

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2015

BEFORE

THE HON'BLE MR. JUSTICE A S BOPANNA

WRIT PETITION NO.14226/2015 (GM-POLICE)

BETWEEN:

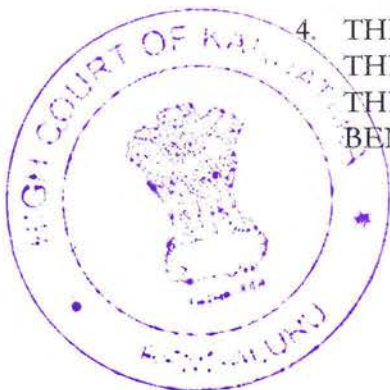
DIAMOND ENTERPRISES,
NO.54/7, 30TH CROSS,
B MAIN ROAD, CORPORATION LAYOUT,
4TH, 'T' BLOCK, JAYANAGAR,
BENGALURU – 560 041.
REP. BY ITS MANAGING PARTNER
Mr. LALITH KUMAR.

... PETITIONER

(BY SRI.ERAPPA REDDY M. ADV.)

AND:

1. STATE OF KARNATAKA,
REP. BY ITS SECRETARY,
HOME DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU – 560 001.
2. THE COMMISSIONER OF POLICE,
BENGALURU CITY, INFANTRY ROAD,
BENGALURU – 560 001.
3. THE ASSISTANT COMMISSIONER OF POLICE,
MICO LAYOUT SUB DIVISION,
THILAK NAGAR,
BENGALURU – 560 041.
4. THE STATION HOUSE OFFICER,
THILAK NAGAR POLICE STATION,
THILAK NAGAR,
BENGALURU – 560 041.



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5. THE BRUHATH BENGALURU
 MAHANAGARA PALIKE
 REP. BY ITS COMMISSIONER,
 J.C.ROAD, BENGALURU – 560 002.

... RESPONDENTS

(BY SRI.VIJAYAKUMAR.A.PATIL, AGA FOR R-1 TO R-4.
 SRI.H.DEVENDRAPPA, ADV. FOR R-5.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO DIRECT THE RESPONDENTS NOT TO INTERFERE IN THE BUSINESS OF THE PETITIONER INCLUDING SERVING OF HOOKA TO ITS CUSTOMERS IN SMOKING AREA IN THE SCHEDULE PROPERTY AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

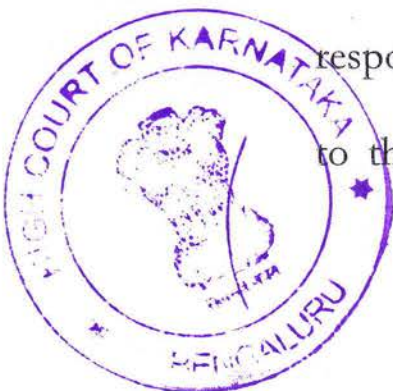
The petitioner is before this Court seeking for issue of direction to the respondents not to interfere in the business of the petitioner including serving of Hooka to its customers in smoking area in the schedule property. The petitioner contends that the petitioner cannot be insisted upon to obtain separate licence for serving Hooka in the schedule property.

2. The petitioner claims to be a firm registered and is carrying the business of Snacks Bar and is serving



coffee and other products in the name and style 'Brews N Bytes' at No.54/7, 30th Cross, B Main Road, Corportion layout, 4th T Block Jayanagar, Bengaluru 560 041. For carrying on such business, the petitioner is stated to have rented out the premises. In the said premises, the petitioner claims that they have provided a separate smoking zone wherein apart from smoking tobacco in other forms, they are also providing the facility of such smoking through Hooka. The petitioner contends that though no licence is required to be obtained by the petitioner for providing such services to its customers, the respondents have been interfering with his business seeking that they obtain licence and therefore the petitioner claiming to be aggrieved is before this Court.

3. Having taken note of the contention put forth by the petitioner, at the outset, it is to be noticed that the respondents have not intimated the petitioner in writing to that effect so as to create a cause of action for the

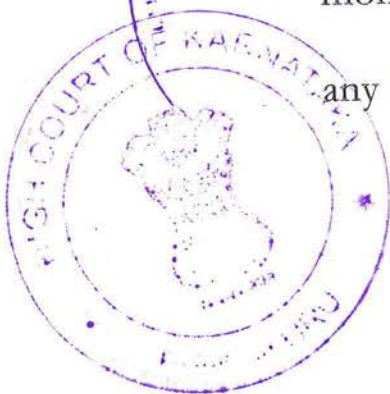


petitioner to approach this Court. However, taking note of the allegations made by the petitioner that such interference is being caused by the police, though no mandamus in the nature of injunction against the respondents in performing their legal duty could be granted, the issue relating to the use of Tobacco in such cases needs to be taken note of to examine whether law contemplates securing licence in that regard. Insofar as the use of Tobacco, the same is regulated under the provisions of the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Act 2003. Under the said Act smoking has been defined which includes the smoking of Tobacco in any form including the use of wrapper or in any other instrument and for that a licence is not prescribed notwithstanding the restrictions provided.



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

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



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

With the above observation and clarification, the petition stands disposed of.

Sd/-
JUDGE

akc/bms

TRUE COPY'

Madhusudhan
Section Officer 10.9.15
High Court of Karnataka
Bengaluru-560 001



- a) The date on which the application was made 9.9.15
- b) The date on which charges and additional charges if any, are asked for
- c) The date on which charges and additional charges, if any are disposed of/Paid
- d) The date on which the copy is ready 10.9.15
- e) The date of reaching that the copy is ready for delivery 10.9.15
- f) The date on which the applicant is required to appear on or before 15.9.15
- g) The date on which the copy is delivered to the Applicant 10.9.15
- h) Examined by *[Signature]*