

(2011) 08 MAD CK 0292

Madras High Court

Case No: Writ Petition No. 16881 of 2011 and M.P. No's. 1 and 2 of 2011

Robustaa (Hyglow
Cafe)

APPELLANT

Vs

The Commissioner,
Corporation of
Chennai, The Health
Officer, Corporation of
Chennai and S. Julius
Sekar, Secretary,
Rukshan Annexe
Association

RESPONDENT

Date of Decision: Aug. 1, 2011

Acts Referred:

- Madras City Municipal Corporation Act, 1919 - Section 279, 379A
- Mumbai Municipal Corporation Act, 1988 - Section 479
- Tamil Nadu Public Health Act, 1939 - Section 44, 45
- Tobacco Products Prohibition Act, 2003 - Section 34, 6

Citation: (2011) 8 MLJ 136 : (2011) WritLR 700

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: V. Selvaraj and B. Rabu Manohar, for the Appellant; V. M. Velumani, Spl.Govt.
Pleader for R-1 and R-2 and M. Kamalanathan, for R-3, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

By consent of the learned Counsel appearing for the parties, the Writ Petition itself is taken up for disposal.

2. Whether prohibition of running a restaurant, permitting using tobacco products, such as "Hookah" in the residential locality, is justified and in accordance with law ? is the important question, to be decided in this Writ Petition.
3. The Petitioner-restaurant has sought to forbear the Respondents from in any way interfering with the business at Robustaa Restaurant at No. 24/67, Halls Road, Kilpauk, Chennai-600 010, pursuant to the licence granted by the first Respondent in Licence Code No. K070071590/2010-2011, dated 23.3.2011.
4. According to the Petitioner, the restaurant was started in January 2011. The Petitioner applied for licence before the first Respondent and it was granted to the Petitioner in Licence Code No. K070071590 in its order dated 8.2.2011 and the licence was valid upto 31.3.2011 and the Petitioner also paid the necessary licence fee of Rs. 12,650/- to start the restaurant, namely for vegetarian food like Italian with Indian Fillings (Pizza, Pastam etc.), Indian Starters and Rices, Coolers, Coffees, Shakes and Deserts, Sandwiches and more Indian dishes.
5. Basically, the restaurant is a small eat-out-joint in Kilpauk area catering to the needs of the middle class people. The terms and conditions of the licence have been set out in the licence granted u/s 279 of the Chennai City Municipal Corporation Act (hereinafter referred to as "the CCMC Act"). The said licence was renewed by the order of the first Respondent on 23.3.2011 for a further period of one year after the payment of the required licence fee and it is valid upto 31.3.2012 and till date, this licence has not been cancelled by the first Respondent. In addition to the above licence, the Petitioner has obtained fire service licence and has been maintaining the restaurant as prescribed by the first Respondent, by following the rules and Regulations and kept the restaurant tidy and clean.
6. While so, the second Respondent issued a notice u/s 379-A of the CCMC Act, intimating the following defects, which are to be rectified:
 - (a) Chimney (smoke outlet) should be raised to six feet from the surrounding structure.
 - (b) The use of tobacco products inside the restaurant should be stopped immediately.
 - (c) Using tobacco with smoking should be prevented immediately, otherwise causing public health nuisances.
 - (d) Food handlers should be medically examined by payment of necessary fee.
 - (e) Burning of any kind of cooking articles outside the premises should be prevented.
 - (f) To obtain neighbours' NOC and produce.

(g) Sound nuisance from the eating house causing public health nuisance be stopped.

7. For the above notice, the Petitioner-restaurant gave a reply to the second Respondent on 2.5.2011 complying with all the defects as mentioned in the said notice, dated 25.4.2011. The Petitioner also intimated that the chimney is raised to six feet above the neighbouring buildings, as requested by the second Respondent and tobacco products were not in use inside the restaurant and separate zone has been earmarked for tobacco users. It was also mentioned that smoking of tobacco was prohibited inside the restaurant except in a particular zone and in the said reply-letter, it was further mentioned that necessary fee has been paid for medical examination of the food handlers and No. burning of any kind of cooking articles outside the premises is taking place. NOC has been obtained from the adjacent owners of the building and there was No. sound nuisance from the eating house and causing public health nuisance at any point of time.

8. In such a situation, one Rukshan Annexe Association (impleaded third Respondent in this Writ Petition), which is a residential complex situated behind the Petitioner-restaurant, in its letter addressed to the first and second Respondents on 14.4.2011, stated that the Petitioner is causing health hazards and environmental pollution. It was also mentioned that the nuisance has been caused to the residents. The Rukshan Association seems to have sent another letter on 11.6.2011 to the Respondents 1 and 2 to take action on the Petitioner and the Petitioner should function only in strict compliance of the rules prescribed by the public authority and a copies of the said letters were also sent to the Petitioner by the said Association. Thereafter, the Petitioner immediately requested the office bearers of the Rukshan Association to have a meeting with them, which was organised on 17.6.2011 at 12.15 p.m. in the Petitioner-restaurant and the grievances were considered and in furtherance to that, the Petitioner's Engineers were consulted and by using the knowledge of technical personnel, the entire matter of running the restaurant was streamlined so that the residents of the Rukshan Association do not have any problem. The Petitioner also sent a letter to their office bearers of the Association on 1.7.2011 intimating that all their grievances have been rectified and there will not be any complaints in future from them and also informed them that they are looking forward for a long and happy relationship with their esteemed Association.

9. By the time, the Association sent a complaint to the Tamil Nadu Pollution Control Board, to which, the Tamil Nadu Pollution Control Board sent a letter on 17.6.2011, stating that the officials of the Board visited the Petitioner's premises on 17.6.2011 and requested to take the following measures within a fortnight and furnish the progress of the same immediately:

(a) To remove the motor of the kitchen chimney from ground floor and to place it in a suitable place of the building to avoid noise nuisance.

(b) To extend the kitchen chimney exhaust at the terrace to the mid of their terrace building.

(c) Washings of the vessels at the backyard shall be stopped strictly before 7 p.m. daily.

(d) Copy of the licence obtained from the Corporation of Chennai.

(e) Copy of the licence obtained from the Fire Service Department.

10. Pursuant to that, the Petitioner has written a letter of the District Environmental Engineer, Pollution Control Board on 22.6.2011, stating that the chimney has been turned to the other side and the civil work for the same will be completed within 10-15 days and it was also completed and the same was also intimated to the Association. However, the second Respondent issued a notice to the Petitioner on 5.7.2011, stating that the Petitioner is also selling tobacco products and violated Section 44 of the Tamil Nadu Public Health Act, 1939, calling upon the Petitioner to give a reply within seven days and in the said notice, it was mentioned that the tobacco products are being administered, which is harmful to the health, and the environment is polluted due to tobacco administration to the clients and the same violates Section 6(b) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, supply and Distribution) Act, 2003 (for short, "the Tobacco Products Prohibition Act"). Further, the officials of the Respondents 1 and 2 sealed the premises of the Petitioner at around 6 p.m. on the same day, i.e. on 5.7.2011 and have restrained the Petitioner from doing business. The Petitioner immediately sent a reply to the first Respondent on 8.7.2011, stating that they will abide by all the rules and Regulations imposed by the Respondents 1 and 2 and they are willing to run the restaurant without giving any room for adverse notice and requested the Respondents 1 and 2 to permit the Petitioner to run the restaurant, since licence was still in force. They have also undertaken the same in the stamp paper of Rs. 20/-and gave it to the Respondents 1 and 2 on 8.7.2011, but till date, the Respondents 1 and 2 have not permitted the Petitioner to re-start the business, since the Petitioner is serving tobacco products in the restaurant.

