

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE S. G. PANDIT

WRIT PETITION No.6971 OF 2022 (GM-POLICE)

BETWEEN:

SOHO PUB AND GRILL

...PETITIONER

(BY SRI. SUNIL KUMAR B N, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
REP. BY SECRETARY
HOME DEPARTMENT
VIDHANA SOUDHA
BANGALORE-560001.

2 . COMMISSIONER OF POLICE
INFANTRY ROAD
BANGALORE-560001.

- 3 . DEPUTY COMMISSIONER OF POLICE
BENGALURU NORTH
BANGALORE-560003.
- 4 . ASSISTANT COMMISSIONER OF POLICE
BASAVANAGUDI
BANGALORE-560003.
- 5 . STATION HOUSE OFFICER/INSPECTOR
BASAVANAGUDI POLICE STATION
BANGALORE-560010.
- 6 . CENTRAL CRIME BRANCH
NARCOTIC DEPARTMENT
MYSORE ROAD
CHAMARAJPETE
BENGALURU-560018
REP. BY ITS INSPECTOR

...RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R1 TO 6 NOT TO INTERFERE IN THE LAWFUL ACTIVITIES CARRIED ON BY THE PETITIONER IN THE SCHEDULE PREMISES OF THE PETITIONER AND DIRECT THE RESPONDENTS NOT TO INSIST FOR OBTAINING LICENSE UNDER THE KARNATAKA POLICE ACT OR ANY OTHER ACT TO SERVE HOOKAH AND ALSO DIRECT THE RESPONDENTS NOT TO INTERFERE WITH THE LAWFUL SERVING OF HOOKAH.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Sri Sunil Kumar B N, learned counsel for the petitioner.

Smt Rashmi Patel, learned Additional Government Advocate for the respondents.

2. The matter is taken up for hearing with the consent of the parties. It is heard finally.

3. Petitioner is before this Court seeking a writ of mandamus to respondents not to interfere with the lawful activities carried on by the petitioner. Petitioner is said to be running a restaurant wherein the customers are permitted to smoke hooka and respondents are alleged to have interfered with the business of petitioner. Hence, petitioner is before this Court for issue of writ of mandamus to the respondents not to interfere with his business.

4. Under similar circumstances, Coordinate Bench of this Court by order dated 27.02.2017 passed in W.P.No.8140/2017 had considered these aspects and after taking note of the order passed in W.P.No.14226/2015 on 03.09.2015 had held as under:

"4. If that be the position, the use of the instrument known as Hooka cannot be prohibited as long as such smoking is of Tobacco through the Hooka and no other prohibited substance is used. Therefore, if the said Hooka is used for any other illegal purpose, certainly the law enforcing authorities including the jurisdictional police would be entitled to take appropriate action in accordance with law.

5. Therefore, the only direction that is required to be issued in the instant petition to the respondents is not to insist upon the petitioner to obtain licence for the use of Hooka in the smoking zone provided by the petitioner in their premises, if such facility is provided only for smoking Tobacco through Hooka. However, if any credible information is received and in the process of monitoring, if any illegal activity is found including use of any banned substance, certainly the respondents or such other law

enforcing authorities would be entitled to take action in accordance with law.”

In that view of the matter, petitioner would be entitled for similar relief.

5. At this juncture, learned Government Advocate would submit that alleged customers of the petitioner-restaurant under the guise of smoking hooka are likely to indulge in activities, which are unlawful and as such, police authorities should be permitted to keep a check and also smoking having been prohibited in public places, exclusive area for smoking hooka is to be earmarked by the petitioner in the business premises, where the hotel being run and as such, he prays for additional condition also being imposed on petitioner.

6. Said contention deserves to be accepted for the simple reason that under the guise of smoking hooka, customers at the petitioner-restaurant cannot

be allowed to use ganja marijuana, etc. That apart, smoking of hooka should not cause inconvenience to other customers since smoking having been prohibited in public places, an exclusive area with separate enclosure requires to be reserved for hooka bar. Hence, in addition to the conditions noted hereinabove an additional condition requires to be imposed on the petitioner and it shall be as under:

- (a) Petitioner shall earmark exclusively a separate area/place(s) with appropriate enclosure in the hotel premise and necessarily after obtaining licence for the purpose of hooka smoking and no other area or portion of premise shall be used by the customers of the petitioner for smoking hooka.
- (b) Under the guise of inspection, the respondent-jurisdictional police shall not harass the petitioner. However, it

does not deter them from inspecting the premise at periodical intervals with notice to the petitioner, if necessary.

7. In that view of the matter, instant petition is disposed of by imposing the conditions in the order dated 03.09.2015 passed in W.P.No.8140/2017 and also the additional conditions as noted above. Respondents are hereby directed not to interfere with the legal activities of petitioner. However, liberty as indicated hereinabove would be available to the competent authorities to proceed in accordance with law, if any illegal activities are found in the premises of petitioner.

Ordered accordingly.

Sd/-
JUDGE