AFR
Reserved On :- August 18, 2026
Delivered On :- September 29, 2026
Uploaded On :- September 29, 2026

2026:AHC-LKO:69218-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 10713 of 2023

M/s Aftek Foods and Beverages Pvt. Ltd. Thru. Auth. Signatory Vishnu Kumar Gupta and another

.....Petitioner(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Admin. U.P. Lko. and others

.....Respondent(s)

Counsel for Petitioner(s)	:	Vatsala Singh, Nitesh Kumar Mishra, Shobhit Mohan Shukla
Counsel for Respondent(s)	:	C.S.C., Akhilesh Kumar Srivastava

Along with :

1. **Writ - C No. 6028 of 2025:**
Anuj
Versus
State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 4 others

2. **Writ - C No. 7293 of 2025:**
Planters Tea and Book Cafe Thru. Authorized Signatory Udit Narayan Gupta and another
Versus
State of U.P. Thru. Addl. Chief Secy. Deptt. Food Safety and Drug Administration Lko. and 6 others

3. **Writ - C No. 7592 of 2025:**

M/s Good Luck Food and Beverages,Lko Thru. its Manager Nishant Singh

Versus

State of U.P. Thru. Secy. Food and Drugs Administration Lko and 5 others

Writ - C No. 7879 of 2025:

4. M/s J Club (a Unit of Spj) Thru. its Propriter Jais Pratap and another

Versus

State of U.P.Thru. Addl.Chief Secy. Deptt. of Food Safety and Drug Administration Lko. and 6 others

Writ - C No. 7895 of 2025:

5. M/s Dana Cafe Thru. Proprietor Mohd. Irfan Khan and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt.of Food Safety and Durg Administration Lko.and 6 others

Writ - C No. 7905 of 2025:

6. M/s Cafe D Fire Oasis Thru. Proprietor Pankaj Kumar and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety/Drug Administration Lko. and 6 others

Writ - C No. 7931 of 2025:

7. M/s D Fire Oasis, Thru. Owner / Proprietor Divyansh Chaurasia and another

Versus

State of U.P. Addl. Chief Secy. Deptt. of Food Safety and Drug Adminstration, Lko.

Writ - C No. 8446 of 2025:

8. The Jail Cave and Multi Cuisine Restaurant Thru. Proprietor Amit Kumar Mishra

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Admi. Lko and 5 others

Writ - C No. 8472 of 2025:

9. M/s Sicily Cafe and Dine in Thru. Partner Mohd. Adil Saleem and Mohammad Firoz and 2 others

Versus

State of U.P.Thru.Addl.Chief Secy.Deptt.of Food Safety and Drug Administation Lko. and 6 others

Writ - C No. 8476 of 2025:

10. M/s Chic Shack Cafe and Bar Llp Thru. Partner Devesh Singh and Amit Kumar Singh and 2 others

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration and 6 others

Writ - C No. 8508 of 2025:

11. Hs and Hs Food Beverages Thru. Manager Mohammad Aqeeb Ahmad

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration U.P. Lko. and 5 others

Writ - C No. 8884 of 2025:

12. M/s Urban Hermit Cafe Thru. Authorized Signatory Vinay Kumar Singh and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration and 6 others

Writ - C No. 8928 of 2025:

13. Flames of Arabia Hospitality Private Ltd. Thru. Managing Director Zaid Ali Khan

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 5 others

Writ - C No. 9727 of 2025:

14. M/s New Masala Magic Restaurant and Banquet Hall Thru. Prop. Mohd. Arshal Siddiqui and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Durg Administration Lko. and Ors.

Writ - C No. 9741 of 2025:

15. M/s Radhey Dining Ventures Thru. Proprietor Meena Devi and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration Lko and Ors.

Writ - C No. 9762 of 2025:

16. Abdul Ameer Ajeem

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration Lko. and Ors.

Writ - C No. 9796 of 2025:

17. Aakash

Versus

State of U.P. Thru. Prin. Secy. Food Safety and Drugs Administration Lko. and 3 others

Writ - C No. 9953 of 2025:

18. Sai Enterprises Thru. Manager Piyush Awasthi

Versus

State of U.P. Thru. Secy. Food Safety and Durgs Administration Lko. and 5 others

Writ - C No. 10126 of 2025:

19. Royal Sky Unit of Jagtiani Hotels Properties Pvt.Ltd.Thru. Authorized Signatory Mr.Ganesh Lalwani

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. Food Safety Drug Admin. Lko. and 5Others

Writ - C No. 10209 of 2025:

20. M/s Farsha Cafe and Dine Thru. Partner Mohd Sharique and Qazi Dawood and 2 others

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Admi. Lko and 6 others

Writ - C No. 10359 of 2025:

21. Credence Hospitality Llp Thru. Authorized Signatory,Utkarsh Poddar and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration and 6 others

Writ - C No. 10515 of 2025:

22. M/s Addison International Private Limited Thru. Authorized Signatory Mr.Manish Raj Singh and Anr.

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration Lko. and 6

Writ - C No. 10622 of 2025:

23. Bizcorp Hospitality Private Limited, Lko. Thru. Director Aayush Jaiswal and another

Versus

State of U.P. Thru. Addl. Chief Secy., Deptt. of Food Safety and Drug Administration Lko. and Ors

Writ - C No. 11016 of 2025:

24. Aditya Kumar C/o Atul Yadav M/s the Penthouse Cafe and Family Restaurant Thru Proprietor Aditya Kr.

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration, U.P. Lko. and 5 others

Writ - C No. 11529 of 2025:

25. R.K. Sachdeva and Sons Pvt. Ltd Thru. Managing Director Mohak Raitani and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 6 others

26. **Writ - C No. 11536 of 2025:**

Rigel Spiritzz Lko. Thru. its Manager Subham Tiwari and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 6 others

Writ - C No. 11540 of 2025:

27. Singh Attam Hospitality Llp Thru. Owner / Proprietor Rohan Anand Singh and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. Food Safety and Drug Administration Lko. and 6 others

Writ - C No. 11542 of 2025:

28. Savvy Grand Hotels Pvt. Ltd. Thru. Manager Suresh Pal Singh and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration and 6 others

Writ - C No. 11543 of 2025:

29. As4 Creations and Support Services Pvt Ltd. Thru. Managing Director Aniket Singh and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration, Lko and 6 others

Writ - C No. 11552 of 2025:

30. Viviana Greens (Trade Name) (H.U.F) Thru. Karta Manish Garg and another

Versus

State of U.P.Thru.Addl.Chief Secy.Deptt.of Food Safety and Drug Administration Lko. and 6 others

Writ - C No. 11819 of 2025:

31. M/s Adarsh Cuisine Pvt. Ltd. Lko.Thru. Director Auth. Representative Mithilesh Kumar and others

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 4 others

Writ - C No. 11825 of 2025:

32. Green Python Ventures Pvt. Ltd. Thru. Co-Owners Ashutosh Vaish and Neeraj Kumar Maurya and 2 others

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Admini. Lko. and 6 others

Writ - C No. 12238 of 2025:

33. M/s Club Jalwaa Thru. Partner Pankaj Kumar Dixit and Ashish Singh and 2 others

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration and 6 others

34. **Writ - C No. 12240 of 2025:**

G.S. Hotels Thru. Owner Sarab Jeet Singh and 2

others

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety/Drug Administration Lko. and 6 others

Writ - C No. 12248 of 2025:

35. M/s the Big Bang Cafe Thru. Proprietor Pooja Singh and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. Food Safety and Drug Administration Lko. and 6 others

Writ - C No. 12284 of 2025:

36. M/s the Hype Room Thru. Manager Brahamjeet and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Adminis. Lko. and 6 others

Writ - C No. 12290 of 2025:

37. M/s Tonique Bistro and Bar Thru. Authorized Signatory/Manager Suraj Ajay Srivastava and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Admi. Lko. and 6 others

Writ - C No. 12442 of 2025:

38. M/s the Liquid Club Thru. Partners Anurag Kumar and Ajay Kumar Tiwari and 2 others

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety/Drug Administration and 6 others

Writ - C No. 12484 of 2025:

39. Fest World Foods Pvt.Ltd.Thru. Authorized Signatory Rohit Kumar and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 6 others

Writ - C No. 12586 of 2025:

40. Mohd.Zakir

Versus

State of U.P. Thur. Secy. Food Safety and Drug Administration Lko. and 4 others

Writ - C No. 12635 of 2025:

41. M/s Punjabi Tadka Point Thru. Proprietor Joginder Singh and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Durg Admini. Lko. and 5 others

42. **Writ - C No. 12768 of 2025:**

Momentz Club and Resorts Pvt. Ltd. Thru. Owner/ Proprietor Kamal Sachdeva and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. Food Safety Drug Administration and 6 others

Writ - C No. 54 of 2026:

43. The Fly Bee Cafe Thru. Owner/Proprietor Firoz

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safely and Drug Admi. Lko and 6 others

Writ - C No. 153 of 2026:

44. Fest World Foods Pvt. Ltd. Thru. Authorized Signatory Rohit Yadav and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 7 others

Writ - C No. 197 of 2026:

45. G and G Ginger Garlic Savouries Pvt.Ltd.Thru.Authorized Sign. Pankaj Kumar Sharma and another

Versus

State of U.P. Thru. Secy. Food Safety Durgs Admiinistration Lko. and 8Others

Writ - C No. 502 of 2026:

46. M/s My Breweries Thru. Partner Mr. Manish Kumar Agarwal and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration and 6 others

Writ - C No. 509 of 2026:

47. Alcazar Open Sky Restaurant and Cafe Thru. Manager Vindhyashish Mishra

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 5 others

Writ - C No. 594 of 2026:

48. Impaxive Hospitality Pvt. Ltd. Thru. Owner/ Proprietor Shravan Kumar Rajpal and another

Versus

State of U.P. Thru. Addl. Chief Secy. Food Safety and Drug Administration Lko. and 6 others

Writ - C No. 833 of 2026:

49. Aao Kabhi Haveli Pe Restaurant and Lounge Thru. Proprietor Vipin Kumar Gupta and another

Versus

State of U.P. Thru. Secy. Food Safety and Durgs Administration Lko. and 5 others

50. **Writ - C No. 868 of 2026:**

A and G Hospitality Services Thru. Owner/Proprietor Surinder Singh Gandhi and another

Versus

State of U.P. Thru. Addl. Chief Secy. Food Safety and Drug Administration Lko. and 6 others

Writ - C No. 1096 of 2026:

Skyhilton Restaurant Thru. Authorized Person Manager Sanjay Yadav and another

51. Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Durg Administration Lko. and 6 Ors.

Writ - C No. 1098 of 2026:

Maa Anapurna,Thru. Owner/Proprietor Ankit Singh and another

52. Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. Food Safety and Drug Administration Lko. and 6 others

Writ - C No. 1203 of 2026:

Singh Club Lko. Thru. Proprietor Shivendra Singh and another

53. Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration U.P. Lko. and 7 others

Writ - C No. 1216 of 2026:

M/s Haze House Thru. Proprietor and another

Versus

54. State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Durg Administration Lko. and Ors.

Writ - C No. 1226 of 2026:

M/s Shakti Restaurants Thru. Authorized Signatory Prasahant Singh and another

55. Versus

State of U.P. Thru.Secy. Food Safety Drugs Administration Lko. and 5 others

Writ - C No. 1228 of 2026:

Sora Bistro Thru. Authorized Partner Mr.Satnam Singh and another

56. Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Durg Administration Lko. and Ors.