11. The only reason put forward by the Respondents 1 and 2 is that the Petitioner is serving tobacco products, namely Hookah in the restaurant. It is their case that the Hookah is a leisurely enjoyment of people and people smoke Hookah sitting around in street cafes, exhaling sweet smelling smoke of Hookah tobacco which is unlike any other tobacco. Hookah tobacco is essentially a damp blend referred to as maassel and this blend contains tobacco leaves with molasses or honey or fruit pulp or semi-dried fruit, depending upon the taste of the smoker. According to the Petitioner, it is also a common practice among some smokers to include the pomegranate juice or rose oil to this blend to add extra flavour to the Hookah tobacco. As Hookah made its way into the Western society, many new and

aromatic fruit flavours were introduced with the Hookah fruit flavoured tobacco, which is now the most famous.

12. Although many traditional Hookah smokers do enjoy the more traditional Hookah tobacco, but most people nowadays enjoy puffing the dark flavoursome wet mixture or aromatic Hookah fruit tobacco, which comes in outstanding flavours such as vanilla, apple, mint, lemon, passion, fruit, raspberry, guava and this succulent list goes on. Hookah tobacco is mainly 70% molasses and flavouring and just 30% tobacco and 0.05% nicotine. Most types of Hookah tobacco contain almost No. tar content, and this mix is what gives the tobacco its aromatic and delicious quality. As Hookah tobacco by composition is wet and so, it is smoked with the help of a Hookah charcoal. Instead of lighting the tobacco directly, it is heated with the help of a coal placed in a tin foil or a wire mesh which is positioned either above or in the bowl holding the wet mixture of tobacco. Once lit properly, this wet tobacco lasts a smoker a very long time, mostly requiring the coal to be lit again and again. In Hookah etiquette, it is considered very disrespectful if any one lights a cigarette near a place where a Hookah is being enjoyed, cigarette tobacco is not tolerated by Hookah smokers in their aromatic environment. The Hookah tobacco is not only aromatic, but also has No. harmful effects on the smoker, as the tobacco is never actually burned, but just heated, it produces a fewer number of carcinogens, which have the most harmful results on the smoker.

13. It is the Petitioner's case that a Division Bench of the Bombay High Court, had for the first time, directed the Municipal Corporation of Mumbai to incorporate such terms and conditions while issuing licences u/s 479 of the Mumbai Municipal Corporation Act. The Division Bench also suggested that the Municipal Corporation shall have to incorporate the necessary terms and conditions in the licences including existing licences to provide that licensees shall comply with the aforesaid statutory provisions. It was also directed that the same should be done within six weeks from the date of the order, i.e. 5.5.2011. The Municipal Corporation of Mumbai, following the directions issued by the Division Bench of the Bombay High Court, issued circulars to the restaurants, indicating as follows:

(a) Restaurants serving Hookahs should have a seating capacity of 30 persons or more and have a separate smoking area.

(b) Smoking area should not be established at the entrance or exit of the restaurant.

(c) They should be distinctively labelled "smoking area" in English and Marathi.

(d) Smoking area should be used for smoking only and No. service (food/beverage) should be allowed.

(e) Smoking area should be separately ventilated in the following way: It should be physically separated and surrounded by full height walls on all four sides and it should have an entrance with an automatically closing door, which should normally

be kept in closed position.

(f) The air from the area should be exhausted directly outside and should not mix with the air supply for the other parts of the building. It should be fitted with a non-re-circulation exhaust ventilation system, an air cleaning system, or a combination of the two.

(g) The smoking area should have negative air pressure in comparison to the other parts of the building.

Thus, the Mumbai Municipal Corporation issued the above guidelines and permitted the use of Hookah in the city of Mumbai.

14. Similarly, High Court of Andhra Pradesh also considered the case and granted interim order of injunction restraining the Respondents therein from interfering with the business of the Petitioners in serving of flavoured Hookahs to their customers, unless any violation of the provisions of Act 34 of 2003 or any other enactment which governs the serving of flavoured Hookahs is pointed out.

15. That being the position, the Petitioner has not violated any provisions of the Tobacco Products Prohibition Act, more specifically Section 6(b). However, the Petitioner-restaurant undertakes that they will not sell Hookah to any person below 18 years and there are No. schools or colleges within the radius of 100 yards from their restaurant and the action taken by the Respondents are totally illegal and unwarranted.

16. It is the further case of the Petitioner that many restaurants in the city of Chennai are still serving Hookah to their customers and No. action had been taken against them and only the Petitioner and a few others are being targeted for the reasons best known to the Respondents 1 and 2 alone and thus, the Petitioner's fundamental rights under Articles 14 and 19(1)(g) of the Constitution, are grossly affected. Having No. other efficacious alternative remedy, the Petitioner invoked the writ jurisdiction under Article 226 of the Constitution of India and filed the present Writ Petition.

17. The first Respondent has filed counter affidavit, inter-alia stating that the allegations contained in the affidavit of the Petitioner, are denied, except those that are specifically admitted. According to the Respondents 1 and 2, the Corporation of Chennai has issued licence only for Robestaa Hyglow Cafe to run the restaurant, but the Petitioner was running Hookah Bar instead of restaurant by using cancer causing tobacco products unauthorisedly and causing public health hazards by way of emanated noxious smoke. Further, there is No. proper chimney in the restaurant and the running of the Hookah Bar is an illegal mode of business. As per CCMC Act, u/s 279, the Petitioner has obtained licence for the restaurant, in which it is mentioned that the licence was only for running the restaurant. The Petitioner is running Hookah Bar with cancer causing tobacco products and the youngsters and

youth especially in the age group of below 20 years, were smoking/inhaling tobacco products and emanated noxious carbon-monoxide affecting the neighbouring residents as well as the youngsters who are spoiling themselves and it becomes a public nuisance in and around the area. The Petitioner is not entertaining the middle class people in the Hotel for having food. The Petitioner was serving tobacco products to the upper class youngsters for Hookah smoking, because, the products are sold at very high cost, such that, per user, the charge is Rs. 800/-approximately.

18. The Rukshan Annexe Association at Sivasankar Street, Kilpauk, Chennai-10, has written a complaint letter to the Chief Minister's Cell, vide reference No. 130017, dated 16.6.2011 against one Mr. N.Rajesh Kumar and N.Vishal Kumar, the original licence holders that they are running a Hookah Bar with restaurant at Old No. 67, New No. 24, Halls Road, Kilpauk, Chennai-10 and they further stated that the harmful pollution and irritating unbearable chimney noise affects the life and health of all neighbouring residents as well as causing public nuisance. The Association also prayed to close the illegal trade immediately. Similar petition was received by the Respondents 1 and 2 from the Rukshan Annexe Association, dated 14.4.2011 and 11.6.2011. Subsequently, the Respondents 1 and 2 issued notice u/s 279 of the CCMC Act on 25.4.2011 with immediate effect and asked the Petitioner to comply with the sanitary conditions. The Respondents also directed the Petitioner to stop the Hookah Bar and use of all related cancer causing tobacco products. Even on 5.7.2011, the Respondents issued a notice u/s 44 of the Tamil Nadu Public Health Act to the Petitioner to stop the using hazardous cancer causing tobacco products in the residential locality immediately. The Respondents issued a notice u/s 6(b) of the Tobacco Products Prohibition Act, which prohibits the sale of tobacco products in the area within a radius of 100 yards of any educational institution and also asked the Petitioner to stop the Hookah Bar activity in the limit of 300 feet educational institutions locality. But, the Petitioner had not complied with and continuously ran the Hookah Bar illegally and against the Tobacco Products Prohibition Act. The fire licence was obtained for running eating house, but the Petitioner emanated the noxious smoke without proper chimney and endangering to neighbouring residents by way of running Hookah Bar. Hence, the Petitioner's entire contention is false and baseless and the Petitioner also wrongly mentioned in the affidavit that the notice u/s 379-A has been issued and it is u/s 279 of the CCMC Act.

