco product marketable;

(l) "public place" means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are visited by general public but does not include any open space;

(m) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale;

(n) "smoking", means smoking of tobacco in any form whether in the form of cigarette, cigar, beedis or otherwise with the aid of a pipe, wrapper or any other instruments;

(o) "specified warning" means such warnings against the use of cigarettes or other tobacco products to be printed, painted or inscribed on packages of cigarettes or other tobacco products in such form and manner as may be prescribed by rules made under this Act;

(p) "tobacco products" means the products specified in the Schedule.

4. Prohibition of smoking in a public place.-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 and in the airports, a separate provision for smoking area or space may be made.

5. Prohibition of advertisement of cigarettes and other tobacco products.-(1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall-

(a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

Provided that this sub-section shall not apply in relation to-

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of-

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

6. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area.-No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product-

(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.

7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.-(1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label such specified warning including a pictorial warning as may be prescribed. (2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

(3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning. (4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

11. Testing laboratory for nicotine and tar contents.-For purposes of testing the nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.

12. Power of entry and search.-(1) Any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other

officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised side by the Central Government or by the State Government may, if he has any reason to suspect that any provision of this Act has been, or is being, contravened, enter and search in the manner prescribed, at any reasonable time, any factory, building, business premises or any other place,-

(a) where any trade or commerce in cigarettes or any other tobacco products is carried on or cigarettes or any other tobacco products are produced, supplied or distributed; or

(b) where any advertisement of the cigarettes or any other tobacco products has been or is being made.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to every search and seizure made under this Act.

13. Power to seize.- (1) If any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government, has any reason to believe that,-

(a) in respect of any package of cigarettes or any other tobacco products, or

(b) in respect of any advertisement of cigarettes or any other tobacco products, the provisions of this Act have been, or are being, contravened, he may seize such package or advertisement material in the manner prescribed. (2) No package of cigarettes or any other tobacco products or advertisement material seized under clause (a) of sub-section (1) shall be retained by the officer who seized the package or advertisement material for a period exceeding ninety days from the date of the seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention.

14. Confiscation of package.- Any package of cigarettes or any other tobacco products or any advertisement material of cigarettes or any other tobacco products, in respect of which any provision of this Act has been or is being contravened, shall be liable to be confiscated:

Provided that, where it is established to the satisfaction of the court adjudging the confiscation that the person in whose possession, power or control any such package of cigarettes or any other tobacco products is found is not responsible for the contravention of the provisions of this Act, the Court may, instead of making an order for the confiscation of such package, make such other order authorised by this Act against the person guilty of the breach of the provisions of this Act as it may think fit.

16. Confiscation not to interfere with other punishments.- No confiscation made, costs ordered to be paid under this Act shall prevent the infliction of any punishment to

which the person affected thereby is liable under the provisions of this Act or under any other law.

20. Punishment for failure to give specified warning and nicotine and tar contents.-(1) Any person who produces or manufactures cigarettes or tobacco products, which do not contain, either on the package or on their label, the specified warning and the nicotine and tar contents, shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees.

21. Punishment for smoking in certain places.-(1) Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to two hundred rupees.

(2) An offence under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973 (2 of 1974).

10. On earlier occasions, identical issues to the cases on hand, came up for consideration before this Court in W.P.No.3202 of 2014 and batch, W.P.No.14093 of 2011, W.P.No.4942 of 2012, and W.P.Nos.22060 of 2017 and 23213 of 2017

11. In Writ Petition No.3202 of 2014 and batch, this Court dealt with a similar situation where the police were interfering with the business activities of the petitioners therein, in serving flavoured hookah in their coffee shops. Dealing with the said aspect and also taking into consideration various provisions of the COTPA Act, the petitioners cases were rejected, holding as under:

"16. Insofar as the interference of the police are concerned, it is pertinent to note that the provisions of Section 12 of the COTPA Act confer powers to the police not below the rank of Sub Inspector of Police or any officer of the State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub Inspector of Police authorized by the Central Government or by the State Government, may, if he has any reason to suspect that any provision of this Act has been or is being contravened, enter and search in the manner prescribed at any reasonable time at factory, building, business or any other place.

