



GAHC010002892021

Page No.# 1/9



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/75/2021

M/S TRUE WELLNESS VENTURE PVT LTD AND 4 ORS
REPRESENTED BY SHRI ABHISHE JAIN, AGE 30 YEARS, S/O SANJAY
KUMAR JAIN, R/O SAGAR APARTMENT, S.J. ROAD, ATHGAON, GUWAHATI
781001

2: M/S HIDEOUT SHEESHA LOUNGE
REPRESENTED BY SHRI RANJIT MAHANTA
AGE 29 YEARS
S/O SANJAY MAHANTA
R/O NEAR VISHWARATNA HOTEL
A.T. ROAD
GUWAHATI 781001

3: M/S A.K. GROUP
REPRESENTED BY SHRI KRISHAN GOPAL AGARWALLA
AGE 36 YEARS
S/O LATE R.L. AGARWALLA
R/O LACHIT NAGAR
BYE LANE NO. 1
GUWAHATI 781007

4: M/S ADDICTED
REPRESENTED BY SHRI ANKIT JAIN
AGE 32 YEARS
S/O LATE ASHOK KUMAR JAIN
R/O A.T. ROAD
NEAR ATHGAON FLYOVER
GUWAHATI 781001

5: M/S INV ENTERPRISE
REPRESENTED BY ISHAN AGARWALLA
AGE 31 YEARS



S/O PRAKASH AGARWALLA
R/O TRANZ ENCLAVE
ZOO ROAD
GUWAHATI 78100

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM,
GUWAHATI DEVELOPMENT DEPTT., DISPUR, GUWAHATI-6

2:THE GUWAHATI MUNICIPAL CORPORATION

PANBAZAR
GUWAHATI 781001
REPRESENTED BY ITS COMMISSIONER

3:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI 78100

Advocate for the Petitioner : MR. P N GOSWAMI

Advocate for the Respondent : SC, GDD

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT AND ORDER (Oral)

Date : 18-02-2021

Heard Mr. P. N. Goswami, learned counsel appearing on behalf of the writ petitioners. I have also heard Ms. M. Bhattacharjee, learned Standing Counsel, Guwahati Municipal Corporation (GMC), appearing for the official respondents.

2. It appears that the writ petitioners herein were operating their respective



restaurant-cum-“Hookah Bars” in different locations within the city of Guwahati on the basis of trade licences issued by the Guwahati Municipal Corporation (GMC) authorities. Their trade licences was also renewed from time to time. However, pending consideration of their request for renewal of trade licences, on 03.10.2020, the respondent No.3 had written to the Government of Assam seeking clarification as to whether, the GMC authorities can go ahead and issue trade licence to Hookah Bars. In response to the communication dated 03.10.2020, the Deputy Secretary to the Government of Assam, Guwahati Development Department, had issued reply dated 19.10.2020, according to which, the Government of Assam would not allow operation of tobacco encouraging places like Hookah Bars. Acting on the communication dated 19.10.2020, the respondent No.3 had issued the impugned notice dated 18.12.2020 directing closure of Hookah Bars within the Guwahati Municipal Corporation area. Consequently, the restaurant-cum- Hookah Bars operated by the five petitioners herein had to be closed down. Aggrieved thereby, the present petition has been filed.

3. By referring to the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (here-in-after referred as the “Act of 2003” as well as the Rules framed under Section 31 of the aforesaid Act, Mr. Goswami submits that the Act of 2003 does not impose total ban on smoking of tobacco and Hookahs in such restaurants and therefore, the impugned notice is without jurisdiction. Mr. Goswami has also referred to and relied upon a decision of the Supreme Court of India rendered in the case of **Narinder S. Chadha and others Vs. Municipal**



Corporation of Greater Mumbai and others reported in **(2014) 15 SCC 689** to contend that similar orders by the Municipal Authorities, banning Hookah Bars in other States have been held to be illegal by the Apex Court upon interpretation of the provisions of the Act of 2003 and the Rules framed thereunder. Urging that the GMC authorities do not have any power or jurisdiction either to issue trade licence or refuse the same with regard to any item not included in Schedule-IV of Section 180 of the GMC Act, 1971, the learned counsel for the petitioners has argued that the impugned circular is without jurisdiction and therefore, is liable to be struck down by this Court. It is also the submission of Mr. Goswami that the petitioners would never violate any provisions of the Act of 2003 and the Rules framed thereunder. Therefore, there cannot be any justifiable ground to close down the restaurants operated by the petitioners since the same impinges upon the question of livelihood of the owners of the restaurants and the number of employees engaged therein.

4. Ms. M. Bhattacharjee, learned Standing Counsel, GMC, on the other hand, submits on instructions, that the GMC authorities have taken a policy decision not to issue any renewal licence in respect of "Hookah Bars" and therefore, the question of granting licence to the petitioners to operate "Hookah Bars" does not arise.

5. From a reading of the relevant provisions of the Act of 1971, I find that the GMC has the jurisdiction to issue licence only in respect of those items included in Schedule-IV of Section 180 of the Act. I also find that "Hookah Bar" is not specifically mentioned in Schedule-IV of Section 180 of the GMC Act, 1971. If that be so, a question may arise as to whether there is any need, at all, to obtain NOC or trade

licence from the GMC to operate a “Hookah Bar”.