19. In the counter affidavit, the Respondents-Corporation of Chennai stated that the Petitioner has not complied with the sanitary conditions and was running Hookah Bar upto the last day, unauthorisedly and inspite of several warnings by the Respondents, the Petitioner neither stopped his illegal activities, nor rectified the immoral activities. The Respondents made inspection several times including Zonal Health Officer, Sanitary Inspectors and Sanitary Officer, Food Inspector and it was found that the Petitioner supplied tobacco products to the customers for Hookah in the entire area and there is No. separate zone for using the tobacco products as the Petitioner falsely stated in the affidavit. During the inspection, the Respondents

found hundreds of pockets of tobacco with display "Tobacco causes cancer" and those tobacco pockets in the Store Room of the Petitioner's Hookah Bar were duly sealed by the Respondents. The relevant evidence in relation with the illegal and immoral activities of the Petitioner, is furnished before this Court. The Respondents have taken necessary relevant steps in controlling the illegal activities of the Petitioner under due process of law.

20. The Petitioner has accepted the illegal and immoral business to the Rukshan Annexe Association in the reply dated 11.6.2011. The Petitioner assured that they will rectify the defects. Therefore, the Petitioner has full knowledge about the endangered Hookah products, which were emanating cancerous smoke. The Petitioner intentionally with an ulterior motive, to spoil the young generation, purposely even after several warnings by the Respondents, continued the Hookah business without any hesitation. The Petitioner also accepted the defects and that there was No. proper chimney in the Hotel. The existing chimney was in the back side and not properly erected. Hence, the officials of the Pollution Control Board also issued instructions to the Petitioner for erection of chimney. Even during the inspection made on 6.7.2011, the Petitioner had not erected the smoke outlet/chimney and hazardous chemical smoke emanated which causes heavy air pollution in and around the neighbouring areas as well as polluting the nature. The Petitioner purposely violated the conditions of licence and running the Hookah Bar without bothering the public health, public nuisance and spoiling the youth society.

21. It is further averred in the counter affidavit that the World Health Organisation (WHO) and public health agencies as well as the Mumbai news-letters briefed about the running of Hookah tobacco products as below:

(a) Hookah smoke contains high levels of toxic compounds, including tar, carbon-monoxide, heavy metals and cancer-causing chemicals (carcinogens). In fact, Hookah smokers are exposed to more carbon-monoxide and smoke than are cigarette smokers.

(b) As with cigarette smoking, Hookah smoking is linked to lung and oral cancers, heart disease and other serious illnesses.

(c) Hookah smoking delivers about the same amount of nicotine as cigarette smoking does, possibly leading to tobacco dependence.

(d) Hookah smoke poses dangers associated with second hand smoke.

(e) Hookah smoking by pregnant women can result in low birth weight babies.

(f) Hookah pipes used in Hookah Bars and Cafes may not be cleaned properly, risking the spread of infectious diseases.

22. Like many tobacco products, use of the pipes is linked to lung cancer and other respiratory and heart diseases. Water pipe tobacco smokers are exposed to

cancer-causing chemicals and hazardous gases, such as carbon-monoxide. Water pipe users are also exposed to nicotine, the substance in tobacco that causes addictive behaviour. Despite knowing the dangers of water pipe smoking, one study found that most (more than 90%) beginning water pipe smokers believe cigarette smoking is more addictive than water pipe smoking. The same study also found evidence that the use of water pipes is increasing throughout the world. Hence, the Hookah Bar is very endangering to public and public health and therefore, the Petitioner's contention is false and baseless.

23. According to the Respondents 1 and 2, the Petitioner is trying to mis-interpret the judgment of the Division Bench of Bombay High Court and the direction of the Court was to Corporation of Mumbai to frame rules for running Hookah Bar. The High Court directed the Corporation of Greater Mumbai to frame stringent Rules as conditions for grant of licence for running a Hookah Bar or permitting smoking in the restaurant. The Police Department was also directed to inspect the restaurants and inform Corporation Officials about the violations, if any. In this case, the Petitioner has not sought permission or licence to run Hookah Bar or permit smoking in the Restaurant. Therefore, the sealing of the premises is legal and valid. The premises where the Petitioner is running the Hookah Bar is within 100 meters of school, church and destitute home situated at No. 62, Halls Road and another school at No. 70, Halls Road, Kilpauk, Chennai-10.

24. The hazardous smoke emanated is let out harming the general public. The Petitioner is spoiling especially the youngsters to use Hookah. Ultimately, on inspection, it was found that the young boys and girls smoking Hookah spread over the entire premises. Considering the activity of the Petitioner, violating the entire condition of the licence and with related number of evidence, the Respondents 1 and 2 have sealed the Petitioner's premises to avoid public issues. The Petitioners have not initiated any proceedings against the same, and the Respondents 1 and 2 prayed for dismissal of the Writ Petition.

25. After the filing of the counter affidavit by the Respondents 1 and 2, the Petitioner has filed an additional affidavit, stating that they have been permitting and serving Hookah in the restaurant at a separate enclosure as contemplated u/s 7 of the Tobacco Products Prohibition Act. The term "tobacco product" as contemplated u/s 3(p) under the Tobacco Products Prohibition Act, includes cigarette tobacco, pipe tobacco and Hookah tobacco as contemplated under the Schedule therein and as such, it is not a banned product and therefore, the Petitioner has not violated any terms and conditions of the licence issued by the Corporation of Chennai on 8.2.2011 and 23.3.2011 under the provisions of the CCMC Act. Further, the Petitioner has made a statement in the additional affidavit that they will not sell any tobacco product in violation of the conditions of licence and they undertake to discontinue the sale of Hookah in the event of this Court holding that they are not entitled to sell or serve Hookah at the Petitioner's restaurant.

26. Mr. V. Selvaraj, learned Counsel appearing for M/S.B.Rabu Manohar, learned Counsel for the Petitioner-restaurant, in his submissions, would strenuously contend that the licence was granted to the Petitioner on 8.2.2011 and renewed on 23.3.2011, which are in force till date and it will expire only on 31.3.2012. He further contended that the Petitioner has not violated the terms and conditions of the licence in running the restaurant and they are serving Hookah in the restaurant in a separate enclosure as contemplated u/s 7 of the Tobacco Products Prohibition Act. It is his submission that the Petitioner has taken utmost care and caution to run the restaurant as per the terms and conditions of the licence and rectified all the defects pointed out by the Respondents and also the Pollution Control Board. The Petitioner undertakes that they will not sell Hookah to any person below 18 years and there are No. schools or colleges within the radius of 100 yards from their restaurant as contemplated u/s 6(b) of the Tobacco products Prohibition Act. Even the Petitioner is ready to undertake discontinuance of the selling of Hookah and they will run the restaurant as per the licence granted. He would further submit that before sealing the premises, the Respondents 1 and 2 have not followed the procedures contemplated under the provisions of the CCMC Act and No. final orders are passed u/s 379-A of the said Act.