17. In the light of this provision and Section 149 Cr.P.C., the contention of the learned Counsel for the petitioners that the acts of the Police amount to infringement of fundamental rights and that the police are not the competent authority, but it is only the G.H.M.C that is competent to interfere with the business of the petitioners, who are serving Hookhas, does not have any force. Therefore, this Court is of the view that under Section 12 of the Act and Section 149 Cr.P.C., the police including the other authorities as authorized by both Central and State Governments have ample powers to inspect the business premises of the petitioners. In this regard, the learned Counsel for the petitioners has failed to place any such authority, under which, the G.H.M.C is only competent to inspect the business of the petitioners in serving Hookah.

18. In view of the foregoing discussion, this Court is of the view that the action of the respondents-police is in accordance with law and any interference by this Court with the powers of the police in this regard by exercising the powers under Section 226 of the Constitution of India, is not warranted.

19. Further, the Director General of Police, Telangana State, is directed to take appropriate action against the officers for their inaction in respect of the restaurants being used as hookah centres and also to take action against the high-handed acts of the officers, who interfered with the restaurants, which are being run without there being any violations."

12. In W.P.No.14093 of 2011, a learned Single Judge of this Court referring to the order passed in W.P.No.3202 of 2014 and the judgment of the Hon'ble Apex Court in *Narinder S.Chadha and others v. Municipal Corporation of Greater Mumbai* (supra), held as under:

"The facts in W.P.No.3202 of 2014 and batch are same and similar to the facts asserted in the instant writ petition. Further, as rightly pointed out by the respondents there can't and ought not to be a blanket direction against the respondents for such direction virtually prevents the Police from even knowing or investigating what is actually happening in the name of flavoured hookahs. The decision of Hon'ble Supreme Court is distinguishable to the fact situation of this case, for a Circular was challenged in the reported case and the legality of the Circular was considered and decided. Whereas in the case on hand the prayer and the cause of action are on alleged interference by Police against flavoured hookahs serving and no written order or proceeding is placed on record to examine the legality of such order or proceeding. Therefore, having regard to the view taken in the common order dated 27-01- 2017 in W.P.No.3202 of 2014 and batch, I am satisfied that the instant writ petition can be dismissed by adopting the same reasons."

13. In W.P.Nos.22060 of 2017 and 23213 of 2017, a learned Single Judge of this Court vide order dated 02.08.2017, observed as follows:

"17) The two judgments referred to above dealt with situation where the interference of the police in the business of the petitioners in serving flavoured hookah was in challenge. Situation on hand now is totally different and still verse in view of the notification dated 23.05.2017 which prohibited service in smoking area or space provided for smoking.

Admittedly, hookah is a product which contains tobacco and when any product contains tobacco, the same has to be puffed in a non-smoking zone. In view of the circular issued by the Government, service of hookah even in the no-smoking zone would be impermissible.

18) It is to be noted here that the above said provision will apply if the hotel/restaurant has 30 rooms and the coffee shop has seating capacity of 30 persons or more, which does not mean that hookah can be freely supplied in a restaurant where seating capacity is less than 30 or a hotel where there are less number of rooms."

14. As per Section 4 of the Act, if the restaurant has seating capacity of 30 persons or more, a separate provision for smoking area has to be provided. The word Hookah has not been defined in the COTP Act. Section 3 (k) of the COTP Act defines "production". A reading of the said provision would show that the word "production" includes making of cigarettes, cigars, cheroots, beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff. Therefore, it implies that all the tobacco products which are taken with the aid of pipe, wrapper or any other instruments would fall within the definition of Section 3(n) of the COTP Act. If the restaurant or coffee shop falling within the ambit of Section 4 of the COTP Act, has to provide a separate smoking zone. The Government of India has issued a notification in the month of May, 2017, which clearly indicate that no service shall be allowed in a smoking area or in the space provided for smoking. Therefore, the restaurant owners shall not involve themselves in the act of service to their customers, in the prohibited area. Section 12 of the Act confers powers to the police officer not below the rank of Sub-Inspector of Police or any officer of authorized by the Central Government or State Government to search the premises at any reasonable time, if he suspects that the provisions of the Act are contravened namely cigarettes or any other tobacco products are produced, supplied or distributed or whether any advertisement of the cigarettes or any other tobacco products are being made. While affecting a search and seizure, Section 12 of the Act clearly says, that the provisions of the Cr.P.C. have to be followed.

