

Madhya Pradesh High Court

Shoeab Aslam vs Health And Family Welfare ... on 7 January, 2016

W.P.No.8704/2015

07.01.2016

Shri Vivek Sharan, learned Counsel for the petitioner.

Shri Ambar Pare, learned Counsel for respondent No.4

Shri Mukesh Parwal, learned Government Advocate for the respondent-State.

The petitioner before this court who is having a hotel business running in the name of Cafe' and Sheesa Lounge is aggrieved by the order dated 23/11/2015 passed by the District Magistrate, Indore by which the District Magistrate has directed the authorities to ensure compliance of the provisions as contained under the Cigarette Act read with Prohibition of smoking in public places Rules 2008.

The contention of the petitioner is that the order passed by the District Magistrate is bad in law as there cannot be a complete ban on smoking in hotels and hotels can certainly provide a smoking area, keeping in view the statutory provisions as contained under the provision of smoking in public places Rules 2008.

On the other hand, learned Government Advocate has vehemently argued before this Court that the Collector-Indore has taken into account, the judgment delivered by Apex Court in the case of Narinder S. Chandha & Ors. Vs. Municipal Corporation of Greater Mumbai & Ors. reported in AIR 2015 SC 756 and he has also taken into account the judgment delivered by this Court in the case of Restaurant and Lounge Vyapari Association, Bhopal and one another vs. State of M.P. And others in W.P. No.15487-2014 and thereafter, the impugned order has been passed.

It has also been stated that the order passed by the Collector makes it very clear that smoking is permitted in smoking zone and specifications of smoking zone are also provided in the order passed by the Collector.

The Apex Court in the aforesaid case has held that smoking can be permitted in smoking zones and this Court also in the case of Restaurant and Lounge Vyapari Association, Bhopal has taken a similar view. Paragraph 24 of the judgment delivered by this Court reads as under:-

24. Consequently, in my considered opinion, the order impugned annexure P/6, passed by the respondent No.7 is hereby quashed. As the life of the order, annexure P/7, has elapsed, however, subject to complying the observations, power under Section 144 Cr.P.C may be exercised by the District Magistrates. Accordingly, this petition is hereby allowed in part with the following directions:-

(I) As the sale of tobacco products is strictly prohibited to the persons below the age of eighteen years, and upto hundred yards of the educational institutions in the State, as per Section 6 of the COTP Act, however, directed that in case of any violation action ought to be taken applying the mandate of law. (II) As per section 4 of the COTP Act, smoking at a public place is prohibited subject to compliance of rule 3 and

rule 4 of the Rules of 2008. However, directed that in hotels, restaurants and at other public places smoking can be permitted within the ambit of rule 4 of the 2008 Rules.

(III) The hotel and restaurant owners cannot be permitted to offer Hookah or use of tobacco products by pipe or by "any other instrument" on each and every table under the garb of service; in fact it can be permitted in a smoking area or space only. However, it is directed that smoking may be permitted in hotel and restaurants only in the "smoking area or place", otherwise action may be taken in accordance with law. (IV) In view of the discussion made herein above and looking to the spirit of Section 144 of Cr.P.C. The District Magistrate may pass the order in case of emergent situation and to check the anticipated action, visualising danger to human life, health or safety or disturbance of the public tranquility and in other situations as specified. But, the repetitive orders seems to be of semi-perennial nature which is not permissible in law.

In light of the judgment delivered by the learned Single Judge and also the judgment delivered by the Hon'ble Supreme Court, the order of the Collector is in consonance with the Cigarette and other tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the cigarette and other tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 read with prohibition of smoking in public places Rules, 2008.

Resultantly, the admission is declined.

C.C as per rules.

(S.C. Sharma) Judge Karuna