27. On the other hand, Ms. V. M.Velumani, learned Spl.G.P. appearing for the Respondents 1 and 2 contended that the licence was granted only to run the restaurant; on the contrary, the Petitioner has been running the Hookah Bar by using the cancer causing tobacco products unauthorisedly and causing public health hazard by emanating noxious smoke contrary to the terms and conditions of the licence and therefore, the action by the Respondents 1 and 2 is in accordance with the provisions of the relevant Acts and the Rules. It is her main concern and serious contention that the future of the younger generation and the welfare of the public and their public health is the paramount consideration, which the Respondents have taken very seriously and proceeded to take action and sealed the premises of the Petitioner-restaurant to avoid any public issue, after following the procedures contemplated under law. The running of the Hookah Bar by the Petitioner is within 100 meters of School, Church and destitute Home situated in and around the Petitioner-restaurant. Therefore, the action contemplated and taken by the Respondents 1 and 2 cannot be said to be illegal and invalid.

28. Mr. M.Kamalanathan, learned Counsel for the impleaded third Respondent, while adopting the similar contentions of the learned Spl.G.P., contended that the Rukshan Annexe Association is an affected party due to the conduct of the Petitioner in running the Hookah Bar, thereby, emanating hazardous chemical smoke, which causes heavy air pollution in and around the neighbouring areas as well as polluting the nature and therefore, the Petitioner cannot be allowed to run the Hookah Bar.

29. I have heard the learned Counsel appearing for the parties and perused the relevant materials annexed in the typed set of papers filed along with the Writ

Petition and the records produced by the Respondents 1 and 2 and also given thoughtful consideration to the relevant provisions of law.

30. The Directive Principles of State Policy as enshrined in the Constitution of India, enunciated under Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. In the above Constitutional background, it is to be examined as to what is the duty of the State in respect of improvement of public health and prohibition of intoxicating drinks and of drugs which are injurious to health and the public health is to be protected for the standard of living of the mankind.

31. The World Health Organisation (WHO) in its 39th World Health Assembly, held on 15.5.1986, urged its 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. Therefore, the WHO urged the 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. India, being the Member State, this avowed object of the WHO has been taken into account for enacting certain comprehensive law, particularly, in the field of protection of public health, considering the need for expedient prohibition and accordingly, the legislation called "The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 was enacted (for short, "the Tobacco Products Prohibition Act").

32. In the beginning of 20th Century, the civic laws have been enacted. Accordingly, in 1919, the Madras City Municipal Corporation Act was enacted (now called as "Chennai City Municipal Corporation Act, 1919") (for short, "the CCMC Act"). Various regulatory mechanisms have been evolved as per the provisions of the CCMC Act and even the authorities are vested with powers with control measures and the Council of the Municipal Corporation had been provided with the power to regulate by making laws. u/s 349 of the CCMC Act, the power is conferred upon the Council to make bye-laws not inconsistent with this Act or with any other law to provide under Clause (11) therein for the Regulation and licensing of hotels, lodging houses, boarding houses, choultries, rest-houses, emigration depots, restaurants, eating houses, cafes, refreshment rooms, coffee houses, and any premise to which the

public are admitted for repose or for the consumption of any food or drink or any place where any food or drink is exposed for sale.

33. u/s 379-A of the CCMC Act, a special amendment was contemplated as early as in 1936 and this Section was introduced with an object of power to enforce licensing provisions, which contemplates u/s 379-A(1) that, "If under this Act, or any rule, by-law or Regulation made under it, the licence or permission of the Council, Standing Committee or Commissioner or registration in the Office of the Corporation is necessary for the doing of any act and if such act is done without such licence or permission or registration or in manner inconsistent with the terms of any such licence or permission, then--(a) the Commissioner may, by notice, require the person so doing such act to alter, remove or as far as practicable restore to its original state the whole or any part of any property, movable or immovable, public or private, affected thereby, within a time to be specified in the notice; (b) the Commissioner or any officer duly authorised by him may also enter into or on any building or land where such act is done and take all such steps as may be necessary to prevent the continuance of such act."

34. Immediately, in 1939, importance of maintaining public health was felt by the then Government and they have introduced the public health legislation in the Presidency of the Government at that time. Therefore, with the adaptability of local conditions, an Act was contemplated recognising that some of the provisions contemplated under the CCMC Act, 1919 and the Tamil Nadu District Municipalities Act, 1920 and the Tamil Nadu Local Boards Act, 1920 and thereafter, a draft Bill was introduced in 1929 and Tamil Nadu Public Health Act, 1939 was enacted with special features like constitution of a Public Health Board for the Province, the statutory recognition of Director of Public Health and the vesting of adequate powers in him for the effective discharge of his duties and the taking of power to compel the employment of Health Officers by important local authorities and the imposition of an obligation on the local authorities at the discretion of the Government to provide sufficient supply of drinking water, compulsorily levy of water tax and provisions for securing proper drainage, provisions for abatement of nuisances, adequate measures for the prevention and eradication of the infectious diseases, etc., Accordingly, the Act came into force in 1939 with an aim and object of the preservation of public health as one of the duties devolved upon the State as a sovereign power and with an object sought to be secured by Governmental laws and health being the sine quo non of all personal enjoyment, it is not only the right, but the duty of the State or Municipality to pass such laws or Ordinances as may be necessary for the preservation of the health of the public. For the protection of the health of the community, the most extensive powers are conferred on such Boards of the local authorities and the Act received the assent of the Governor on 28.2.1939 and the said laws are in force even today.

35. Sections 44 and 45 of the Tamil Nadu Public Health Act provide for the power of the Health Officers to abate nuisance. The said Sections read as follows:

44: Power to Health Officer to abate nuisance.--If the Health Officer is satisfied, whether upon information given u/s 43 or other wise of the existence of a nuisance, he may, by notice require the person by whose act, default or sufferance the nuisance arises or continues or, if that person cannot be found, the owner or occupier of the premises on which the nuisance arises or continues, to abate the nuisance and to execute such works and take such steps as may be necessary for that purpose:

Provided that:

(a) where the nuisance arises from any defect of a structural character, the notice shall be served on the owner of the premises; and

(b) where the person causing the nuisance cannot be found and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or the occupier of the premises, the Health Officer may himself forthwith do what he considers necessary to abate the nuisance and to prevent a recurrence thereof.

"45. Power of local authority to abate nuisance:

If the person, on whom a notice to abate a nuisance has been served u/s 44, makes default in complying with any of its requirements within the time specified therein, or if the nuisance although abated within such time is, in the opinion of the local authority, likely to recur on the same premises, the local authority may arrange for the execution of any works necessary to abate the nuisance or to prevent its recurrence, as the case may be, and may recover the cost from such person as if it were a tax due to the local authority.

36. The above legislative intentions, constitution of duties and obligations and the aim of the member States of the WHO, would give a clear mandate to all the authorities and the persons concerned, to give importance to the protection of the citizens with the special attention to an area where there is public interest and the need for bringing into an orderly society with the standard of living. Whether this object sought to be achieved by the above legislations, is infringed upon by any of the persons, is the question to be examined in this case.