15. Having regard to the above, and taking into consideration, consistent view taken by this Court in the aforesaid Writ Petitions, this Court do not find any illegality in police officers, entering into the premises and searching the same, so as to find out whether the owners of the restaurants have contravened or violated any of the provisions of the COTP Act and Rules made thereunder.

16. It is useful to refer and extract Article 47 of the Constitution of India, which reads as follows:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-- The State shall regard the raising of the level of nutrition

and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

17. This Constitutional Provision specifically deals with improvement of public health a primary duty of the State. The Court should enforce this duty against a defaulting local authority. Any article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed to the citizens under Article 21 read with Article 47 and a paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health. Further, restrictions imposed by law for supply and serving of tobacco products including serving hookah cannot be said to be violative of Article 19(1)(g). Having regard to the principles contained in Article 47 of the Constitution, the State or its authorities are having right to regulate the sale of tobacco product which includes running of hookah centres. While granting license to run the restaurants, the State or its authorities must resort to strict scrutiny of the applications. For the purpose of grant of licence, the law as contained in the rules, did not contain any provision for relaxing any condition. In *Vincent Panikurlangara v. Union of India* 3 the Hon'ble Supreme Court observed that "maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends, the AIR 1987 SC 990: (1987) 2 SCC 165 building of the society of which the Constitution makers envisaged. Attending to public health is of high priority.

18. Section 4 of the COTP Act defines prohibition of smoking in a public place. It states that 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 and in the airports, a separate provision for smoking area or space may be made. Admittedly, the petitioners in all these cases have obtained licence to run the hotels/restaurants. Section 6 of the COTP Act prohibits sale of cigarette or other tobacco products to a person below the age of eighteen years and in an area within a radius of one hundred yards of any educational institution. A conjoint reading of Section 6 read with Section 4 of COTP Act clearly indicate smoking of tobacco in any form is prohibited in public places like Hotels, Restaurants and Airports. Rule 4(3) of the Rules, 2008, a smoking area or space shall be used only for the purpose of smoking and no other service(s) shall be allowed. A careful reading of the above provisions, would indicate that the Hotels and Restaurants where normally food is supplied, are prohibited from smoking of any tobacco product, unless a separate area is made to allow smoking. Therefore, the contention of the petitioners that the licence obtained by them to run the Hotels/Restaurants also allows them to have smoking of hookah and run hookah centres is not tenable.

19. The petitioners having obtained licence to run hotels/ restaurants have to comply the conditions imposed by the Municipal Corporation, whereas Section 4 of the COTP Act, prohibits smoking in a public place. Therefore, the conditions imposed by the Municipal Corporation for granting trade licence to run Hotels/ Restaurants are varying from the conditions that are incorporated under the provisions of COTP Act. The licence obtained for running Restaurants which have the seating capacity of thirty persons or more does not confer any right to the petitioners to convert the same as

a place of smoking area or to run hookah centre.

20. Admittedly, in the present cases on hand, the petitioners have obtained licences to run Hotels/Restaurants/Bars and without specifying any area as smoking zone as per the provisions of COTP Act and Rules made thereunder, as such they are not having right to contend that they are entitled to run the hotels/restaurants as Hookah centres.

21. The Hon'ble Supreme Court in *Narinder S. Chadha v. Municipal Corporation of Greater Mumbai* (supra), while dealing with the Condition 35(C) of the Circular issued by the Bombay Municipal Corporation, observed as follows:

"14. It will be seen that Condition 35(C) of the impugned circular essentially reproduces Rule 4(3) of the said Rules and then adds the words "or any apparatus designed to facilitate smoking". The effect of the added words is that a Hookah cannot be provided by the hotel, restaurant or airport being an apparatus designed to facilitate smoking."

16. We find it difficult to accept this contention because, if carefully read, Rule 3 deals with the prohibition of smoking in public places, which is referable to Section 4 (main part) whereas Rule 4 is referable to the proviso to Section 4. Rule 3 would only apply where there is a total prohibition of smoking in all public places as is clear from Rule 3(1)(a) which makes it incumbent on the owner, proprietor, etc. of a public place to ensure that no person smokes in that place. It is in that context that ashtrays, matches, lighters and other things designed to facilitate smoking are not to be provided in public places where smoking is prohibited altogether."