57. **Writ - C No. 1272 of 2026:**

M/s Drosia India Limited Thru. Director Mr. Waheedul Hasan Siddiqui

Versus

State of U.P. Thru. Prin. Secy. Food Safety and Drugs Administration U.P. Lko. and 4 others

Writ - C No. 1492 of 2026:

Hasan Faraz @ Hasan Farazz

58. Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Admini. Lko. and 4 others

Writ - C No. 1585 of 2026:

Gumbad View Cafe and Restaurant Lko. Thru. Director, Ammar Husain

59. Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration U.P. Lko. and 5 others

Writ - C No. 1591 of 2026:

Hideout Cafe Llp Thru. Auth. Sign. Saurabh Gupta and another

60. Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko and 6 others

Writ - C No. 2060 of 2026:

M/s Rhythm the Mid Night Club Thru, Partners Ram Ji and Rahul Tiwari and 2 others

61. Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety Drug Administration Lko. and 6 others

Writ - C No. 2066 of 2026:

Farshaa Hospitality Thru. Authorised and One of the Partner Namely Hamza Khan and another

62. Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 4 others

Writ - C No. 2410 of 2026:

The Jannat X Bistro and Bar a Unit of G.D.Hospitality Thru. Owner Rakesh Kumar Singh and another

63. Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration and 6 others

Writ - C No. 2458 of 2026:

Manu Galaxy Hotel and Restaurant Thru. Proprietor and another

64. Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. Food Safety and Drug Administration Lko. and 6 others

65. **Writ - C No. 2849 of 2026:**

M/s Cloud Haven Thru. Proprietor and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Durg Admini. Lko. and 6 others

Writ - C No. 4759 of 2026:

66. Emperio Grand Pvt. Ltd. Thru. Owner/Proprietor Shivam Gupta and another

Versus

State of U.P. Thru. Prin. Secy. Food Safety Drugs Administration Lko. and 5 others

Writ - C No. 4912 of 2026:

67. Prabha Hospitality and Services Private Limited Thru. Authorized Signatory Ayush Singh and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 7 others

Writ - C No. 4936 of 2026:

68. Nvn Hospitality Llp, Gautan Buddha Nagar Thru. Authorized Signatory Nishant Kumar and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko. and 7 others

Writ - C No. 5084 of 2026:

69. M/s Hideout Cafe and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Administration Lko. and 6 Ors.

Writ - C No. 5114 of 2026:

70. M/s Fursat Cafe and Dine in and another

Versus

State of U.P. Thru. Addl. Chief Secy.Deptt. of Food Safety and Drug Administration Lko. and 6 Ors.

Writ - C No. 5192 of 2026:

71. Hyfun Cafe Thru. Manager, Mohd. Sahil Ansari

Versus

State of U.P. Thru. Secy. Food Safety Drugs Administration Lko. and 5 others

Writ - C No. 5319 of 2026:

72. M/s Turkish Dastarkhwan Thru. Authorized Signatory Mohd.Farman and another

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. Food Safety and Drug Administration Lko. and 4 others

73. **Writ - C No. 5530 of 2026:**

The Coffee Palette Thru. Authorized Signatory Aquid Husain and another

Versus

State of U.P. Thru. Addl. Chief Secy. Drug Deptt.

of Food Safety/Drug Administration and 5 others

Writ - C No. 5659 of 2026:

74. M/s M and M Eats Thru. its Authorized Signatory Madhav Dutt Mishra

Versus

State of U.P. Thru. Addl. Chief Secy, Drug Deptt. of Food Safety Administration Lko. and 5 others

Writ - C No. 6103 of 2026:

75. Mashup Food Llp Lko. Thru. Manager Manoj Bajpai

Versus

State of U.P. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Admin. Lko. and 6 others

Writ - C No. 6114 of 2026:

76. M/s Aroma Waves Cafe Barabanki Thru. its Proprietor Aman Singh and another

Versus

State of U.P. Thru. Addl. Chief Secy. Dept. Food Safety and Drug Administration Lko. and 5 others

Writ - C No. 6118 of 2026:

77. M/s S.S.Food Corner Situated Barabanki Thru. Proprietor Abhishek Srivastava and others

Versus

State of U.P.. Thru. Addl. Chief Secy. Deptt. of Food Safety and Drug Admi. Lko and 5 others

Writ - C No. 6483 of 2026:

78. M/s River Front Cafe Thru.Proprietor Mohd Shoeb,

Versus

State of U.P. Thru. Addl. Deptt. Food Safety Drug Administration Govt. Lko. and 5 others

Writ - C No. 6767 of 2026:

79. M/s Smoky Tales Cafe, Thru.I Proprietor Shri Aman Raj Sharma and another

Versus

State of U.P. Thru. Secy. Food Safety and Drugs Administration Lko and 6 others

Writ - C No. 7345 of 2026:

80. Tonique Bistro and Bar Thru. Auth. Person Manager,Raj Bahadur Singh and another

Versus

State of U.P. Thru. Addl. Chief Secy. Food Safety and Drug Administration Lko. and 6 Ors.

:

Counsel for Petitioner(s) Aarsh Raj, Abhay Pratap Singh, Abhilasha Rastogi, Abhishek Mishra, Abhishek Singh, Adarsh Pratap Singh, Ajay Kumar Singh, Ajeet Pratap Singh, Akansha Pathak, Akhileshwar Singh, Akriti Pandey, Aman Thakur, Anand Kumar, Anand Mishra, Anand Prakash Dixit, Anubhav Awasthi, Anuj Kumar Awasthi, Anuj Kumar Gupta, Anurag Singh, Arpit Verma, Arun Kumar Yadav, Aryan Singh, Ashish Kumar, Ashutosh Mishra, Atma Ram Mishra, Chandan Verma, Deepansi, Dharmendra Kumar Verma, Dhiraj Pratap Singh, Dinesh Kumar Mishra, Divya Dwivedi, Hari Krishna Chaubey, Harshit Singh, Harshita Rajnish, Indra Pratap Singh, Ishan Bhasin, Kamlesh Kumar Gupta, Kshemendra Shukla, Lakshmi Kant Tripathi, Mangal Sen Yadav, Manoj Kumar Mishra, Mohd. Imran Khan, Muskan Bharti, Neeta Tekwani, Nitesh Kumar Mishra, Palak Sahai Gupta, Pankaj Mishra, Pankaj Verma, Pawan Kumar Shukla, Piyush Tripathi, Prabhakar Trivedi, Prashant Mishra, Prerna Jalan, Raghvendra Pandey, Rahul Kumar, Raj Krishna, Rakesh Kumar Upadhyaya, Ratnesh Kumar Rawat, Ritic Bhardwaj, Ritick Bhardwaj, Sachin Dixit, Sagar Singh, Samanvya Dhar Dwivedi, Sanidhya Shukla, Sanjeev Kumar Dwivedi, Saurabh Kashyap, Shailendra Kumar Singh, Sheo

Shankar Verma, Shikhar Chaube, Shivanshu Goswami, Shobh Nath Pandey, Shobhit Mohan Shukla, Sivendra Kumar Srivastav, Sudhanshu Singh, Suraj Sharma, Surya Bhan Singh, Sushil Kumar, Syed Aftab Ahmad, Syed Ahmad Mehdi, Tauheed, Vaibhav Srivastava, Vaibhav Upadhyay, Varsha Pandey, Vatsala Singh, Vineet Tripathi

Counsel for Respondent(s) : Abha Srivastava, Adnan Hashmat, Aftab Ahmad, Akhilesh Kumar Srivastava, Anuj Kumar Srivastava, C.S.C., G.A., Jaiyesh Bhoosreddy, Krishna Kumar Pandey, Mohammad Talib Khan, Namit Sharma, Om Shankar Tiwari, Rajesh Kumar Singh, Shailendra Singh Chauhan, Shailesh Kumar Pathak, Shashwat Dwivedi, Shruti Sahu, Siddarth Tripathi, Siddharth Shankar Dubey, Siddharth Tripathi, Yatindra Pathak

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

INDEX		
S. NO.	**CONTENTS**	**PAGE NO.**
I	**PRAYER**	15
II	**FACTS**	16
III	**CONTENTIONS ON BEHALF OF PETITIONERS**	18
IV	**CONTENTIONS ON BEHALF OF RESPONDENTS**	31
V	**ISSUE**	38
VI	**ANALYSIS**	38
A	Genesis of Hookah	39
B	Scheme of the COTPA	44
C	Objectives of the COTPA	46
D	Preamble of the COTPA	46
E	Relevant Provisions of the COTPA	50
F	Methodology of Hookah	60
G	Discussion and Findings	62
VII	**CONCLUSION**	86
VIII	**EPILOGUE**	90

"Have you not reason then to be ashamed and to forbear this filthy novelty, so basely grounded, so foolishly received and so grossly mistaken in the right use thereof. In your abuse thereof sinning against God harming yourself both in person and goods, and raking also thereby the marks and notes of vanity upon you by custom thereof making yourself to be wondered at by all foreign civil nations and by all strangers that come among you to be scorned and held in contempt; a custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs, and in the black stinking fume thereof nearest resembling the horrible stygian smoke of the pit that is bottomless."

King James I of England in
'A Counterblast to Tobacco'

SHEKHAR B. SARAF, J. : The present bunch of writ petitions have been filed under Article 226 of the Constitution of India craving indulgence of this Court for the issuance of a writ of mandamus commanding respondents to issue categorical guidelines to the effect that the petitioners in all the connected writ petitions are having a valid food service-restaurant license which also permits them to run a dedicated smoking space in accordance with the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as 'COTPA') as well as the Prohibition of Smoking in Public Place Rules, 2008 (hereinafter referred to as 'Rules') framed thereunder, where facilitation for smoking Hookah is provided to its patrons. Petitioners in furtherance pray

to command the police authorities to not create any hindrance in their business of running Hookah Bar. Since, prayer in all the connected writ petitions are common, therefore, all the connected writ petitions are being dealt with and disposed of by this common judgment.

FACTS

2. The factual matrix of the leading writ petition bearing Writ C- 10713 of 2023 are delineated below:

a. M/s Aftek Foods and Beverages Private Limited (hereinafter referred to as 'Petitioner') was granted food service restaurant license by the Food Safety and Drug Administration Department under the Food Safety and Standards Act, 2006 (hereinafter referred to as 'FSSA') under the franchise and in the name of Fashion TV Cafe situated at Kisan Bazar, Vibhuti Khand, Gomti Nagar, Lucknow.

b. During covid lockdown a Suo Motu PIL No. 716 of 2020 was registered by this Court, wherein vide an order dated August 27, 2020, this Court had issued a strict direction to the Chief Secretary, State of U.P. to not permit the bars, restaurants and cafes to serve hookah until further orders due to alarmingly high transmission of Corona virus in the State of Uttar Pradesh.

c. Subsequently, the Chief Secretary issued a communication dated September 5, 2020 banning running of all hookah bars across the State of Uttar Pradesh

d. After relaxation of COVID-19 restrictions, this Court Court in PIL No. 716 of 2020 *vide* order dated February 21, 2023 had observed, without going into the merits of the controversy, that the business of running hookah bars is regulated under the FSSA. The Court had further granted liberty to the individual interveners to apply to the statutory authority in accordance with law for grant/renewal of license to run their respective businesses of Hookah Bar.

e. In pursuance of order passed in PIL No. 716 of 2020, Commissioner, Food Safety and Drug Administration issued a circular dated March 29, 2023 directing Food Safety and Drug Administration department to dispose food license applications received from hotels/restaurant/food establishments operating hookah bar on being found to be in compliance with the provisions of amended Rule of 2008 issued *vide* notification dated May 23, 2017. The circular further stated that failure of compliance would result in

cancellation/suspension of license issued under FSSA.

f. The police conducted a raid and a preventive order dated May 15, 2023 was passed by Additional Commissioner of Police (hereinafter referred to as 'respondent no. 5') under Section 133 CrPC whereby it was observed that hookah bars were being operated without any license/permission, and inter alia, observed that hookah smoking were being carried outside the petitioner's cafe that was creating public nuisance. The order further specified that hookah was being served to minors.

g. Petitioner has approached this Court as he was unable to run the business of hookah bar thereby alleging violation of his fundamental right under Article 19(1)(g) of the Constitution of India in spite of allegedly following the statutory and legal requirement due to intervention of police authorities.