37. A circumspection of the facts would reveal that the Petitioner applied for licence to run the restaurant in the name and style of "Robustaa (Hyglow Cafe)" and the licence was granted on 8.2.2011 in the licence Code No. K070071590 and the said licence was granted up to 31.3.2011 and the required fee of Rs. 12,650/-was also paid and thereafter, it was renewed for one year up to 31.3.2012. It is seen that the Respondents 1 and 2 have granted the licence u/s 279 of the CCMC Act for running the restaurant for supply of vegetarian foods like Italian with Indian Fillings (Pizza, Pastam etc.), Indian Starters and Rices, Coolers, Coffees, Shakes and Deserts,

Sandwiches and more Indian dishes, with the following conditions:

Common conditions for all trades:

1. The licensee shall cause the flooring of the premises to be paved or otherwise rendered impervious and suitably drained and at times be maintained in good order and repair. The premises shall be properly enclosed and provided with suitable gateways and gates.
2. The licensee shall cause the premises to be cleaned and prevent any accumulation of filth or refuse therein.
3. He shall cause every part of the internal surface of the walls and ceiling of every building upon the said premises to be limewashed in the months of January and July if so directed by the Commissioner.
4. The licensee shall provide a sufficient supply of pure and wholesome drinking water.
5. The licensee shall cause such every means of ventilation and light as may be provided in or in connection with the said premises to be maintained at all time in good orders and efficient action.
6. An inspection book should be maintained in the licenced premises. The instruction given in the inspection book should be carried out within the time specified therein provided that such instructions are not in conflict within the provisions of Act-IV of 1919.
7. In case the business or trade is found to be a nuisance or otherwise objectionable the Commissioner reserves to himself the right to revoke the licence at any time.
8. Licences issued by the Corporation should be hung up in a prominent place.
9. During business hours they must at all times conduct themselves in a respectful and becoming manner to the Officers of the Corporation and the general public.
10. Licence may at any time be suspended or revoked by the Commissioner in case the business or trade is found to be in contravention with common condition and specific conditions applicable to the trade.

"Specific conditions for trades coming u/s 279 of CCMC Act:

1. Suitable and separate accommodation for the manufacture, preparation, storage and service of food and drink shall be provided.
2. Every drain or means of drainage upon or in connection with the licensed premises shall be maintained at all times in good order and efficient action.
3. The licensed premises shall be cleaned as often as may be necessary and atleast, twice in every twenty-four hours.

4. Suitable smoke outlets shall be provided in every place set apart for the manufacture or preparation of any they should be maintained in good order and efficient action.
5. Suitable covered receptacles for the deposit of all refuse matter shall be provided and these shall be complied and thoroughly cleaned atleast twice in every 24 hours. No. accumulation of further refuse shall be permitted.
38. Pursuant to the grant of licence, the Petitioner started running the restaurant. As per the requirement, the Petitioner also obtained the Fire Service Licence from the competent authority of the Fire Service Department.
39. While so, on 25.4.2011, a notice u/s 279 of the CCMC Act was issued to the Petitioner, stating that as the Petitioner is running eating house in the premises contrary to the conditions of licence issued u/s 279 of the CCMC Act, the Petitioner was required to comply with the requirements specified on scheduled licence within one week from the date of receipt of the said notice, failing which, prosecution will be launched against the Petitioner. It was also noted therein that u/s 379-A of the Act, steps will be taken to prevent the Petitioner from continuing to use the place as such. The Petitioner has explained to the Corporation on 2.5.2011 by complying with the defects and the said reply was acknowledged by the Respondents.
40. By the time, the Rukshan Annexe Association made a complaint to the first Respondent on 14.4.2011, stating that the Petitioner is causing health hazards and environmental pollution and the further complaint on 11.6.2011, to take action against the Petitioner, requesting them to allow the Petitioner to function only in strict compliance of the Rules prescribed by the public authority and there was a meeting between the Association and the Petitioner, in which, certain things were discussed about the amicable solution to the problem and for rectification of certain grievances pointed out by the Association and to avoid any future complaints and this has been taken into account by the Petitioner and certain things have been rectified. Even after that, the Rukshan Annexe Association seems to have made a complaint to the Tamil Nadu Pollution Control Board and the Tamil Nadu Pollution Control Board authorities visited the Petitioner-restaurant on 17.6.2011 and found that certain things are to be done and therefore, they directed the Petitioner to take certain measures as quoted earlier in this order.
41. However, the second Respondent issued a notice on 5.7.2011 u/s 44 of the Tamil Nadu Public Health Act, stating that the Petitioner is selling tobacco products and violated Section 44 of the said Act. In that notice, it was also mentioned that the tobacco products are being administered which is harmful to health and the environment is polluted due to tobacco administration to the clients and the same violates Section 6(b) of the Tobacco Products Prohibition Act. Thereafter, the officials of the Respondents 1 and 2 sealed the Petitioner's premises on 5.7.2011 at 6 p.m. The Petitioner appears to have sent a reply on 8.7.2011 stating that they will abide

by all the rules and Regulations imposed by the Respondents and that they are willing to run the restaurant without giving any room for adverse notice and requested them to permit the Petitioner to run the restaurant since the licence was still in force. The Petitioner also undertook the same in Rs. 20/-stamp paper and as there was No. action, the Petitioner knocked the doors of justice to forbear the Respondents 1 and 2 from in any way interfering with the business.

42. To examine the above grievance of the Petitioner, and for a direction to forbear the Respondents 1 and 2 from interfering with the Petitioner's business, it is to be seen that the licence was granted to the Petitioner with a condition to run the vegetarian restaurant with Licence Code No. K070071590 indicating that the Petitioner has been granted licence for the trade-restaurant. Licence was granted u/s 279 of the CCMC Act and Section 279(1) contemplates that No. person shall without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf, keep any lodging house, eating-house, tea-shop, coffee-house, cafe, restaurant, refreshment room, or any place, where the public are admitted for repose or for consumption of any food or drink or any place where food is sold or prepared for sale: provided that No. such licence shall be required for a lodging house as defined in the Tamil Nadu Public Health Act, 1939, if the keeper thereof been registered under that Act. Further, Section 279(2) contemplates that the Commissioner may, at any time, cancel or suspend any licence granted under Sub-section (1) if he is of opinion that the premises covered thereby are not kept in conformity with the conditions of such licence or with the provisions of any by-law made u/s 349 relating to such premises whether or not the licensee is prosecuted under this Act.

43. It is brought to the notice of this Court that the power of the Council to make by-laws is provided u/s 349 of the CCMC Act and Clause (11) therein provides that, "for the Regulation and licensing of hotels, lodging houses, boarding houses, choultries, rest-houses, emigration depots, restaurants, eating houses, cafes, refreshment rooms, coffee houses, and any premise to which the public are admitted for repose or for the consumption of any food or drink or any place where any food or drink is exposed for sale.

44. It is an admitted position that till date, the Respondents have not regulated anything in respect of the cigarettes and other tobacco products, including Hookah. The specific conditions are provided in the licence granted to the Petitioner, as quoted earlier in this order. Therefore, it appears from these conditions that though the power of Regulation was provided in respect of the restaurant, till date, there are No. Regulations being followed and the common conditions for all trades/special conditions for trades coming u/s 279 of the CCMC Act, prescribed by the Respondents in the licence, are appeared to have been followed and certain defects pointed out were also rectified by the Petitioner-restaurant. The neighbour, namely the third Respondent, i.e. Rukshan Annexe Association started giving

complaints both to the Respondents 1 and 2 and also to the Tamil Nadu Pollution Control Board and on such complaints, the Petitioner also rectified the same. Ultimately, for certain defects pointed out earlier in this order, notice u/s 279 of the CCMC Act was issued, indicating the the action will be taken u/s 379-A of the CCMC Act, preventing the Petitioner from continuing to use the place as such. The notice has also been issued u/s 44 of the Tamil Nadu Public Health Act, on 5.7.2011, calling upon the Petitioner to stop the selling of the Hookah products, which is prohibited u/s 6(b) of the Tobacco Products Prohibition Act, otherwise fine of Rs. 50/-will be imposed on the Petitioner and it was directed that the Petitioner shall comply with the defects or vacate the premises.