22. As per Section 3(l) of the COTP Act, "public place" means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are visited by general public but does not include any open space. As per Section 3(g) of the Hyderabad City Police Act, 1348 Fasli (for short "City Police Act"), "public place of amusement" means every place or house or tent or enclosure or booth or any other building whether permanent or temporary where singing, music, dancing or any diversion or game and anything giving amusement or the means of carrying on the same is provided and to which the public are admitted either on payment of money or with the intention that money may be collected from them on admission and shall include the race-course, circus, theatre, music and dancing hall, billiard room, gymnasium or any other place allotted for such purposes. As per Section 3(h) of the City Police Act, "public place of entertainment" means any enclosed or open place to which the public have access and where any kind of articles of food and drink are supplied for consumption by any person or for the profit of any person owning or having any interest in or managing such place and shall include a refreshment room, tea house, liquor house, boarding house, lodging house, hotel, tavern or sendhi, wine, ganja, toddy, bhung or opium shops. As per Section 3(j) of the City Police Act, "public place" also includes the place within the premises or enclosure of any public building or monuments and all places to which the public have access for drawing water, washing or bathing or for the purpose of recreation.

23. It is pertinent to state that "public place" as defined under Section 3(l) of COTP Act, includes amusement centres, and the same is defined in "public place of amusement" under Sections 3(g) of City Police Act. As per Chapter III of the City Police Act, the Commissioner of Police is having power to issue rules and regulations for preservation of order. Further, as per Section 32 of the City Police Act, for enforcement of orders under Sections 22, 23 and 24 of the City Police Act, the police officer may arrest any person without warrant. As per Section 84 of the City Police Act, police is having power to specify conditions etc., for obtaining licences and permits. Since the City Police Act, confers power over the amusement Centres/restaurants, which are defined as "public place" under the COTP Act and as per Rule 4 of the Prohibition of Smoking in Public Places Rules, 2008 permission is required specifying smoking area. In view of the powers being conferred on the Commissioner of Police, under the City Police Act, the police are having power to supervise the business establishments of the petitioners and seize the hookah centres if there is any violation of the provisions of the COTP Act. Therefore, to establish hookah centres, permission from the concerned authority has to be obtained under the provisions of City Police Act. The petitioners shall follow rules and regulations issued by the Commissioner of Police from time to time for preservation of the public order.

24. In view of the above discussion, this Court is of the opinion that imposing of certain conditions to run the Hookah Centres would meet the ends of justice.

i) As Charcoal is being used for serving hookah in the Hookah Centres, the petitioners shall obtain licence from the Municipal Corporation as specified under Section 521(1)(b) of Greater Hyderabad Municipal Corporation Act, 1955.

ii) Since the Hyderabad City Police Act, 1348 Fasli confers power over the amusement Centres/restaurants which are defined as "public place" under the COTP Act and as per Rule 4 of the Prohibition of Smoking in Public Places Rules, 2008 permission is required specifying smoking area. Therefore, to establish hookah centres, the petitioners shall obtain necessary permission from the concerned authority under the provisions of the City Police Act.

iii) The Hookah Centres are prohibited from serving any tobacco product to the persons below the age of eighteen years. Pictorial health-warning labels at the entrance must be displayed.

iv) The respondents-police are at liberty to supervise and inspect the Hookah Centres, for any violation of rules and regulations, guidelines or circulars issued under the provisions of the Hyderabad City Police Act, 1348 Fasli.

v) If there is any violation of the provisions of the COTP Act and the Rules made thereunder, the respondents-police are at liberty to take appropriate action as per the provisions of the COTP Act.

25. Subject to fulfilling the above conditions and also the provisions of COTP Act, the respondents-police are directed not to interfere with the business activity of the petitioners for running Hookah Centres. If the police are found to act in a highhanded manner, the owners of the Hookah Centres are at liberty to bring the same to the notice of the Director General of

Police/Commissioner of Police, as directed by this Court in Writ Petition No.3202 of 2014 and batch, in which event the said authority shall forthwith take necessary steps in that regard.

26. Accordingly, all these Writ Petitions are disposed of.

Miscellaneous Petitions, if any, pending in these writ petitions shall stand closed. No order as to costs.

_____ C.V. BHASKAR REDDY, J Date: 15.11.2023 scs