CONTENTIONS ON BEHALF OF PETITIONERS

3. Mr. Harshit Singh, learned counsel appearing on behalf of the petitioners has made the following submissions on behalf of all the petitioners in the connected writ petitions. At the outset, the Court would like to express its gratitude for the multifarious

arguments raised by the learned counsel who has used remarkable ingenuity in dealing with the objections of the respondents and answering queries fallen from this Bench. His submissions are delineated below:

a. The authority for unwarranted enforcement actions by the State Government in pursuance of order dated September 5, 2020 that imposed a prohibition on the operation of Hookah Bars, due to COVID-19 Protocols is legally misconceived, factually obsolete, and constitutionally untenable as the aforesaid executive order was promulgated to prevent the rampant increase of coronavirus in the State of U.P. Moreover, the aforesaid executive order was passed in compliance with the order of High Court in PIL No. 716 of 2020 that itself mentions the temporary requirement for the said ban. The order of August 27, 2020 specifically mentions that the ban is necessary "during the present crisis to ensure restriction of COVID-19 transmission through hookah smoking". Hence, the executive order was a purely temporary executive measure designed to break the chain of transmission. It was neither a legislative amendment to the COTPA Act 2003, nor its Rules of 2008 nor was it a permanent policy shift regarding the legality of usage of tobacco in the State.

b. The circular demonstrates that the State has implicitly recognised the permissibility of hookah operations, as the creation of an application-processing mechanism presupposing that the activity is not per se illegal but capable of being regulated through statutory compliance.

c. The Food Safety department lacks jurisdiction to regulate/license smoking or tobacco consumption. The regulatory domain of the Food Safety and Standards Act, 2006 is confined to food safety and does not extend to the regulation or licensing of tobacco consumption or smoking activities. The legislative object of the enactment is to consolidate laws relating to food and establish standards for articles intended for human consumption. Section 3(j) defines "food" as any substance intended for human consumption for nutritional or dietary purposes; tobacco products, however, are neither consumed for nutritional value nor regulated as food items in their primary form. Instead, tobacco products, including hookah tobacco, fall within the statutory framework of the COTPA, which exclusively governs their manufacture, sale, advertisement, and consumption. Consequently, the mere operation of a smoking zone or hookah facility cannot be brought within

the licensing jurisdiction of authorities functioning under the Food Safety Act. This jurisdictional distinction is further reinforced by the statutory licensing scheme under Section 31 of the FSSA, which mandates licences only for "Food Business Operators," thereby limiting the competence of Food Safety Officers to food-related activities conducted within an eating establishment. Furthermore, they have also affirmed their lack of jurisdiction by way of their counter in respective petitions.

d. Municipal Corporation lacks jurisdiction to regulate smoking. The smoking zone maintained within a restaurant remains an ancillary facility governed by tobacco-specific legislation rather than municipal licensing statutes. Consequently, insistence upon a separate 'hookah licence' or insisting on its prohibition on grounds of the activity being illegal, by municipal authorities lacks statutory foundation and amounts to colourable exercise of power. Furthermore, they have also affirmed their lack of jurisdiction by way of their counter in respective petitions.

e. The jurisdiction of police in relation to restaurant operations and Designated Smoking Areas is strictly

statutory and cannot be expanded through executive practice or administrative presumption. Section 12 of COTPA, authorises the police officer not below the rank of Sub-Inspector to conduct search and seizure only upon recording a "reason to suspect" that a specific offence under the Act has been committed. The statutory power is therefore conditional and evidentiary in nature, and does not authorise raids merely on the existence of a hookah facility or Designated Smoking Areas. The enforcement mandate under Sections 4 and 6 of the COTPA read with Rules is regulatory and confined to ensuring compliance with structural segregation, ventilation, signage, prohibition of service within smoking zones, and protection of minors. Accordingly, absent demonstrable violation of these provisions, police interference with lawful restaurant operations constitutes jurisdictional overreach.

f. The preamble and structural architecture of the COTPA reveals that Parliament never intended to ban tobacco products or related instruments. The stated objectives of the legislature reflect the intent of the legislature to strictly regulate trade and commerce, to progressively restrict and discourage consumption in public places and prevent addiction in the young

generation and safeguard non-smokers from involuntary exposure to tobacco smoke.

g. The legislature explicitly prohibits smoking in public places but it intentionally carved out a distinction between non-smoking and smoking environments by incorporating a specific proviso to Section 4 of the COTPA and the Rule 4 of the Rules that permits the establishment of separate Designated Smoking Areas. It is an undeniable reality that a patron visits a hotel, restaurant, or lounge to enjoy its ambiance, culinary experience, and the entirety of the hospitality service. In order to discharge its obligation to discourage smoking in public places while acknowledging these commercial realities, the legislature provided for the creation of Designated Smoking Areas and ensured that the said spatial distinction is highlighted brightly by giving an elaborate definition of the term "Public Place".

h. Following the judgment of the Supreme Court in **Narinder S. Chadha v. Municipal Corpn. of Greater Mumbai**[1], the legislature acknowledged the occupational exposure of non-smoking waiting staff to smoke in Designated Smoking Area. Hence, Rule 4(3) was modified

---

1 **(2014) 15 SCC 689**

by amendment of 2017 to prohibit the continuous, active involvement of waiting staff once a hookah has been served, while Rule 4(3A) was implemented to discourage smoking and safeguard the younger generation from potential addiction. In order to curb such active involvement, the self-service operational model whereby hookah apparatuses are prepared externally, retrieved by patrons and independently operated without staff intervention inside the Designated Smoking Areas satisfies all essentials of Rule 4(3), thereby will seek to ensure zero 'service' rendered within the smoking area.

i. The respondents have illegally weaponised themselves with an illusionary prohibition, brought forth by erroneous interpretation in the judgment of the Hon'ble Karnataka High Court in **R. Bharath v. State of Karnataka[2].** The interpretation fails to stand in absence of a specific State Amendment banning the hookah, leaving the statute and the provision a dead-letter if allowed to be read as stated by the Respondents. The Karnataka High Court has overlooked the Self Service model of hokkah, the distinction between 'backend preparation' and 'rendering of service' as well as the

---

2 **2024 SCC OnLine Kar 41**

distinction between the concept of ‘rental’ and ‘service’.

j. The act of providing hookah apparatus by restaurants amounts to ‘rental’ or ‘lease’ but not ‘service’ as the restaurant hands over the the hookah apparatus to its customer, whereby a legal right to use it to the exclusion of the transferor exercising effective control over its operation during the contract period of the transaction is created. Whereas, renting equipment requires the transfer of possession and effective control to the user. For example, if a taxi is hired, it is a service, as possession and effective control is with the driver whereas if a taxi is taken on rent, the hirer has complete possession and effective control over the taxi and the hirer can take the taxi anywhere he wishes. In restaurants providing hookah to the patron amounts to renting as the patron has effective control and possession over the hookah. Therefore, providing hookah apparatus to the patron legally falls outside the scope of a ‘service’ as affirmed by Madras High Court in **Anandcine Service Pvt. Ltd. v. Commissioner of Service Tax[3].**

k. The COTPA merely establishes the conditions precedent for the operation of a Designated Smoking

---

3 **(2025) 140 GSTR 253**

Area. In the absence of a specific State level amendment prohibiting business of hookah bars, the respondents cannot arbitrarily invoke a rule intended to enforce a blanket commercial prohibition, merely to mask administrative convenience or laxity in enforcement. Such an over-broad construction not only violates the statutory protections explicitly carved out in the Preamble and the COTPA but also creates severe operational anomalies and a manifest absurdity (reductio ad absurdum) in its practical implementation.

l. ‘Service" necessarily contemplates an activity, performance, assistance or facility rendered or provided by the establishment in the smoking area. The expression cannot be expanded to include the mere presence of a patron, the possession of an article by the patron, or the independent use of an article by the patron which has already been provided to him. Therefore, there is a fundamental distinction between a ‘transaction’ and a ‘service’ being rendered. The fact that a person may enter into a transaction with an establishment does not mean that the establishment necessarily continues to render that service. COTPA itself recognises distinct legal and commercial concepts, and consciously defines ‘sale’ under Section 3(m) and leaves out the definition of the

the expression "service" in Rule 4(3). Hence, the same cannot be expanded beyond its ordinary and contextual meaning so as to encompass every activity which merely facilitates, accompanies or is commercially connected with smoking.

m. The overall transaction is a composite service. As per Section 2(30) of the CGST Act of 2017, a composite transaction comprises distinct constituent elements such as tobacco/smoking material and renting of the hookah apparatus, which are commercially bundled together for use by the patron. Furthermore, Section 8 of the CGST Act, 2017 remains relevant to explain the term "service". It provides the statutory mechanism for determining the tax treatment of composite and mixed supplies. If the overall hookah transaction is accepted as a composite supply, it is pertinent to examine its principal or dominant constituent in order to determine its proper legal character. The counsel relies on the judgment of Hon'ble Supreme Court in **Union of India v. Mohit Minerals Pvt. Ltd[4].**

n. In the present case, the dominant and essential character of the transaction is arguably of providing

---

4 **(2022) 10 SCC 700**

tobacco/smoking material to be consumed by the patron through the hookah. The hookah apparatus, therefore, does not constitute an independent continuing service being actively rendered to the patron inside the smoking area. The essential object of the transaction is the tobacco/smoking material, while the apparatus serves as the means through which such consumption takes place. Accordingly, if the composite transaction is to be classified in accordance with Section 8 of the CGST Act of 2017 by identifying supply of tobacco/smoking material as a principal/main supply, the composite transaction may consequently be treated as a supply of goods rather than a supply of services. Under the new self-service model of provision of hookah, the establishment does not undertake any continuing activity of operating, managing or serving the hookah for the patron inside the smoking area. The patron independently operates and uses the apparatus for consumption of the tobacco supplied.

o. Hookah smoking cannot be equated with the statutory category of restaurant service merely because the activity takes place within a restaurant or hospitality establishment. The mere commercial description of an activity as "hookah service" cannot be treated as determinative of its legal character. The actual

constituent elements of the transaction and the principal supply must be examined.

p. Despite operating a restaurant/hotel with a valid food licence in accordance with relevant provisions and rules of the FSSA, and having a duly constructed Designated Smoking Area in accordance with the COTPA and the amended Rules, 2008, the respondents are creating hindrance in running of Hookah Bar.

q. To buttress his aforesaid arguments, learned counsel has placed reliance on the following judgments:-

(i) **Murli S. Deora v. Union of India and Ors[5];**

(ii) **Narinder S. Chadha v. Municipal Corporation of Mumbai[6];**

(iii) **Kunj Behari Lal Butail & Ors. v. State of Himachal Pradesh & Ors[7];**

(iv) **Global Energy Ltd. v. Central Electricity Regulatory Commission[8];**

(v) **Godawat Pan Masala Products I.P. Ltd. &**

---

5 **(2001) 8 SCC 765, (Para 9 & 10)**
6 **(2014) 15 SCC 689, (Para 14,18,19,24,25)**
7 **(2000) 3 SCC 40, (Para 13 & 14)**
8 **(2009) 15 SCC 570, (Para 25)**

Anr. v. Union of India & Ors[9];

(vi) **Sanjay Ramdas Patil v. Sanjay[10];**

(vii) **Padma Sundara Rao (Dead) & Ors. v. State of Tamil Nadu & Ors[11];**

(viii) **State of Jharkhand & Anr. v. Govind Singh[12];**

(ix) **R. Bharath v. State of Karnataka[13];**

(x) **Anjappar Chettinad A/C Restaurant v. Jt. Commr., Office of Commissioner of GST C. Ex., Chennai South Commissionerate[14];**