45. Section 45 of the Tamail Nadu Public Health Act provides the power of local authority to abate nuisance and it is stated therein that, "If the person, on whom a notice to abate a nuisance has been served u/s 44, makes default in complying with any of its requirements within the time specified therein, or if the nuisance although abated within such time is, in the opinion of the local authority, likely to recur on the same premises, the local authority may arrange for the execution of any works necessary to abate the nuisance or to prevent its recurrence, as the case may be, and may recover the cost from such person as if it were a tax due to the local authority."

46. The power of the first Respondent-Commissioner of Corporation of Chennai, provided u/s 279(2) of the CCMC Act and the power conferred upon the second Respondent-Health Officer of the Corporation of Chennai by Section 44 of the Tamil Nadu Public Health Act, empowers them to proceed with the Petitioner, if in the opinion of the Commissioner the premises covered thereby are not kept in conformity with the conditions of such licence or with the provisions of any by-law made u/s 349 relating to such premises and Section 44 of the Public Health Act empowers the Health Officer to prevent a recurrence thereof in case of any default in the nuisance being continued and not abated. Therefore, the impugned action of the Respondents in sealing the premises in the occasion where the Petitioner continued to run the Hookah Bar contrary to the grant of licence for running the restaurant, and thereby, causing harmful pollution and irritating unbearable chimney noise affects the life and health of all neighbouring residents as well as causing public nuisance, is justified.

47. It is also admitted by the Petitioner in the additional affidavit that they are permitting and serving Hookah in the restaurant at a separate enclosure as contemplated u/s 7 of the Tobacco Products Prohibition Act and the term "tobacco product" as contemplated u/s 3(p) of this Act includes cigarette tobacco, pipe tobacco and Hookah tobacco as contemplated under the Schedule and as such, it is not a banned product. However, while taking a stand that they have not violated any terms and conditions of the licence issued by the Corporation, they admitted that they were selling tobacco products in their restaurant and undertakes to

discontinue the sale of tobacco in the event of this Court holding that the Petitioner is not entitled to sell or serve Hookah.

48. Considering the protection and safeguard guaranteed to the citizen under Article 47 of the Constitution of India and the object sought to be achieved as member-State of the WHO and the legislations provided as on date for prohibition of sale of cigarette or other tobacco products to a person below the age of 18 years and in particular, u/s 3(p) of the Tobacco Products Prohibition Act in an area within a radius of 100 yards of any educational institution provided u/s 6(b) of the Tobacco Products Prohibition Act and taking into account the noise pollution as pointed out by the Tamil Nadu Pollution Control Board, the notice issued u/s 44 of the Tamil Nadu Public Health Act calling upon the Petitioner to close the restaurant or otherwise, the Petitioner is liable to be penalised, cannot be said to be illegal and, therefore, the action of the Respondents so far contemplated is in accordance with the provisions of the Acts and therefore, the Petitioner's prayer for forbearing the Respondents from in any way interfering with the business, cannot be granted. Hence, the question is answered in the affirmative.

49. At this point, it is apt to refer to the observations made by the Supreme Court in [Ashok Lenka Vs. Rishi Dikshit and Others](#), which are as under:

25. The Act and the Rules deal only with control and Regulations. There is No. provision which gives any discretion to the authorities concerned to relax the provisions of the Rules. The Rules in this behalf again must be framed upon taking into consideration of all relevant factors. The State in making the rules and formulating the policy decisions must be guided by public interest. In such matters, the State has a positive obligation to ensure that any activity contemplated, strictly conforms to the requirements of public good and is not otherwise derogative of public health. The State parts with its exclusive privilege on certain statutory conditions such as payment of excise fee. When it lays down criteria for selection of persons who would become qualified for grant of licence under the Act, not only the eligibility criteria therefor should be laid down, but having regard to its past experience as to how and in what manner, the licensees find means and methods to circumvent the said provisions, all endeavours should be made to plug all loopholes. The State has an extremely solemn obligation to fulfil in that behalf. All information supplied by the applicants for licences, thus, must undergo and satisfy the "strict scrutiny test". The State should not treat its right of parting with its privilege only as a means of earning more and more revenue. It may certainly earn revenue but only upon fulfilment of its constitutional and statutory obligations. There exists a strong underlying notion of public health and welfare when the matter comes to retention of the exclusive privilege and/or parting therewith either in whole or in part.

Inception of Article 47

Article 47 of the Constitution reads as under:

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

27. The importance of Article 47 of the Constitution may have to be noticed tracing the history back from the date of Constitutional Debate. With a view to find out the intent and purport for which the said provision was inserted, Shri H.M. Seervai in his treatise, Constitutional Law of India, Vol. II, 4th Edn., p. 2012 noticed that all sections of the society including the Mohammadan community, whose social habits were reinforced by the Koranic injunction in relation to intoxicating liquor, supported the insertion of such a provision. The learned author stated:

The prohibition of intoxicating liquor had long been a part of the policy of the Indian National Congress; and its inclusion in Article 47 received support from the Mohammedan community whose social habits were reinforced by the Koranic injunction against intoxicating liquor. In considering the directive in Article 47, it may be observed that alcohol (the intoxicating ingredient of liquor) is a "narcotic", a word replaced by the word "depressant" to describe the same effects contrary to the popular belief that it is a stimulant. It is not mere accident that intoxicating liquor and dangerous drugs have been clubbed together in Entry 8 List II.

28. Article 47 has a unique feature in the sense that the first part refers to public health, whereas the second part specifically refers to prohibition of liquor. Similar provisions are found in the Constitution of US and Lithuania as well. It is of some significance to note that Section 70 was inserted in the draft Constitution after the first part was suggested by Shri B.N. Rau derived from the recommendations of the UN Conference on Food and Agriculture, 1943 as several members, including Seth Govind Das and Shri Bishwanath Das specifically wanted that prohibition should find specific mention at a suitable place in the Constitution. One of the members, Kazi Sayed Karimuddin expressed his desire that such a provision should be included in a separate article having regard to the preachings of Mahatma Gandhi and also having regard to the fact that the same has been approved by all communities. In Article 47, however, only liquor was specifically mentioned at the instance of Shri Bishwanath Das who opined that if prohibition of liquor is to be included in a separate article, other harmful articles like opium, tobacco and like products should also find mention in Article 47. (See CAD, Vol. VII, No. 9, pp. 496 to 498.)

Regulation of liquor vis-à-vis public health

29. Having noticed the parliamentary debate, we may also notice the importance of Regulation of liquor vis-à-vis public health.

30. In common parlance, public health tends to refer only to aspects of medical care and prevention of disease. However, a true interpretation of the term "public

health" will include not only this traditional notion but several other aspects that promote healthy living.

31. Public health refers to both a goal for the health of a population and to professional practices aimed at its attainment. In both senses, the term tends to be broadly defined. The Constitution of the WHO defines the goal as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The Institute of Medicine defines it as the fulfilment of society's interest in assuring the conditions in which people can be healthy. Public health, as the practice that pursues the goal of a healthy population, also has a broad definition, including the development of the social machinery, which will ensure to every individual in the community a standard of living adequate for the maintenance of health. [See Lawrence O. Gostin, Scott Burris and Zita Lazzarini, "The Law and the Public's Health: A Study of Infectious Disease Law in the United States", 99 COL.L. REV. 61 at 69 (1999)].

32. The relationships among medicine, public health, ethics and human rights are now evolving rapidly, in response to a series of events, experiences and struggles. In general people equate medical care with health, but the vast majority of research into the health of populations identifies so-called "societal factors" as the major determinants of health status. Public health, although starting as a social movement, has at least in recent years, responded relatively little to this profound knowledge about the dominant impact of society on health, such as behaviour like excess alcohol. Given that the major determinants are societal in nature, it seems evident that only a framework that expresses fundamental values in societal terms, and a vocabulary of values that links directly with societal structure and function, can be useful to the work of public health. [See Jonathan M. Mann, "Public Health and Human Rights", 25 American Bar Association Journal on Human Rights 2 at pp. 3-4 (1998)].

33. Grant of licence as a measure of control of intoxicating liquor is an age-old phenomenon. Even in England several statutes have been enacted therefor including the current one which was enacted in 2003. (See Halsbury's Laws of England, 4th Edn., Vol. 26, p. 5.)

50. It is placed on record before this Court that in similar circumstances, in the matter relating to eating house in Mumbai, wherein, the licence was granted, the Division Bench of the Bombay High Court, in its decision rendered on 5.5.2011 in Public Interest Litigation (Lod) No. 111 of 2011 (Crusade against Tobacco v. Union of India and others) held as follows:

The Commissioner of Police, Greater Mumbai has submitted a report dated 5th May, 2011 indicating the action taken in last three days.

1. Having heard learned Counsel for the Petitioner, learned Government Pleader and learned Counsel for the Municipal Corporation, Greater Mumbai Respondent

No. 6 it appears that the hukka bars are being run at places which are granted licence as eating houses. It however, appears that licences for running eating houses do not provide, as a part of the terms and conditions of licence, for stringent compliance with the provisions of Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Act, 2003 and rules made thereunder.

2. It would therefore, be necessary for the Municipal Corporation to incorporate such terms and conditions while issuing licences u/s 479 of the Mumbai Municipal Corporation Act, 1888, Section 479 empowers the Commissioner/Municipal Officer to impose stringent conditions subject to which licences may be granted. It goes without saying that the Municipal Corporation shall have to incorporate the necessary terms and conditions in the licences, including existing licences, to provide that licencees shall comply with the aforesaid statutory provisions and that breach of any of the provisions of the above Act and rules shall entail cancellation/suspension of licence. This shall be done within six weeks from today.

3. It also goes without saying that whenever police officers find that the provisions of the above Act and Rules are violated at any place which is granted licence as a eating house, the police authorities also must invite attention of the municipal corporation officers to such violations so that the municipal corporation can take necessary steps for cancellation/suspension of the licence.

4. It also appears that the state government as well as the municipal corporation will have to ensure that officers and staff members of the concerned department get familiar with the above statutory provisions.

51. In similar circumstances, the Andhra Pradesh High Court in the decision rendered on 7.6.2011 in W.P.M.P. No. 18012 of 2011 in W.P. No. 14994 of 2011 (M/S. Melange Enterprises (P) Ltd., (Mocha-Coffees & Conversations) v. Government of Andhra Pradesh, represented by its Principal Secretary for Home Department, Secretariat, Hyderabad and 3 others), passed the interim order as follows:

Pending further orders, Respondents are directed not to interfere with the business of the Petitioners in serving flavoured hookahs to their customers unless any violation of the provisions of the Act 34 of 2003 or any other enactment, which governs the serving of flavoured hookahs is pointed out. This order shall not preclude the authorities from taking action, if any statutory provisions have been violated in providing flavoured hookahs.

52. In view of the above stated legal position, as No. provision relating to Hookah has been incorporated in the licence issued by the Corporation of Chennai, and also in view of the prohibition made in the Tobacco Products Prohibition Act and the CCMC Act empowering the Commissioner or Municipal Officer to impose stringent conditions, subject to which, licence may be granted, the Corporation of Chennai shall have to incorporate necessary terms and conditions in the licence including the

existing licence as is done in the case of Mumbai Municipal Corporation, which, following the directions of the Bombay High Court, imposed the following conditions:

Restaurants serving hookahs should have a seating capacity of 30 persons or more and have a separate smoking area.

Smoking area should not be established at the entrance or exit of the restaurant.

They should be distinctively labelled "smoking area" in English and Marathi.

Smoking area should be used for smoking only and No. service (food/beverages) should be allowed.

Smoking area should be separately ventilated in the following way: It should be physically separated and surrounded by full height walls on all four sides and it should have an entrance with an automatically closing door, which should normally be kept in closed position.

The air from the area should be exhausted directly outside and should not mix with the air supply for the other parts of the building. It should be fitted with a non-recirculation exhaust ventilation system, an air cleaning system, or a combination of the two.

The smoking area should have negative air pressure in comparison to other parts of the building.

53. The following undertaking is also given by the Petitioner in the additional affidavit, dated 21.7.2011:

5. I humbly state that I will not sell any tobacco product in violation of the conditions of license.

6. I humbly state that I undertake to discontinue the sale of hookah in the event of this Hon"ble Court holding that I am not entitled to sell or serve hookah at the Petitioner"s restaurant.

54. In the light of the above position, as the Petitioner-restaurant is having licence up to 31.3.2012 and they are running the restaurant, and in the absence of any incorporation of the relevant provisions of law in the conditions of licence, I am of the considered opinion that the Petitioner, having a licence for running the restaurant, shall be allowed to continue as a vegetarian restaurant, as per the conditions stipulated in the licence and also the undertaking given by him not to run "Hooka Bar" in the restaurant.

55. Accordingly, the Respondents 1 and 2 are directed to remove the seal of the Petitioner-restaurant and permit them to run the restaurant, as indicated above. Liberty is given to the Respondents 1 and 2 to inspect the premises of the Petitioner-restaurant at regular intervals of time and during such inspection if any

violation of the conditions/special conditions of the licence and the relevant Acts/Rules/Regulations or the undertaking is found, they are at liberty to cancel or suspend the licence.

56. It goes without saying that whenever the Police officials find that the provisions of the relevant Acts and Rules/Regulations are violated at the places which are granted licence as restaurants, they shall invite the attention of the Municipal Corporation concerned to such violations, so that the Municipal Corporation shall take necessary steps for cancellation/suspension of licence. Also, the State Government and the Municipal Corporation shall ensure that the officers and staff members of the concerned Department are familiar with the above stated statutory provisions.

57. Writ Petition is disposed of in the above terms. No. costs. Consequently, the connected Miscellaneous Petitions are closed.

58. Before parting with the case, I am to state the following:

(i) The issue involved in this Writ Petition is of vital importance, as it relates to consumption of hookahs. In view of Article 47 of the Constitution, indisputably, public health in society plays a constitutive role. By the said expression, the makers of the Constitution refer both to the goal of health of the public and the attending promotion of healthy practices.

(ii) When a law is made, having regard to the phraseology used in Part IV of the Constitution, it is expected that law made or actions taken would be in furtherance thereof. In terms of the directive principles of State policy, the State is bound to make endeavours to promote public health which is one of the primary duties of the State. One important component of the said directions is Regulation and control over the trade in intoxicating drinks so as to enable the State to curb or minimise, as far as possible, the consumption thereof. The State may or may not prohibit manufacture, sale or consumption of tobacco made products but it is vital that while parting with its exclusive privilege to deal with intoxicating products, the provisions of the Act and the Rules for which the same had been enacted must be strictly complied with.

(iii) The Act and the Rules deal only with control and Regulations. There is No. provision which gives any discretion to the authorities concerned to relax the provisions of the Rules. The Rules in this behalf again must be framed upon taking into consideration of all relevant factors. The State in making the rules and formulating the policy decisions must be guided by public interest. In such matters, the State has a positive obligation to ensure that any activity contemplated, strictly conforms to the requirements of public good and is not otherwise derogative of public health. The State parts with its exclusive privilege on certain statutory conditions such as payment of fee. When it lays down criteria for selection of persons who would become qualified for grant of licence under the Act or the Rules,

not only the eligibility criteria therefor should be laid down, but having regard to its past experience as to how and in what manner, the licensees find means and methods to circumvent the said provisions, all endeavours should be made to plug all loopholes. The State has an extremely solemn obligation to fulfil in that behalf. All information supplied by the applicants for licences, thus, must undergo and satisfy the "strict scrutiny test". The State should not treat its right of parting with its privilege only as a means of earning more and more revenue. It may certainly earn revenue but only upon fulfilment of its constitutional and statutory obligations. There exists a strong underlying notion of public health and welfare when the matter comes to retention of the exclusive privilege and parting therewith either in whole or in part.

(iv) A healthy body is the very foundation for all human activities. In a welfare State, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. In a series of pronouncements during the recent years, the Supreme Court has culled out from the provisions of Part IV of the Constitution several obligations of the State and called upon it to effectuate them in order that the resultant pictured by the Constitution Fathers may become a reality. Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health, therefore, is of high priority - perhaps the one at the top.

(v) Health care of citizens is a problem with various facets. It involves an ever-changing challenge. There appears to be, as it were, a constant competition between Nature, which can be said to be responsible for new ailments, on one side and human ingenuity engaged in research and finding out curative processes. This being the situation, the problem has an ever-shifting base.

(vi) Provision in statutes or rules or instructions issued by executive authorities do not meet the demands of today's situation. The process of Regulation has to be strengthened. Law must be provided with sufficient biting teeth and there must be genuine apprehension in the mind of every person engaged in the trade that any infraction would be visited with exemplary punishment. The provisions of the statutes, therefore, deserve strict construction. In the prevailing situation in the country, unless the law is properly enforced, it would be difficult to regulate the hazardous activities.

(vii) This Court has great concern about the use of tobacco products in public restaurants so as to protect the citizens from harmful and hazardous activities, taking into account the very object of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the Tamil Nadu Public Health Act and the CCMC Act, and also taking into consideration the object of the WHO to its member-States

and the Constitutional obligation enshrined under Article 47 of the Constitution of India, as the Hookah and tobacco products will harm human-beings, particularly the youth and the younger generation.

(viii) Hookah smoke contains high levels of toxic compounds, including tar, carbon-monoxide, heavy metals and cancer-causing chemicals (carcinogens) and the Hookah smokers are exposed to more carbon-monoxide and smoke than are cigarette smokers; as with the cigarette smoking, the Hookah smoking is linked to lung and oral cancers, heart diseases and other serious illnesses; the Hookah smoking delivers about the same amount of nicotine as cigarette smoking does, possibly leading to tobacco dependence; the Hookah smoke poses dangers associated with second hand smoke; the Hookah smoking by pregnant women can result in low birth weight babies; the Hookah pipes used in Hookah Bars and Cafe may not be cleaned properly, risking the spread of infectious diseases; like many tobacco products, the use of pipes is linked to lung cancer and other respiratory and heart diseases; water pipe tobacco smokers are exposed to cancer-causing chemicals and hazardous gases such as carbon-monoxide; water pipe users are also exposed to nicotine, the substance in tobacco which causes addictive behaviour; one study found that most (more than 90%) beginning water pipe smokers believe cigarette smoking is more addictive than water pipe smoking and it is found in evidence that the use of water pipes is increasing throughout the world and the Hookah Bar is very endangering to public and public health.

(ix) Hookah Bars, which permit the youngsters to consume hookah either for enjoyment or for any other purpose, spoil the entire youth, as a result of which, not only the national and international interest will be affected, but the lives of entire mankind as a whole, as well. Therefore, unless the said activity is regulated by proper mechanism as contemplated under the relevant Acts and the Rules, it is impracticable to thwart the youth from using the Hookah Bars, and, for that purpose, even, the businessmen, who run the restaurants, must refrain themselves with self-discipline from opening and running the Hookah Bars as trade/business, in public interest, without having the aim of making money from such Bars, and, instead, they should caution the customers from consuming tobacco products, otherwise, it may have a serious impact on the society and the entire mankind of the world. Therefore, the need of the hour is to avoid consumption of Hookahs and tobacco related products, in which regard, every stake-holder of the society should take responsibility, so that every human being on the earth shall lead a dignified life, with good standard of living.

(x) The Governments and the authorities concerned are to take appropriate measures to regulate the Hookah Bars, by prohibiting or permitting them with stringent conditions, in exercise of the powers conferred upon them u/s 349 of the CCMC Act and they are to act immediately without any further delay upon the matter, taking into account the legislation, namely, the Cigarettes and Other

Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and other related laws.

(xi) The conclusion arrived at in the present case and the observations made hereinabove are inescapable in this situation. On the other hand, it is absolutely necessary for the State and the authorities concerned as well as all other stakeholders to achieve the constitutional goal to take immediate efforts in the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of usage of Tobacco products viz., cigars, cheroots, hookah tobacco, pipe tobacco, pan masala, etc., which are injurious to health, by taking stringent action on all traders, who use such products in Restaurants or Eating Houses, thereby desisting them from acting in a manner harmful to the entire society, particularly the younger generation. This observation is not only in the interest of the public at large, but it is also for the traders, who also have children that get attracted to tobacco products. Therefore, every stakeholder's attention has to be drawn to the above concern of public health, as, usage of tobacco is harmful to the society and this observation against usage of tobacco products has to be carried on to the public by means of mass campaign.

(xii) I am happy to add the recent information which I came across in one of the English Dailies, dated 29.07.2011 that the Ministry of Health and Family Welfare Department, Government of India has planned to launch its campaign against the usage of tobacco products from 15th August 2011 onwards, taking into account the large chunk of casualties i.e., 27% of the society, due to the usage of tobacco products which contains higher concentration of Nicotin and Carbon Monoxide, resulting in Cardio-vascular diseases.

(xiii) In view of my specific observation in paragraph 58(x), it is necessary to bring to the notice of the authorities concerned about the prohibition of tobacco products or making stringent conditions as referred above if there is any compelling circumstance for any purpose to take immediate steps to incorporate relevant provisions in relevant Acts and Rules, by circulating a copy of this order. Therefore, the Registry is directed to mark a copy of this order to (i) The Chief Secretary, State of Tamil Nadu (ii) The Secretary, Health and Family Welfare Department and (iii) The Secretary, Municipal Administration for taking immediate steps in this regard. With such anxiety and concern for the public, this Writ Petition is disposed of.

59. I hope and trust that the observations made by me as above would definitely serve as an eye-opener and a trend-setter for the entire society and also the Governments in containing the evil practice of consumption of hookahs in general and the tobacco related products in particular, for which purpose only, I have dealt with the matter in detail.