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WP-46523-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 15<sup>th</sup> OF JUNE, 2026WRIT PETITION No. 46523 of 2025*M/S THE HIGH TRIBE**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Krishna Sharma - Advocate for the petitioner.*

*Smt. Priyanka Mishra - Govt. Advocate for respondents/State.*

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Reserved on : 14.05.2026

Pronounced on : 15.06.2026

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ORDER

The present writ petition has been filed under Article 226 of the Constitution of India seeking a writ of mandamus restraining the respondents from taking coercive action against the petitioner-firm in respect of serving herbal, tobacco-free and nicotine-free hookah in its restaurant premises situated at Rewa, Madhya Pradesh. The petitioner has also sought a declaration that no separate licence is required for permitting smoking of herbal hookah in a restaurant having seating capacity of more than thirty persons and compliant with the statutory smoking area requirements. The petitioner has relied upon various statutory provisions and prior orders of this Court, particularly the decisions placed on record as Annexure P/1, along with registration documents annexed as Annexure P/2, the Central Act as Annexure P/3, the Rules of 2004 as Annexure P/4, and the State Amendment



Act as Annexure P/5.

2. Factual Matrix of the case is that the petitioner is a registered partnership firm engaged in hospitality business under the name and style “The High Tribe”, operating a restaurant and bar unit within the same premises. It is stated that the establishment has a seating capacity exceeding thirty persons and maintains a physically segregated smoking zone in compliance 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”) and the Cigarettes and Other Tobacco Products Rules, 2004, as well as the Prohibition of Smoking in Public Places Rules, 2008. The petitioner asserts that it serves only herbal hookah which is completely free from tobacco and nicotine, and that no tobacco-based product is sold or permitted within the premises.

3 . The grievance of the petitioner arises from alleged action/communications by the respondent authorities threatening closure of the establishment and cancellation of licence on the ground that hookah service is impermissible. It is the petitioner’s case that such action amounts to a blanket prohibition, which is not contemplated under the Central Act or the State Amendment Act. Reliance is placed upon the amendment introduced by the State of Madhya Pradesh inserting Section 3(ea) defining “hookah bar” as an establishment where people gather to smoke tobacco or other similar product from a community hookah or narghile provided individually. The petitioner contends that the statutory definition clearly relates only to tobacco or similar products and does not extend to herbal,



nicotine-free hookah.

4. It is further stated that no order has been passed after hearing the petitioner, and the action is allegedly administrative and arbitrary in nature without statutory backing. The petitioner claims that identical issues have been considered by coordinate Benches of this Court in earlier writ petitions, wherein protection was granted permitting herbal and flavoured hookah subject to compliance with COTPA and subject to inspection by authorities.

5. Learned counsel for the petitioner submitted that COTPA, 2003 regulates tobacco products and prohibits smoking of tobacco in public places, but does not prohibit herbal or nicotine-free products. It was argued that Section 3(n) defines smoking as smoking of tobacco in any form, and Section 3(p) read with the Schedule covers tobacco products, including hookah tobacco, and therefore the statutory prohibition is confined to tobacco-based substances. It was contended that the petitioner's activity is strictly within the framework of law, as the establishment satisfies the requirement of seating capacity and maintains a segregated smoking area as contemplated under the Rules of 2004 and 2008.

6. It was further submitted that the State Amendment introducing Section 3(ea) pertains specifically to establishments dealing with tobacco hookah bars, and cannot be interpreted to impose a blanket prohibition on herbal hookah. Reliance has been placed on Annexure P/1, being orders passed in similar matters including W.P. No.25005/2023, W.P. No.21485/2024, and W.P. No.17636/2025, wherein directions were issued restraining coercive action subject to compliance with statutory provisions. It was urged that the



impugned threat is disproportionate, without any material showing violation of law, and violates the petitioner's right to carry on trade and business under Article 19(1)(g) of the Constitution, subject to reasonable restrictions.

7. Per contra, learned counsel for the respondents submitted that the State has enacted amendments to curb the misuse of hookah lounges, as such establishments may become centres for consumption of prohibited substances under the guise of hookah service, thereby affecting public health and law and order. It was contended that the authorities are empowered to ensure strict compliance with COTPA and allied regulations, and that preventive measures are necessary in the larger public interest.

8. It was further submitted that even if herbal hookah is claimed to be served, effective monitoring is required to ensure that no tobacco or nicotine-based products are used. The respondents maintained that regulatory oversight and inspection powers are available under the statutory framework, and that no establishment can operate in a manner contrary to public health norms. However, she fairly admitted that in the present case no action has been taken or proposed to be taken against the petitioner and thus, nothing remains to be adjudicated in this case.

9. Heard the parties through their counsels and perused the material available on record.

10. However, learned counsel for the State has submitted that no coercive action has been taken against the petitioner and his firm. Notwithstanding the said submission, considering that the matter raises a recurring question of law of general importance, which has been extensively addressed by the



parties, this Court considers it appropriate to adjudicate upon the issue on merits.

11. Upon careful scrutiny of the pleadings, annexures and the rival submissions, this Court finds that the core issue for determination is whether the respondent authorities can impose a blanket prohibition on the petitioner's establishment from serving herbal, tobacco-free and nicotine-free hookah in the absence of any specific statutory bar, and whether such action is sustainable in view of the scheme of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA), the Rules framed thereunder, and the State Amendment Act of 2023.

12. It is undisputed that the petitioner is a registered partnership firm operating a restaurant with seating capacity exceeding thirty persons and that it claims to maintain a physically segregated smoking area in compliance with the statutory framework. The petitioner has placed reliance upon Annexures P/2 to P/5 to demonstrate registration, statutory compliance and the relevant enactments. The statutory scheme under COTPA, particularly Sections 3(a), 3(n) and 3(p) read with the Schedule, makes it clear that the prohibition under Section 4 pertains to smoking of tobacco in public places, and "tobacco products" are those specified in the Schedule, which includes hookah tobacco.

13. The amendment introduced by the State inserting Section 3(ea) defines "hookah bar" as an establishment where persons gather to smoke tobacco or other similar product from a community hookah or narghile. A plain reading



of the provision indicates that the legislative intent is directed towards establishments facilitating smoking of tobacco or similar substances, and not towards herbal preparations devoid of tobacco and nicotine. In the absence of any material demonstrating that the petitioner is serving tobacco-based hookah, the mere apprehension of possible misuse, without concrete findings or inspection-based violation, cannot justify an absolute restraint amounting to a de facto blanket ban on herbal hookah.

14. At the same time, this Court is conscious that public health is a matter of paramount importance and that the regulatory framework under COTPA and allied rules is intended to prevent exposure to tobacco smoke in public places and to ensure compliance with prescribed safeguards. The power of the authorities to inspect, regulate and take action in case of contravention remains intact, and nothing in this order shall be construed as diluting the statutory prohibitions relating to tobacco products.

15. However, regulatory power must be exercised within the four corners of the statute and cannot extend to prohibiting activities not expressly barred by law. The principle that restrictions on trade under Article 19(1)(g) must have statutory backing and must be reasonable and proportionate applies with full force. In the present case, the petitioner has undertaken to comply with all applicable laws and to ensure that only herbal, tobacco-free and nicotine-free hookah is served strictly within the designated smoking area, and that no prohibited substances are introduced. Such an undertaking, coupled with the statutory framework, warrants protection from arbitrary coercive action, subject to compliance and inspection.



16. Accordingly, the writ petition is disposed of with the following directions:-

1. The respondents are directed not to take any coercive action against the petitioner-firm solely on the ground of serving herbal, tobacco-free and nicotine-free hookah, provided that the petitioner strictly adheres to and complies with all applicable statutory provisions, including but not limited to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the Cigarettes and Other Tobacco Products Rules, 2004, the Prohibition of Smoking in Public Places Rules, 2008, the Cigarettes and Other Tobacco Products (Madhya Pradesh) Amendment Act, 2023, municipal laws, fire safety regulations, licensing conditions, and any other law for the time being in force.
2. The petitioner shall ensure, as a continuing obligation, that no tobacco, nicotine, narcotic substance, psychotropic substance, drug, or any other prohibited or unlawful material is stored, possessed, served, mixed, promoted, or permitted within the premises under the guise or description of herbal hookah, and that the business activity remains confined strictly to herbal, tobacco-free and nicotine-free products.
3. The petitioner shall maintain proper physical segregation of smoking and non-smoking areas in strict conformity with the applicable statutory rules, including display of mandatory signage, compliance with seating capacity requirements, and adherence to all safety norms



prescribed under law.

4. The competent authorities shall remain at liberty to conduct inspection(s) of the premises at any reasonable time to verify compliance with the statutory provisions and the conditions stipulated herein, and the petitioner shall extend full cooperation for such inspection(s).
5. In the event any violation of statutory provisions, licence conditions, or the directions contained in this order is found during inspection or otherwise, the respondents shall be at liberty to proceed strictly in accordance with law, including initiation of proceedings for suspension, cancellation, or revocation of licence, imposition of penalty, or any other permissible action, after following due process of law.
6. It is further clarified that if the petitioner fails to comply with any of the conditions imposed herein, or is found indulging in activities contrary to the statutory framework, the protection granted under this order shall stand automatically withdrawn, and the respondents shall be entitled to take coercive measures as permissible under law without further reference to this Court.
17. With the aforesaid directions, the writ petition stands disposed of.

(HIMANSHU JOSHI)  
JUDGE