(xi) **Haldiram Marketing Pvt. Ltd. v. Commissioner, CGST, Delhi East[15];**

(xii) **Anandcine Service Pvt. Ltd. v. Commissioner of Service[16];**

(xiii) **Executive Engineer, Southern Electricity Supply Company of Orissa XXI (Southco)**

---

9 **(2004) 7 SCC 68, (Para 28,29,53)**
10 **(2021) 10 SCC 306, (Para 25 to 31)**
11 **(2002) 3 SCC 533, (Para 12 to 15)**
12 **(2005) 10 SCC 437, (Para 18-19, 20-21)**
13 **2024 SCC OnLine Kar 41, (Para 19 to & 27)**
14 **2021 SCC Online Mad 16950, (Para 25&26)**
15 **2023 SCC OnLine CESTAT 1228, (Para 18,19,20)**
16 **2025 SCC OnLine Mad 2282, (Para 20,22,23&29)**

v. Sri Seetaram Rice Mill[17];

(xiv) **Kumar Luv Agarwal v. State of Jharkhand & Ors[18];**

(xv) **Indian Hotel and restaurant Association (AHAR) and Anr. v. State of Maharashtra and Ors.[19];**

(xvi) **Union of India and Anr.v. Mohit Minerals Pvt. Ltd through Director[20];**

(xvii) **In re: Indian Wire Products Company[21].**

CONTENTIONS ON BEHALF OF RESPONDENTS

4. Mr. Pankaj Khare appearing on behalf of State adroitly has made the following submissions:

a. Tobacco control is a significant public health priority of the State.

b. It is respectfully submitted that hookah smoking has emerged as an increasing trend, particularly among adolescents and young adults. Smoking of hookah, waterpipe, narghile or shisha, whether using tobacco,

---

17 **(2012) 2 SCC 108, (Para 48)**
18 **2018 SCC OnLine Jhar 1896, (Para 3,5 & 9)**
19 **(2019) 3 SCC 429, (Para 77 to 105)**
20 **(2022) 10 SCC 700, (Para 156,157,165&168)**
21 **WBAAR 25 of 2025-26, (Para 4.3, 4.7, 4.8, 4.9 & 4.11)**

nicotine-containing products or herbal/non-tobacco preparations, in public establishments such as cafés, restaurants, bars, lounges and similar public places is harmful to the health of both smokers and non-smokers. Hookah smoke contains numerous toxic substances, including carcinogens, carbon monoxide, particulate matter and other hazardous chemicals, which are known to cause cancers, cardiovascular diseases and respiratory illnesses. Exposure to hookah smoke also poses significant health risks to persons exposed to second-hand smoke.

c. It is further respectfully submitted that scientific evidence has established that hookah smoking is not a safe alternative to cigarette smoking. The increasing availability of flavoured hookah products has enhanced its appeal among young persons and first-time users, thereby posing an additional public health challenge. The Department-related Parliamentary Standing Committee on Health and Family Welfare has also observed that tobacco use contributes substantially to the burden of cancer in India and has recommended strengthening measures to prevent initiation of tobacco use, particularly among youth.

d. The constitutional obligation of the State to protect public health has repeatedly been recognised by the Hon'ble Supreme Court. In **Murli S. Deora v. Union of India**[22], the Hon'ble Supreme Court held that a non-smoker cannot be compelled to suffer the adverse health consequences of tobacco smoke merely because he or she visits a public place. The Hon'ble Court recognised that involuntary exposure to tobacco smoke infringes the fundamental right to life guaranteed under Article 21 of the Constitution and emphasised the obligation of the State to protect non-smokers from passive smoking in public places.

e. Pursuant to the constitutional mandate to protect public health and the legislative policy of regulating tobacco use, Parliament enacted the COTPA to discourage tobacco use, regulate trade and commerce in tobacco products, protect non-smokers from involuntary exposure to tobacco smoke and promote public health consistent with Article 47 of the Constitution of India.

f. Section 4 of COTPA provides a general prohibition against smoking in any public place. The proviso to Section 4 creates only a limited exception whereby hotels

---

22 **(2001) 8 SCC 765**

having thirty rooms or more, restaurants having a seating capacity of thirty persons or more and airports may provide a separate smoking area or space, subject to the conditions prescribed by the Central Government through Rules. The proviso does not create an unrestricted right to provide smoking-related services or operate hookah bars; it merely permits establishment of a Designated Smoking Areas subject to strict statutory conditions. The expression "public place" is defined in the COTPA and its Rules. Thus, the statutory framework under Section 4 is one of general prohibition, with only a limited and regulated exception in respect of Designated Smoking Areas.

g. In exercise of the powers conferred under Section 31 of COTPA, the Central Government notified the Rules, 2008 prescribing the structural and operational requirements governing Designated Smoking Areas. Rule 4 requires that smoking areas be physically segregated from non-smoking areas, comply with prescribed ventilation standards and satisfy other technical specifications so as to protect non-smokers from involuntary exposure to tobacco smoke. Thus Rule 4 reflected the regulatory framework that a Designated Smoking Areas was to remain exclusively a smoking area

and not a place where commercial services were ordinarily rendered.

h. Subsequently, the Central Government, in exercise of powers conferred by Section 31 of COTPA, notified the Prohibition of Smoking in Public Places (Amendment) Rules, 2017 (hereinafter referred to as the ‘amended Rules’) vide Notification G.S.R. 500(E) dated 23 May, 2017. The amended Rule substituted the expression "No other service" under Rule 4(3) with ‘No service’ within a Designated Smoking Areas. The effect of the amendment is that no service of any nature is permissible within a smoking area or space provided under Rule 4. The Designated Smoking Area continues to remain only a limited statutory exception to the general prohibition contained in Section 4 of COTPA and cannot be treated as an extension of the normal service area of a restaurant, hotel or airport.

i. The amendment also inserted Rule 4(3A), requiring display of a health warning board at the entrance of every Designated Smoking Area and specifically prohibits entry of persons below eighteen years of age into such smoking areas.

j. The Designated Smoking Area contemplated under

Section 4 of COTPA prohibition on smoking in public places is not intended to function as an extension of the service area of a restaurant, hotel, café, bar or similar establishment. Consequently, activities involving preparation of hookah, placement on the table, lighting the coal, replenishment of charcoal for facilitating the use of hookah by employees or staff of an establishment constitute commercial services rendered by the establishment within the Designated Smoking Area and are therefore inconsistent with amended Rule 4(3) and therefore, impermissible.

k. The commercial meaning of the expression "service" is also consistent with the above interpretation. Notification No. 11/2017-Central Tax (Rate), dated 28 June, 2017, issued by the Ministry of Finance, defines "restaurant service" as the supply, by way of or as part of any service, of food or other articles for human consumption or drink provided by a restaurant or eating establishment. Although the said notification has been issued under the Central Goods and Services Tax Act, 2017 and not under COTPA, it illustrates the commercial understanding of the expression "service". Therefore, activities involving preparation and serving of hookah by restaurant or café staff are in the nature of services

rendered by the establishment in the commercial understanding of the expression "service".

l. Apart from COTPA, operation of hookah-serving establishments may attract compliance obligations under other statutory frameworks depending upon the facts of each case, including laws relating to food safety, public health, fire safety, municipal licensing, protection of children and other applicable regulatory enactments. However, the applicability of such enactments is independent of, and in addition to, the requirements contained in COTPA and the Rules framed thereunder.

m. To buttress his aforesaid arguments, learned counsel has placed reliance on the following judgments:-

(i) **R. Bharath v. State of Karnataka**[23],

(ii) **S. Samuel, M.D., Harrisons Malayalam v. Union of India**[24];

(iii) **Sanjay Anjay Stores and Ors. v. Union of India and Ors**.[25];

(iv) **Director of Elementary Education, Odisha**

---

23 **2024 SCC OnLine Kar 41**
24 **(2004) 1 SCC 256**
25 **2017 SCC OnLine Cal 16323**

and Ors. v. Pramod Kumar Sahoo[26];

(v) **Suo Moto v. State of U.P. and others[27]**

ISSUE

5. Whether the 'service' of Hookah is permissible in the Designated Smoking Area in restaurants under COTPA read with the Rules framed thereunder?

ANALYSIS

6. Upon hearing the arguments canvassed by the learned counsel appearing on behalf of the petitioners as well as respondents, the issue that emerges is as to whether hookah bars can be operationalized in restaurants/eateries in view of the COTPA and the amended Rules governing tobacco regulation.

7. We attach a caveat herein at the outset. Through the course of the hearing, both sides have relied on a catena of judgments of the Supreme Court as well as High Courts to buttress their respective arguments. However, we would like to refer to **L.C. Quinn v. Leathem[28]**, wherein the House of Lords had chosen to

---

26 **2019 SCC OnLine SC 1259**
27 **Allahabad High Court (Neutral Citation- 2023:AHC:42398-DB)**
28 **1901 AC 495**

observe the following:

> "….that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides…."

8. Adhering to the principles delineated in **L.C. Quinn (supra)**, we are of the view that while certain judgments are merely replication of the principles of the judgments that have been considered in greater detail through the course of this judgment, some judgments are either not relevant or are distinguishable on facts. Ergo, only the judgments which were absolutely necessary for deciding this case have been considered and dealt with in detail so that brevity is not jeopardized.

Genesis of Hookah:-

9. Since the word hookah is reverberated multiple times, therefore one must know what is a 'hookah'. 'Hookah' also called Shisha, Goza, Argileh, Narghile is an instrument or apparatus used to smoke tobacco with the aid of a water pipe. They are large table top pipes with a mouth piece attached to a flexible hose, whose bottom is filled with water and tobacco is heated with burning charcoal or embers. The smoke passes through the water

pipe's water bowl and is drawn through a hose to a mouth piece and user inhales the vapour through the water.

10. Hookah originated in India in the 16th century, particularly in the regions of Rajasthan and Gujarat coinciding with the introduction of tobacco to the region but it quickly spread to Persia, Turkey and the Arab world. The invention of Hookah is attributed to Hakim Aboul futteh Ghilani, an Iranian physician in the Court of Emperor Akbar. Traditionally hookah's were made from coconut using hollow bamboo sticks as the stem. With the passage of time smoking hookah became a symbol of nobility and social status particularly among the Indian Elite. In the last decade after a period of undesirability, Hookah gained popularity among the Indian society and as a result many bar/cafes have opened Hookah bars.

11. The petitioners in all these cases mainly contends that they are having their respective food licence to run restaurants and they do not need any separate licence for running Hookah bar in the Designated Smoking Areas as proviso to Section 4 of the COTPA read with Rule 4(1) of the Rules provides for an exception to prohibition of smoking in a public place by

allowing a restaurant having seating capacity of 30 persons or more to provide for a separate smoking area. Moreover, it was contended that, despite the petitioners operating a restaurant with a valid food licence in accordance with relevant provisions and rules of the FSSA, and having strictly complied with every statutory requirement mandated by the COTPA and the amended Rules, the respondent authorities continuously harass the petitioners in one way or the other. Furthermore, it was contended that neither the Food and Safety Department nor Municipal authorities or Police authorities have any jurisdiction to regulate or license smoking or tobacco consumption.

12. The counsel for the petitioners further contended that a harmonious reading of Rule 4(3) and Rule 4(3A) clarifies that the framework of the rules of 2008 post amendment operates to warn, label and control the environment of a Designated Smoking Area besides discouraging younger generations from engaging in any tobacco related activities, protecting the non smoking waiting staff from exposure to smoke and for putting restriction on prolonged usage of Hookah. Such a harmonious reading of both the aforesaid Rules consolidate the stark difference of a non-smoking area

from the smoking area of an establishment and do not eliminate use of the hookah apparatus itself. Furthermore, interpreting rules of 2008, post amendment of 2017 as a total commercial ban is in contravention to the guiding tenets of the preamble to the COTPA.

13. The petitioners further contend that restaurants provide self prepared hookah to its patrons along with a matchstick or lighter outside the smoking area and then the patron takes the hookah inside the smoking area for consumption after self-lighting the coal on their own, therefore, it does not amount to 'service' but only facilitates smoking in Designated Smoking Area. The counsel further contends that the term facilitation of smoking and service cannot be treated as interchangeable, for the reason that, if every act, which facilitates, assists, enables or contributes to smoking were automatically treated as service, then the concept of creating a legally Designated Smoking Area would become an illusion. Such an interpretation would amount to rewriting the Rule and would render the concept of Designated Smoking Area substantially redundant and otiose.

14. Per contra, the counsel appearing on behalf of

respondents vehemently rebutted the arguments placed on behalf of petitioners and contends that license for restaurants under FSSA does not give authority to petitioners to run hookah bar. Hookah is not governed by FSSA as it is not a food product.

15. The counsel for the respondents further contends that Rule 4(3) prior to amendment of 2017 prohibited 'other service' which includes food and other eateries in the Designated Smoking Area but subsequent to amendment of 2017 'service' of Hookah itself stands prohibited inside the Designated Smoking Area.

16. The counsel for the respondents further contends that the self service model of hookah is not a procedure which is practically possible as consumption of hookah requires continuous active involvement of waiting staff for replenishment of coal, tobacco and cleaning up of residue ashes, and hence, the above continuous assistance amounts to 'service'.

17. Before embarking on the issue, it is relevant to look into the objective of COTPA, its relevant provisions and the Rules framed thereunder specifically in relation to smoking in public places.

Scheme of the COTPA:-

18. In India, tobacco smoking is regulated by COTPA and the Rules, 2008 framed thereunder. The COTPA, is a comprehensive central legislation enacted under Entry 52 of List I - Union List of the Seventh Schedule of the Constitution of India, - "*Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest*" with an objective to reduce the tobacco consumption by prohibiting the smoking of cigarettes and other tobacco products. Tobacco is a major cause of concern for various cardiovascular diseases, cancer, other non communicable diseases and is the single largest causative factor of preventable and premature mortality as per the World Health Organisation.

19. After realising the gravity of the situation and considering the adverse effect of smoking on passive smokers, the Supreme Court in **Murli S. Deora (supra)** has held that passive smoking is an indirect deprivation of life without due process of law. Ergo non-smokers cannot be compelled to become helpless victims of pollution caused by cigarette smoke. Furthermore, the Court has also observed the objective behind COTPA

which was pending before the Parliament at the relevant time. The relevant paragraphs of the judgment are quoted hereinbelow:

> "2. Fundamental right guaranteed under Article 21 of the Constitution of India, inter alia, provides that none shall be deprived of his life without due process of law. Then — why should a non-smoker be afflicted by various diseases, including lung cancer or of heart, only because he is required to go to public places? Is it not indirectly depriving of his life without any process of law? The answer is obviously — "yes". Undisputedly, smoking is injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution.
>
> ***
>
> 9. Realising the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, we direct and prohibit smoking in public places and issue directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places, namely:
>
> 1. Auditoriums.
>
> 2. Hospital buildings.
>
> 3. Health institutions.
>
> 4. Educational institutions.
>
> 5. Libraries.
>
> 6. Court buildings.
>
> 7. Public offices.
>
> 8. Public conveyances, including railways."

Objectives of the COTPA:-

20. The COTPA was brought by introducing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001, wherein the Statement of Object are as follows:

> "Tobacco is universally regarded as one of the major public health hazards and is responsible directly or indirectly for an estimated eight lakh deaths annually in the country. It has also been found that treatment of tobacco-related diseases and the loss of productivity caused therein cost the country almost Rs 13,500 crores annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry."

Preamble of the COTPA:-

21. A Preamble is the raison d'etra of any legislation - heart and soul that reveals the true purpose. It depicts the objectives that need to be achieved by the Act. Ergo, it is necessary to read the preamble to ascertain the objective behind the enactment of COTPA. The preamble to the COTPA is quoted hereinbelow:

> "An Act to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto
>
> WHEREAS, the Resolution passed by the 39th World Health Assembly (WHO), in its Fourteenth Plenary meeting held on the 15th May, 1986 urged the

member States of WHO which have not yet done so to implement the measures to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco;

AND WHEREAS, the 43rd World Health Assembly in its Fourteenth Plenary meeting held on the 17th May, 1990, reiterated the concerns expressed in the Resolution passed in the 39th World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco;

AND WHEREAS, it is considered expedient to enact a comprehensive law on tobacco in the public interest and to protect the public health;

AND WHEREAS, it is expedient to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by article 47 of the Constitution;

AND WHEREAS, it is expedient to prohibit the advertisement of, and to provide for regulation of trade and commerce, production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto:"

(Emphasis added)

22. A perusal of the preamble to COTPA reveals that it is a legislation to deal with the following issues:

- regulate the advertisement of cigarette and other tobacco products;

- provide for the regulation of trade and commerce dealing with production supply and distribution of cigarettes and other tobacco products;

- deal with any matter connected with or incidental to cigarettes and other tobacco products.

23. Furthermore, perusing the reasons as specified in the Preamble, it is clear that COTPA was introduced in the background of International obligations and National obligations that need to be achieved by India.

24. **International Obligations:-** The Preamble states that COTPA was introduced with a view to achieve the following International Obligations of India, ratifying the resolutions passed by World Health Organisation in its meeting held on 15th May, 1986 and 17th May, 1990:

- To ensure effective protection to non-smokers from involuntary exposure to tobacco smoke;

- To protect children and young people from being addicted to the use of tobacco;

- To make tobacco control strategies, specific legislation and other effective measures for protecting citizens specially pregnant women and children from involuntary exposure tobacco smoke;

- To impose progressive restrictions to discourage the use of tobacco; and

- To take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco.

25. **National Obligations:-** Furthermore, the Preamble, inter alia, states that the COTPA was introduced with an aim to protect the public health by prohibiting the consumption of tobacco products, in public interest as well as a fundamental duty of the States towards its citizens, as enjoined under Article 47 listed as a Directive Principle of State Policy of the Constitution of India.

26. A meticulous reading of the judgment of the Supreme Court in **Murli S. Deoria (supra)**, Object of COTPA Bill and Preamble, it is ostensibly clear that COTPA is a special legislation framed by the Government of India in order to protect non-smokers. Moreover, it grants authority to the State to impose progressive restrictions on consumption of tobacco smoking in order to achieve the aforesaid international and national obligations of India.

Relevant Provisions of the COTPA:-

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

(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;

***

(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;

***

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

***

Schedule appended to Section 3(p)

1. Cigarettes

2. Cigars

3. Cheroots

4. Beedis

*5. Cigarette tobacco, pipe tobacco and **hookah tobacco***

6. Chewing Tobacco

7. Snuff

8. Pan masala or any chewing material having tobacco as one of its ingredients (by whatever name

called).

9. Gutka

10. Tooth powder containing tobacco.

***

Section 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.

***

Section 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.

***

Section 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, authorise 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.

Section 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

Section 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.

***

Section 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).

***

Section 24. Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years.–

(1) Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees.

(2) All offences 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).

***

Section 31. Power of Central Government to make rules.–

(1)The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2)Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:–

(a)specify the form and manner in which warning shall be given in respect of cigarettes or other tobacco products under clause (o) of section 3;

(b)specify the maximum permissible nicotine and

tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;

(c)specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;

(d)specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10;

(e)provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other tobacco products shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody any package of cigarettes or other tobacco products has been seized;

(f)provide for any other matter which is required to be, or may be, prescribed.

(3)Every rule made under this Act and every notification made under section 30 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification."

Rules of 2008

Rule 3. Prohibition of smoking in a public place:

(1) The owner, proprietor, manager, supervisor or in charge of the affairs of a public place shall ensure

that:

(a) No person smokes in the public place (under his jurisdiction/implied).

(b) The board as specified in schedule II is displayed prominently at the entrance of the public place, in case there are more than one entrance at each such entrance and conspicuous place(s) inside. In case if there are more than one floor, at each floor including the staircase and entrance to the lift/s at each floor.

***

Schedule II appended to Rule 3(b)

1. The board shall be of a minimum size of 60 cm by 30 cm of white background.

2. It shall contain a circle of no less than 15 cm outer diameter with a red perimeter of no less than 3 cm wide with a picture, in the centre, of a cigarette or beedi with black smoke and crossed by a red band.

3. The width of the red band across the cigarette shall equal the width of the red perimeter.

4. The board shall contain the warning "No Smoking Area-Smoking Here is an Offence", in English or one Indian language, as applicable.

***

(c) No ashtrays, matches, lighters or other things designed to facilitate smoking are provided in the public place.

(2) The owner, proprietor, manager, supervisor or incharge of the affairs of a public place shall notify and cause to be displayed prominently the name of the person(s) to whom a complaint may be made by a person(s) who observes any person violating the provision of these Rules.

(3) If the owner, proprietor, manager, supervisor or the authorized officer of a public place fails to act on report of such violation, the owner, proprietor, manager, supervisor or the authorized officer shall

be liable to pay fine equivalent to the number of individual offences.

(Explanation: For the purpose of these rules the word offence means a person found violating any provision of the Rules).

Rule 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.

[29][(3) No service shall be allowed in any smoking area or space provided for smoking.]

[30][(3A) The owner, proprietor, manager, supervisor or in charge of the affairs of the hotel, restaurant or airport, shall display a board at the entrance of the smoking area or space of minimum size of 60×30 cm with a white background and having the message in English and one Indian language as applicable in black colour that— (i) tobacco smoking is harmful to your health and the health of non-smokers; and (ii) entry of person below the age of eighteen years is prohibited]

(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

---

29 **Substituted by the Prohibition of Smoking in Public Places (Amendment) Rules, 2017, w.e.f. 23-5-2017. Prior to the substituion, sub-rule (3) read as :"(3) A smoking area or space shall be used only for the purpose of smoking and no other service(s) shall be allowed."**

30 **Sub-rule (3A) was newly added by the Prohibition of Smoking in Public Places (Amendment) Rules, 2017, w.e.f. 23-5-2017.**

> 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 corridors."

27. Section 4 of the COTPA read with Rule 3 of the Rules provides that smoking is prohibited in public places with an exception provided in a Designated Smoking Area under proviso to Section 4 of the COTPA. Rule 4 notified under the COTPA provides for regulation of dedicated smoking areas in hotels (with more than 30 rooms), restaurants (with seating capacity of 30 or more) and Airports to allow no other services but only smoking in the dedicated smoking area. The aforesaid Rule has been amended vide notification dated May 23, 2017 to explicitly prohibit 'service' in the Designated Smoking Area and provide for a display at the entrance of the smoking area or space of minimum size 60*30 cm with a white background and having the warning message, that is, 'tobacco smoking is harmful to your health and the health of non-smokers' and 'entry of persons below the age of eighteen years is prohibited' in English and one Indian language in black colour.

28. Furthermore, Section 6 prohibits sale of cigarettes and other tobacco products to a person below the age of 18 years. Section 12 of the COTPA provides power of entry and search to any police officer not below the rank of Sub Inspector or any officer of State Food or Drug Administration or any other officer holding the equivalent rank not below the rank of Sub-Inspector of Police, if he has 'reason to suspect' that any provision of this Act has been or is being contravened by any factory, building, business premises or any other place dealing with production supply or distribution of cigarettes or any other tobacco products. Section 12 further extends the power of authorised officers to enter and search the places dealing with advertisement of cigarettes or any other tobacco products. Several States such as Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Punjab, Rajasthan and Tamil Nadu have made specific respective State amendments explicitly extending the power of police to enter and search the places where any hookah bar is being run. Section 13 empowers authorised officer to seize any package or material related to advertisement of cigarettes or any other tobacco products in case of contravention of any provisions of the COTPA.

29. Section 21 prescribes punishment with a fine

which may extend to two hundred rupees for contravention of Section 4. Several States such as Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Punjab, Rajasthan and Tamil Nadu have increased the punishment to a minimum of 1 year and a maximum of 3 years and fine upto fifty thousand, in relation to the running of hookah bars.

30. Moreover, Section 24 provides punishment with a fine which may extend to two hundred rupees for contravention of Section 4. The punishment provisions and specific State amendments demonstrates that further deterrent mechanism has been provided to give effect to the legislative prohibitions and ensure that they are not merely declarations but binding legal obligations backed by penal consequences.

31. Lastly, Section 31 of the Act empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the Act, thereby vesting in the executive the legislative authority to give effect to the prohibitory framework of the Act. It is under this power, read with Section 31, that the amended Rules have been notified.

Methodology of Hookah:-

32. It is necessary to look into the methodology of hookah for dealing with the case at hand. The picturesque of hookah is drawn for ready reference:

Picturesque of Hookah



Process of preparation and operation of a Hookah

Step 1 – Assembly:

The hookah is assembled by connecting the stem with the water-filled base, placing the bowl and tray in their respective positions, and attaching the hose.

Step 2 – Placement of Smoking Substance:

The smoking substance, generally shisha or flavored tobacco, is placed in the bowl and arranged for the purpose of smoking.

Step 3 – Heat Arrangement:

The bowl is covered with aluminium foil with tiny holes over it so as to facilitate the transfer of heat to the smoking substance.

Step 4 – Application of Heat:

Burning charcoal is placed on the aluminum foil above the bowl to heat the smoking substance.

Step 5 – Passage of Smoke:

When you apply suction through the hose, the air pulls the heat from the burning charcoal downwards passing through the tobacco contained in the bowl and igniting/lighting the tobacco. This tobacco filled smoke travels downward the stem and passes through the water in the base.

Step 6 – Final Operation:

The smoke, after passing through the water-filled base, is drawn through the hose and mouthpiece, thereby completing the procedure for consumption of hookah.

Discussion and Findings:-

33. With respect to the submission of Mr. Harshit Singh that the ban of hookah bar was imposed by way of executive order during the covid period and was temporary in nature, this Court is of the view that the aforesaid submission is correct and the ban was only effective for the period wherein the coronavirus pandemic was prevalent. However, the argument that the circular issued subsequent to the coronavirus lockdown implicitly recognised the legality of hookah bar is palpably incorrect as the circular itself stated that it was mandatory for the establishments to ensure compliance with the COTPA and the amended Rules thereunder.

34. We are also at *consensus ad idem* with the argument of the petitioners that the food safety department and the municipal corporation have no power to regulate and/or issue licenses with regard to grant of permission of hookah smoking in restaurants or to establishments running hookah bars. One need not join issue with this argument as it is clear that FSSA deals only with food for human consumption for nutritional value and includes the primary food, while tobacco products are neither consumed for nutritional value nor is

a primary food. Furthermore, the municipal corporation does not contain any provision to issue a separate hookah license, hence, we are of the view that authorities working under the municipal corporation have no jurisdiction with regard to regulating the operation of hookah bars.

35. The next argument raised by the petitioners with regard to the power of the police authorities for enforcement of COTPA and the Rules therein, is outrightly rejected. The provisions of COTPA especially sections 12, 13, 15 clearly demonstrates the power granted to the police authorities to ensure compliance of the mandate of section 4 and such compliance would include the power to search, seize, confiscate and impose penalty upon the establishments for disobeying the mandate therein. In fact, it is to be noted that some of the raids on establishments found that hookah tobacco was being consumed in open spaces within the precincts of the establishments. Furthermore, it was found that the said hookah was being served to minors in complete disregard to section 6 of the COTPA.

36. The argument of the petitioners with regard to the objective of COTPA and the Rules framed therein, that

the COTPA and the Rules are only 'regulatory' in nature but not 'prohibitory' is also not acceptable. A perusal of the Preamble to the COTPA demonstrates, inter alia, that it is a specific comprehensive legislation to provide effective protection to non-smokers from involuntary exposure of tobacco smoke and discourage the use of tobacco by imposing a progressive restriction. The Hon'ble Supreme Court in **G.K. Krishnan v. State of T.N.**[31], has categorically held that 'regulation' includes 'prohibition'. The relevant paragraph of the judgement is quoted hereinbelow:

> "14. Article 301 imposes a general limitation on all legislative power in order to secure that trade, commerce and intercourse throughout the territory of India shall be free. Article 302 gave power to Parliament to impose general restrictions upon that freedom. But a restriction is put on this relaxation by Article 303(1) which prohibits Parliament from giving preference to one State over another or discriminating between one State and another by virtue of the entries relating to trade and commerce in Lists I and III of Seventh Schedule and a similar restriction is placed on the States, though the reference to the States is inappropriate. Each of the clauses of Article 304 operates as a proviso to Articles 301 and 303. Article 304(a) places goods imported from sister-States on a par with similar goods manufactured or produced inside the State in regard to State taxation within the allocated field. Article 304(b) is the State analogue to Article 302, for it makes the State's power contained in Article 304(b) expressly free from the prohibition contained in Article 303(1) by reason of the opening words of

---

31 **(1975) 1 SCC 375**

> Article 304. Whereas in Article 302 the restrictions are not subject to the requirement of reasonableness, the restrictions under Article 304(b) are so subject. The word "free" in Article 301 does not mean freedom from regulation. There is a clear distinction between laws interfering with freedom to carry out the activities constituting trade and laws imposing on those engaged therein rules of proper conduct or other restraints directed to the due and orderly manner of carrying out the activities. This distinction is described as regulation. The word "regulation" has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied. The true solution, perhaps, in any given case, could be found by distinguishing between features of the transaction or activity in virtue of which it fell within the category of trade, commerce and intercourse and those features which, though invariably found to occur in some form or another in the transaction or action are not essential to the conception. What is relevant is the contrast between the essential attribute of trade and commerce and the incidents of the transaction which do not give it necessarily the character of trade and commerce. Such matters relating to hours, equipment, weight/size of load, lights, which form the incidents of transportation, even if inseparable, do not give the transaction its essential character of trade or commerce. Laws for Government of such incidents "regulate" [See Wynes, Legislative, Executive and Judicial Powers, p. 270] ."
>
> **(Emphasis added)**

37. Furthermore, the Hon'ble Supreme Court in **Indian Handicrafts Emporium v. Union of India**[32], has reiterated the aforesaid principle with regard to 'regulation' and 'restriction'. The relevant paragraphs of the judgment are quoted hereinbelow:

> 38. In order to determine whether total prohibition

---

32 **(2003) 7 SCC 589**

would be reasonable, the Court has to balance the direct impact on the fundamental right of the citizens thereby against the greater public or social interest sought to be ensured. Implementation of the directive principles contained in Part IV is within the expression of restrictions in the interest of the general public.

39. In Municipal Corpn. of the City of Ahmedabad v. Jan Mohammed Usmanbhai [(1986) 3 SCC 20 : AIR 1986 SC 1205 : (1986) 2 SCR 700] this Court held: (SCC pp. 28-29 & 31-32, paras 15 & 20)

> "15. Before proceeding to deal with the points urged on behalf of the appellants it will be appropriate to refer to the well-established principles in the construction of the constitutional provisions. When the validity of a law placing restriction on the exercise of a fundamental right in Article 19(1)(g) is challenged, the onus of proving to the satisfaction of the court that the restriction is reasonable lies upon the State. If the law requires that an act which is inherently dangerous, noxious or injurious to the public interest, health or safety or is likely to prove a nuisance to the community shall be done under a permit or a licence of an executive authority, it is not per se unreasonable and no person may claim a licence or a permit to do that act as of right. Where the law providing for grant of a licence or permit confers a discretion upon an administrative authority regulated by rules or principles, express or implied, and exercisable in consonance with the rules of natural justice, it will be presumed to impose a reasonable restriction. Where, however, power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion the law ex facie infringes the fundamental right under Article 19(1)(g). Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition.
>
> ***

> 20. The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve its problems and furthering the moral and material progress of the community as a whole. (See Jyoti Pershad v. Administrator for the Union Territory of Delhi [AIR 1961 SC 1602 : (1962) 2 SCR 125] .) If the expression 'in the interest of general public' is of wide import comprising public order, public security and public morals, it cannot be said that the standing orders closing the slaughter houses on seven days is not in the interest of general public."

38. From a perusal of the aforesaid two judgments of the Hon'ble Supreme Court, it is clear that 'regulation' has a wider connotation which includes 'prohibition'. The distinction between 'regulation' and 'prohibition' is not absolute, as the term "regulation" has no fixed connotation and may depend upon the nature of the activity. A restriction imposed on a fundamental right may therefore take the form of regulating the manner in which an activity is carried out or may extend to its prohibition, if the activity is inherently dangerous, noxious, injurious to public interest, health or constitutes a potential nuisance. Thus, 'prohibition' is capable of falling within the broader concept of 'regulation', provided

that the restriction is reasonable and justified in the interest of the general public.

39. The counsel further argued that the objective behind the amendment to Rule 4(3) of the Rules was to control the environment of Designated Smoking Areas, to protect the non-smoking staff from exposure to smoke and for curbing the long usage of hookah. For this proposition, petitioners heavily placed reliance on the judgment of the Supreme Court in **Narinder S. Chadha (supra)** to contend that smoking is allowed in a smoking area as Rule 4(3) makes it clear that such places can be used for the purpose of smoking.

40. In our view, the judgment of the Supreme Court in **Narinder S. Chadha (supra)** is not applicable to the present case as it dealt with Rule 4(3) prior to amendment of 2017 that implicitly allowed service of hookah in smoking zones but only 'service' of food items and other eateries besides hookah was prohibited in the smoking zone.

Effect of amendment of 2017 to Rule 4(3) of the Rules:-

Tabular comparison of the Rule 4(3)

Rule 4(3) Prior to the Amendment of 2017	**Rule 4(3) Post to the Amendment of 2017**
A smoking area or space shall be used only for the purpose of smoking and **no other service(s) shall be allowed**.	**No service shall be allowed** in any smoking area or space provided for smoking.

41. Before the 2017 Amendment, the original Rule 4(3) with the qualifying word "other" created a zone of legal ambiguity that the Supreme Court in **Narinder S. Chadha (supra)** addressed by holding that tobacco-related services were not the "other services" prohibited within a Designated Smoking Area. This interpretation, while judicially sound on the text of the original provision, had the unintended practical consequence of enabling the mushrooming of commercial hookah bars operating within purported Designated Smoking Areas. The pre-amendment position was therefore one of conditional and qualified prohibition whereby hookah service outside the Designated Smoking Area was impermissible while within a properly constituted Designated Smoking Area was legally allowed.

42. After the 2017 Amendment, this ambiguity has been comprehensively resolved. The substitution of "no other service(s)" with "no service", is in our view a

deliberate removal of the single qualifying word "other" that has transformed the legal position from a qualified prohibition to an absolute prohibition. The **Narinder S. Chadha (supra)** interpretation no longer serves as a precedent, having been specifically overridden by the legislative amendment. Hookah service, irrelevant of tobacco-based, nicotine-based, or herbal cannot be rendered within a Designated Smoking Area subsequent to the 2017 Amendment. The service of hookah in a Designated Smoking Area is, categorically, unconditionally, and absolutely prohibited under Rule 4(3) of Rules, 2008. Any establishment rendering such service is in clear and direct violation of the law.

43. The argument of the petitioners that the respondent authorities are seeking to enforce an illusionary prohibition based on the judgment of the Karnataka High Court in the judgment of **R. Bharath (supra)** without there being a specific State amendment in the State of Uttar Pradesh banning the smoking of hookah is the core argument presented by the petitioners. The petitioners argued that post the amendment of 2017 in the Rules, there is no significant change and service of hookah is permissible within the premise of the Designated Smoking Area. The arguments

raised before us are pari materia to the arguments raised before the Karnataka High Court and ***Justice M. Nagaprasanna*** has with great dexterity and an eye to detail dealt with all the submissions therein. One is required to examine the judgment in detail and cull out the ratio therein.

44. This Court notices that the judgment in **R. Bharath (supra)** at paragraph 12 dealt with the issue of Right to Trade under Article 19(1)(g) of the Constitution of India and the restrictions imposed therein. It examined a smorgasbord of judgments of the Supreme Court that dealt with harmonising fundamental rights provided under Article 19 and 21 with the Directive Principles of State Policy (DPSP). For the sake of brevity this Court does not want to carry out the same exercise but would rely on the ratio laid down in **R. Bharath (supra)** that is delineated below:

> "13. On a coalesce of the judgments of the Apex Court and that of other constitutional Courts as quoted hereinabove, what would unmistakably emerge is, that in certain circumstances State has a duty and an obligation under Article 47 of the Constitution of India to ensure nutrition and improvement of standard of living and public health and also to bring in prohibition of consumption of intoxicating drinks and of drugs which are injurious to health. The obligation under Article 47 is not restricted to intoxicating drugs or drugs only. Under the label of improvement of public health, State definitely does have a play in the joints to bring in

> such law or order to ensure that public health does not suffer. Public health has different hues and forms, emanating from manifold circumstances and myriad activities of the citizens of the country. Therefore, in the light of Article 47 of the Constitution and its interpretation, it is the duty of the State to ensure public health and prohibition of intoxication and drugs that would be injurious to public health. It is not that intoxication or drugs are to be regulated by statutes, it has to be regulated sometimes under the fountainhead of the statutes — The Constitution of India. How it is now applicable to the fact situation is necessary to be considered."

45. Furthermore, *Justice Nagaprasanna* in the aforesaid judgment has meticulously collated the difference between consuming cigarattes and consuming hookah, thereby observing that consuming hookah instrinsically involves 'service'. Inter alia, it was also observed that the judgment of the Supreme Court was not applicable post the amendment of 2017 to the Rules. The relevant paragraphs are quoted hereinbelow:

> 19. The difference is plain and simple in the manner of consumption itself. For consuming cigarette, an individual need not have a separate apparatus apart from carrying a fire stick to light the cigarette and ash tray at the best; the smoking zones created in designated places do not give any other service except creation of a smoking zone. In the case of smoking through hookah, it cannot be consumed unless there is apparatus, a pipe, hot coal, hot water along with nicotine or herbal hookah as the case may be, which would be sprinkled on hot coal along with flavouring, all of which is provided by the owners of the restaurants. The manner of service to smoke a cigarette is zero. The manner of service to smoke hookah with or without tobacco, needs rendering of services in the designated area, as it requires external human hand to place all the

apparatus on the tables like food or alcohol would be served on those tables. It is, therefore, on the face of it, a service.

20. If hookah requires service that needs to be rendered, it cannot be in the corner of a designated place and apparatus to smoke through hookah cannot be carried in the pocket by the smoker who wants to go into a designated area, smoke and come out. It requires all the overtones of a service, as akin to food and alcohol. If the aforesaid activity is pitted on the amendment to the 2017 Rules, what would unmistakably emerge is the prohibition in furtherance of the amendment brought into the Rule, as no service should be allowed in any smoking area or space provided for smoking. If a designated place is provided for smoking which may include, smoking hookah — hookah tobacco, the very act of preparation to smoke hookah tobacco, cannot but be held to be a service, and if it is, it flies on the face of sub-rule (3) of 2017 Rules.

21. Much reliance is placed by all the Learned Counsel representing the petitioners on the judgment in *NARINDER S. CHADHA*, supra. The said judgment is distinguishable without much ado, as it is a judgment that is rendered prior to the amendment to the Rules in terms of 2017 Rules, when it was a case where there was no occasion to prohibit a service also in a designated smoking area. The Apex Court in the said judgment has held as follows:……

***

The Apex Court was interpreting the then existing Rule 4(3). The Apex Court also interprets the expression, no other service shall be allowed to mean that, providing services other than hookah, which obviously meant, food, alcohol or any other service. Whether hookah itself was a service was not the question before the Apex Court. Then comes the amendment to the Rules supra. The amendment makes the rigour stronger. The Government of India was well aware of the existing Rule 4(3) and the aforesaid judgment of the Apex Court. Even then, brings in an amendment. The amendment is unequivocal, that no service shall be allowed in any smoking area or space provided for smoking. The

> difference is, that in the Rule that existed at the time when the Apex Court rendered the judgment is, it read as, the space shall not be used for any other purpose except smoking and no other service shall be allowed. A slight difference in the amendment is, it is more rigorous, that no service shall be allowed in any smoking area or space provided for smoking. Therefore, the said judgment, in the considered view of this Court, would become inapplicable to the case at hand, which has emerged, post the amendment. Without any service being permitted hookah cannot be inhaled. It requires whole lot of apparatus, as observed supra a human hand in the form of a waiter at a restaurant and therefore, it is not as simple as it is sought to be projected by the petitioners, that hookah tobacco is already covered under the COTPA and as such no prohibition can be imposed. The State has not transgressed its jurisdiction in notifying a complete ban as hookah is undoubtedly requires a service and if service is prohibited by a Central legislation, the State is only implementing the same."

46. We are at consensus ad idem with the ratio laid down in **R. Bharath (supra)** that post the amendement of 2017 to the Rules, there is not an iota of doubt that 'service' of hookah is absolutely impermissible in the Designated Smoking Area. The amendment on a literal and purposive interpretation leads one to the above inexorable conclusion.

47. Mr. Harshit upon having been accosted by the Court with the amended definition of service in Rule 4(3) came up with a novel argument wherein he submitted that the establishments run by the petitioners could hypothetically provide for a system of self-service to the patron. It was his contention that this model of self-

service would circumvent the interpretation in **R. Bharath (supra)** wherein the court had held that service of hookah intrinsically invoked the 'human hands doctrine'. The learned counsel appearing for petitioners with great ingenuity suggested that the preparatory stage of hookah including the setting up of hookah, placing of tobacco in the bowl, filling the base with water, making tiny holes in the aluminium foil, placing burnt charcoal on top of the same would all be carried out in a specific designated area outside the Designated Smoking Area, and thereafter, the patron would carry the entire hookah apparatus into the Designated Smoking Areas, and the said hookah would be consumed within the four corners of the Designated Smoking Areas. This methodology, according to him, would achieve the objectives of COTPA and the Rules therein. He further submitted that this model of self-service would fall within the four corners of the amended Rule 4(3) of the Rules as there would be no staff intervention inside the Designated Smoking Area. The counsel further argued that providing the hookah apparatus would be akin to a rental service provided by the establishments and the provisions of the tobacco products would amount to sale of the tobacco products, as happening outside the Designated Smoking Area. This

being the nature of facilitation being provided the same would not fall prey to the prohibition of 'no service' under Rule 4(3) of the amended Rules.

48. Before addressing this argument, one would like to make it clear that these arguments of 'self service' have been made as an afterthought to counter the bulwark that was faced by the petitioners with regard to the interpretation of "no service" under Rule 4(3). These arguments do not find place in any of the petitions nor in the rejoinders filed by the petitioners. From a perusal of the methodology of hookah as delineated in aforesaid paragraph 32 of this judgment it is patently clear that the argument of the petitioners with regard to the self-service model is playing mockery on Rule 4(3) of the amended Rules which cannot be countenanced by us as we High Court judges are not an island marooned from the activities taking place in the mainland with regard to operation of Hookah bars and lounges and restaurants. This entire argument of self-service of Hookah is not just unfeasible but also demeans the intelligence and pragmatic knowledge of this Court. Being accosted with the issue of 'no service' being allowed in a smoking zone, counsel has adroitly tried to circumvent the same by suggesting that Hookah bars operate in a self-service

model.

49. The second argument of the petitioners is that the activity of providing hookah apparatus to the patrons in their restaurant does not constitute a "service" within the meaning of Rule 4(3) of the Rules but is in the nature of a "renting" or "hiring" of equipment to the patron, inasmuch as the establishment merely provides the physical apparatus of the hookah to the patron for his use during his visit, without performing any act that constitutes the rendering of a "service" in the legal or commercial sense of that expression, and that accordingly the absolute prohibition on "service" enacted by the amended Rule 4(3) does not apply to the activity of providing hookah apparatus, which falls outside the ambit of "service" altogether. In support of this sui generis argument the learned counsel for the petitioners has placed reliance upon the judgment of the Hon'ble Madras High Court in **Anandcine Services Private Limited (supra)** and has specifically drawn the attention of this Court to paragraphs 20, 22, 23, and 29 of the said judgment.

50. After an anxious reading of the aforesaid judgment, this Court finds that it is not applicable to the

present case as the Madras High Court, while considering the applicability of Value Added Tax or Service Tax to a supplier engaged in providing cinematographic equipment on hire, examined the matter in the light of the judgment of the Supreme Court in **BSNL v. Union of India**[33]. The Madras High Court categorically held that where there is a transfer of possession and effective control of the goods to the hirer, such transfer would amount to a transfer of the right to use the goods and, consequently, Service Tax would not be leviable on such transaction. Counsel for the petitioners tried to draw an analogy between renting a taxi to the customer without a driver with renting a hookah apparatus to the patron without assistance of waiting staff. As the argument in relation to rental versus service is a unique argument propounded by the learned counsel appearing on behalf of the petitioners, we would like to quote the submissions made in the notes of arguments with respect to rental versus service:

> "When we come to the legal dichotomy between renting equipment and providing a service, even that has been exhaustively litigated and sharply defined by taxation tribunals. Tax law demands absolute precision in the classification of commercial transactions to determine the appropriate levy. Therefore, defining legal test utilized by Indian courts and tribunals to distinguish a taxable service from a rental or lease is the "transfer of

---

33 **(2006) 3 SCC 1**

> effective control and possession." If the provider of the equipment retains effective control over it and simply uses the equipment to perform a task for the benefit of the customer, the transaction is classified as a service. A classic example is hiring a taxi where the owner provides the driver; the customer dictates the destination, but the owner retains operational control of the vehicle). Parallely, if the provider hands over the physical equipment, and the customer obtains the legal right to use it to the exclusion of the transferor, exercising effective control over its operation during the contract period, the transaction is classified as a rental or lease (a transfer of the right to use goods), like in case of no driver, taxi, where the customer drives the taxi on its own."

51. Upon a careful reading of the example given by the learned counsel of petitioners, we are of the view that the example itself goes against the principle being canvassed by the petitioners. In the case of a hiring of a taxi with a driver, the learned counsel submits that the customer dictates the destination but the owner retains effective control of the vehicle. Furthermore, the learned counsel for the petitioners submits that in the case of hiring a taxi without a driver allows the person to have exclusive possession of the car and complete effective control over its operations during the contract period. Hence, such a hiring would amount to a 'rental'. In our view, juxtaposing the aforesaid instances cannot stand on its own as in case of renting a taxi without driver, one can take the taxi anywhere for the time period of its hiring whereas in case of renting hookah, the patron is not

allowed to take the hookah apparatus anywhere he wishes to but has to confine its use only inside the Designated Smoking Area. In the case made out by the petitioners of 'renting' they forget that the patron does not have absolute control of the hookah apparatus, and hence, there is no absolute transfer that would bring it within the definition of 'renting'. The factum of mandatory consumption of hookah inside the Designated Smoking Area by the patron makes it abundantly clear that he is being provided a 'service' only.

52. The next argument of the petitioners is that prohibition of hookah bars would lead to reducing the statutory provision to a dead letter is a fallacious one. We agree with the petitioners that there is no specific prohibition or ban on hookah tobacco smoking. However, the encouragement of hookah smoking by providing the hookah apparatus, tobacco and rendering services intrinsically linked to smoking of the same cannot be permitted keeping in mind the amended Rule 4(3) of the Rules, 2008. The very rationale of 'no service' in a smoking area is to protect the non-smoking personnel and waiting staff. Furthermore, the self-service model attempted to be portrayed by the counsel suggesting obscured ideas of providing a prepared and ready to use

hookah outside the smoking zone to the customer and charging them for the same is nothing but an attempt tp obfuscate the entire process of hookah smoking and is clearly an argument in sophistry to circumvent the object to be achieved as stated in the Preamble and escape from the clutches of the COTPA by making a mockery of the same. If one were to agree with the submissions put forth by the petitioners one would be hoodwinking oneself of the goals to be achieved by COTPA and the Rules framed thereunder.

53. It was contended by the counsel for the petitioners that smoking hookah is similar to smoking cigarettes in the smoking area. In our view this argument is not sustainable as for smoking cigarettes, a fire stick to light the cigarette and an ash tray is enough to light as well as consume the cigarettes, and no assistance of waiting staffs, whatsoever are required for its consumption whereas for smoking hookah the entire hookah apparatus is required to be set up in a technical manner such as filing the glass base with cold water which is generally kept 1-2 inches (2.5-5 cm) above the lower end of the stem, placing the tobacco in the bowl in a fluffy and gentle manner without congesting it too hard, making tiny holes in the aluminium for passing heat,

heating the charcoal until it turns red and ashy but not overheat it to prevent any flames. The hookah preparation and the smoking procedure is not one that can work on the self-service model as it is something which cannot be prepared and operated by an individual who is a novice and obviously requires staff/individuals having specific knowledge and training for its operation.

54. Moresoever, smoking hookah requires the restaurants to provide for the hookah apparatus as well the tobacco and the consideration price is paid for the same. The very fact that consideration is paid makes the providing of hookah tobacco a 'service'. On top of this the very act of hookah smoking requires constant intermittent assistance from the waiting staff that includes replenishment of coal, cleaning of ashes, changing of tobacco besides other assistance. Furthermore, the factum of ‘consideration’ being paid to the restaurants to provide for the hookah apparatus as well the tobacco makes the hookah tobacco a ‘service’. The umpteen definitions of ‘service’ taken from different excerpts are delineated below:

(a) Section 2(42) of the Consumer Protection Act, 2019 is quoted hereinbelow:

"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"

(b) "Restaurant Service" as defined in Notification No. 11/2017-Central Tax (Rate) New Delhi dated 28th June, 2017:

"means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the Circular No. 164 / 20 /2021-GST premises where such food or any other article for human consumption or drink is supplied."

(c) Section 65B(44) of the Finance Act, 1994:

"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or...."

(d) Black's Law Dictionary 9th edition pg. 1491:

"The act of doing something useful for a person or company, usually for a fee."

(e) P. Ramanatha Aiyar's, The Law Lexicon 3rd Edition:

> Service (pg. 1659):
>
> "The action of serving, helping or benefiting; conduct tending to the welfare or advantage of another; a branch of public employment [S. 21, twelfth (a), IPC (45 of 1860) and Art. 19(6)(ii), Const]; the action or an act of notice etc.) upon a person [S. 63, CrPC 1973 (2 of 1974)]; a of servinging (a (a writ, regularly scheduled transport trip over a public trans-portation route. A good turn, benefit to another [S. 161, IPC (45 of 1860)"
>
> 'services' includes (pg. 1660):
>
> "(i) providing personnel (including skilled or unskilled workmen and persons for rendering technical or other services) for the purpose of any work or project (by whatever name called) or any activity;"
>
> "(iv) making available any other resources. [Export-coivo. Import Bank of India Act (28 of 1981), S. 2(j)]."

55. A collectanea of definitions of the term 'service' as culled from various excerpts demonstrates the following elements in order to constitute a 'service' that are listed hereinbelow:

(i) firstly, the existence of an activity or act performed by an individual, establishment, or entity for the benefit of the recipient, user, or potential user;

(ii) secondly, the rendition of that activity is performed in the context of a commercial or

transactional relationship for consideration and not gratuitously or as a matter of personal obligation;

(iii) thirdly, to make available a facility, resource, or benefit including the supply of goods, facilities for human use and enjoyment, the deployment of personnel staff, or the making available of any resource for the use, benefit, consumption, or enjoyment of the recipient;

56. Upon examination of the aforesaid elements of ‘service’ it is clear that service is any purposive activity performed by one person for the benefit of another, for consideration, involving the provision of a facility, the supply of a product as part of an experience, the deployment of personnel for the making available of any resources. ‘Service’ is an expression of the widest possible amplitude that encompasses every commercial act performed by an establishment for its patron in the course of a trade or business. These elements such as preparing, assembling, delivering, lighting, replenishing, and maintaining a hookah for its patron for a consideration leads one to the inescapable finding that providing hookah in a restaurant amounts to "service" as per the amended Rule 4(3).

CONCLUSION

57. For ease of reference and understanding, we are delineating the core principles that emerge from the preceding paragraphs:

I. The Designated Smoking Area as provided in proviso to Section 4, being an exception to the general rule of prohibition of smoking in public places must be read strictly, narrowly, and in a manner that advances rather than undermines the dominant prohibitory philosophy and overarching public health objective of the COTPA.

II. The power to "regulate" an activity vested in the State under the COTPA necessarily and inherently includes the power to "prohibit" that activity altogether where the object of the regulatory framework demands such prohibition.

III. The 2017 amendment to Rule 4(3) imposes an absolute and unqualified prohibition on all services within a Designated Smoking Area. The prohibition so enacted admits no exception to service of any nature or description whatsoever and includes service of food, beverages, tobacco products, herbal products and hookah.

IV. The 2017 Amendment has specifically and irrevocably overridden the **Narinder S. Chadha (supra)** interpretation by expunging the word "other" from "no other services" in Rule 4(3) of the Prohibition of Smoking in Public Places Rules, 2008.

V. The self-service model hypothetically synthesised by the petitioners to skirt around the clutches of the COTPA and the amended Rules is not a viable model as procedural operation of hookah intrinsically involves 'service' which needs to be carried out by the one having expertise in it and is not an operation that can be carried out by patrons who are not trained and are novices.

VI. Providing hookah in a restaurant is not a rental service akin to renting cars without a driver. In case of rental of a car, the rentee has absolute possession and control over it and can go to any destination of his choice. However, if a prepared hookah apparatus is rented to a customer, he is bound to enjoy the hookah in the Designated Smoking Area only. Ergo, the providing of hookah apparatus is a service and not a rental.

VII. Fundamental right to carry on any trade or

business under Article 19(1)(g) of the Constitution of India must yield to, and is legitimately restricted by the far more fundamental and constitutionally overriding right of every non-smoker to breathe clean air free from involuntary exposure to tobacco smoke in a public place, guaranteed under Article 21 of the Constitution, and the duty of the State to improve public health imposed by Article 47 of the Constitution.

VIII. Food and Safety Department as well as Municipal Corporation lacks jurisdiction to issue licenses for regulating hookah bars in the State of Uttar Pradesh. However, the provisions of COTPA especially sections 12, 13, 15 clearly demonstrates the power granted to the police authorities to ensure compliance of the mandate of sections 4 as well as 6 and such compliance would include the power to search, seize, confiscate and impose penalty upon the establishments for disobeying the mandate therein.

58. Upon sifting through the aforesaid principles this Court arrives at the unambiguous conclusion that the question that these writ petitions have posed before us as

to whether hookah bars may lawfully operate and render hookah service in Designated Smoking Area within public places in the State of Uttar Pradesh is answered in the negative. The right of the non-smoker to breathe clean air in a public place is a fundamental right guaranteed under Article 21 of the Constitution of India, that cannot be abridged by commercial interest of an establishment having Right to Trade under Article 19(1)(g) of the Constitution of India. This Court holds, accordingly, that the operation of hookah bars and the rendering of hookah services by the restaurants within the State of Uttar Pradesh constitutes a flagrant violation of Rule 4(3) of the Prohibition of Smoking in Public Places Rules, 2008 as amended in 2017 and is in direct contravention of the scheme and object of COTPA.

59. All the writ petitions are accordingly **dismissed.**

60. We would like to show our appreciation towards the learned counsel appearing on behalf of both the parties who have assiduosly assisted the Court as well as my Research Associate, Ms. Saumya Patel for her due diligence in assisting the Court.

61. Registry of this Court is directed to send a copy

of this judgment to the Chief Secretary, Government of Uttar Pradesh as well as Director General of Police, Uttar Pradesh for their information and necessary compliance, forthwith.

EPILOGUE

62. Having traversed the entire gamut of litigation and before parting with this matter, this Court considers it necessary to record certain observations that have weighed upon its judicial conscience throughout these proceedings. WHO 2019 Report on the Global Tobacco Epidemic classifies India's smoke-free policy as merely moderate. Several States such as Gujarat, Punjab, Rajasthan, Maharashtra, and Karnataka have enacted their own State-level amendments to COTPA specifically banning hookah bars alongwith raising the quantum of sentence as well as fine in case of contraventions of the provisions of the COTPA. India has also ratified the WHO Framework Convention on Tobacco Control on 14th June, 2004 as one of its founding parties, thereby undertaking binding international obligations to adopt effective legislation requiring 100% smoke-free environments in all indoor public places, indoor workplaces, and public transport. The Court further

places on judicial record a fact of grave medical significance that a single session of hookah lasting approximately one hour involves an estimated 200 puffs and is equivalent in harm to smoking 100 cigarettes. It is a myth that hookah is less harmful than cigarettes. Hookah is as addictive as a cigarette, as harmful as a cigarette, and contains the same toxic chemicals as a cigarette. Moresoever, every packet of cigarettes carries a mandatory statutory health warning, a similar caution is required in case of hookah in order to fill a regulatory gap that demands urgent legislative attention.

63. In view of the foregoing analysis, this Court reasonably expects that the State of Uttar Pradesh would rise to the occasion keeping in mind the health and welfare of the citizens of the State and would take all necessary steps, including issuing a notification on similar lines with other abovementioned States imposing stringent punishment for service of hookah in all Designated Smoking Areas within the State.

MY EXPERIENCE WITH TOBACCO SMOKING

64. From my own experience of smoking, I pen these last paragraphs in an attempt to educate the young generation of this country to not become a prey to the

deleterious and indelible habit of tobacco smoking:

"I entered law school pure as morning dew,

Sneered at the smokers puffing by the gate,

"Weak-willed," I scoffed, "I'd never join that crew"

Famous last words. Reader, I was bait.

It started with a 'chaii', innocent and warm,

A senior offered, "Try one, just for fun."

I took it like a soldier joins a storm

Bravely, stupidly, and one by one.

The "occasional" 'sutta' soon grew bold,

It multiplied like rabbits, unrestrained.

My lungs, once mine, were quietly sold

To a landlord who never once explained the lease.

I told myself I merely dabbled,

A social smoker, cultured, in control.

Meanwhile the count crept steadily

From "just one more" to "buy the whole damn pack."

Then came the cough, my body's stand-up act,

Performing nightly, free of charge, unasked.

The phlegm arrived, a most unwelcome fact,

As if my throat had been recently tasked

With hosting a swamp. I tried the patch, it itched.

I tried the gum, I chewed it, then lit up regardless,

Like a dieter who's sworn off cake, then switched

Straight to the icing, calling it "harmless."

"I'll quit," I said, with great conviction twice,

Then thrice, then roughly forty times a year.

Each January brought the same advice

From me, to me, which I did not adhere.

I've quit the quitting now, if I'll be honest,

The resolution's gathering dust and shame,

But hope remains perhaps once this is finished

(This job, this judgment), willpower makes a claim.

So here's my public service, dressed in rhyme,

From one who walked the very path you tread:

The first cigarette feels like harmless time

It isn't. Trust the cough, not what I said

At twenty, full of swagger, sure and free.

Don't be the fool who scoffed, only to become a boiling

frog."

(Shekhar B. Saraf,J.)

I agree

(Abdhesh Kumar Chaudhary,J.)

September 29, 2026
Chandra Kant Singh