6. It is to be noted herein that as per Section 3(n) of the Act of 2003, “smoking” would mean and include 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 instrument. Section 4 of the Act of 2003 provides 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. Further, the Schedule to the Act of 2003, more particularly Sl. No.5 makes it apparent that “hookah tobacco” is also a tobacco product.

7. Section 4 of the Act of 2003 imposes prohibition on smoking in a public place. However, proviso to Section 4 inter alia lays down that a separate smoking area or space may be made in hotels having thirty rooms or restaurants having seating capacity of thirty persons or more.

8. In exercise of power conferred by Section 31 of the Act of 2003, the Central Government has framed the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 (for short “rules of 2004”). Rule 3 of the Rules of 2004 similarly deals with prohibition of smoking in a public place. Rule 3 is reproduced herein below for ready reference :-

“3. Prohibition of smoking in a public place.-- (1) The owner or the manager or in charge of the affairs of a public place shall cause to be

displayed prominently a board, of a minimum size of sixty centimeter by thirty centimeter in the Indian languages(s) as applicable, at least one at the entrance of the public place and one at conspicuous place(s) inside, containing the warning "No Smoking Area- Smoking Here is an Offence".

(2) The owner or the manager of in charge of the affairs of a hotel having thirty rooms or restaurant having eating capacity of thirty persons or more and the manager of the airport shall ensure that,--

(i) the smoking and non-smoking areas are physically segregated;

(ii) the smoking area shall be located in such manner that the public is not required to pass through it in order to reach the non-smoking area; and

(iii) each area shall contain boards indicating thereon "Smoking Area/Non-Smoking Area".

9. Rule 4 of the Prohibition of Smoking in Public Places Rules, 2008 framed under the provisions of the Act of 2003 also provides as follows :-

“4. Hotels, Restaurants and Airports. (1) 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).

(2) Smoking area or space shall not be established at the entrance or exit of the hotel, restaurant and the airport and shall be distinctively marked as Smoking Area in English and one Indian language, as applicable.

(3) A smoking area or space shall be used only for the purpose of smoking and no other service(s) shall be allowed.

(4) The owner, proprietor, manager, supervisor or in-charge of the affairs of a



hotel having thirty or more rooms may designate separate smoking rooms in the manner prescribed as under:

(a) all the rooms so designated shall form a separate section in the same floor or wing, as the case may be. In case of more than one floors/wings the room shall be in one floor/wing as the case may be.

(b) all such rooms shall be distinctively marked as Smoking rooms in English and one Indian language, as applicable.

(c) the smoke from such room shall be ventilated outside and does not infiltrate/permeate into the non-smoking areas of the hotel including lobbies and the corridors."

10. In the case of **Narinder S. Chadha and others** (*supra*) the Supreme Court, upon interpretation of the provisions of the Act of 2003 and the relevant Rules, has held that although as per Rule 3, there is a total ban on smoking in "public places" Rule 4(3) of the Rules of 2008 statutorily permits smoking in the smoking area.

11. From a conjoint reading of the relevant provisions of the Act of 2003, the Rules of 2004 and the Rules of 2008, what crystallizes is that while smoking is statutorily banned in all public places including restaurants, the same is, however, statutorily permitted in designated smoking areas within the limits of restrictions laid down by the Act and the Rules. It is not in dispute that the Act of 2003 and the Rules framed thereunder, would be applicable to the writ petitioners as well.

12. At this stage, Mr. Goswami submits that if his clients are allowed to operate the restaurants, they would ensure that the expression "Hookah" is not used nor will it be advertised. Mr. Goswami also submits that the petitioners are ready and willing to



give an undertaking that they would strictly comply with the provisions of the Act of 2003, the Rules of 2004 and the Rules of 2008.

13. Responding to the above, Ms. Bhattacharjee submits that if the petitioners do not violate the provisions of any statute or Rules framed thereunder, then the GMC authorities would not have any objection in allowing the petitioners to run their restaurants. Ms. Bhattacharjee further submits that the above stand of the GMC may change as soon as appropriate statute is passed by the competent legislature imposing complete prohibition of tobacco products, which is yet to come.

14. After taking note of the submissions advanced by learned counsel for both the parties, this Court is of the opinion that it would not necessary for this Court to go into the question of legality and validity of the impugned notice in the present proceeding and therefore, the said issue is kept open for decision in an appropriate proceeding. As agreed to by learned counsel for the parties, I dispose of this writ petition by granting leave to the petitioners to submit proper applications with undertaking laying down the following points :-

- (1) That they would not use the expression "Hookah Bar" in any form while operating their restaurants.
- (2) Hookah or any other tobacco products would not be advertised in any form.
- (3) The petitioners would strictly comply with the provisions of the Act of 2003 and the Rules framed thereunder, while operating their restaurants.

15. If such undertaking is furnished within three days from today, the respondent



No.2 shall pass appropriate orders allowing the petitioners to operate their restaurants by adhering to the provisions of the Act of 2003 and the Rules framed thereunder.

With the above observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant