

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 17TH DAY OF MARCH 2014

PRESENT

THE HON'BLE MR.JUSTICE K.L.MANJUNATH

AND

THE HON'BLE MR.JUSTICE RAVI MALIMATH

WRIT APPEAL NO.3428 OF 2009(L-SE)

BETWEEN:

1. The State of Karnataka
Represented by its Chief
Secretary,
Vidhana Soudha,
Bangalore - 560 001.
2. The State of Karnataka
Represented by its Secretary
Department of Labour,
M.S. Building,
Dr.B.R.Ambedkar Veedhi,
Bangalore - 560 001.
3. The Labour Commissioner
Karmika Bhavan,

Bannerghatta Road,
Bangalore – 560 029.

4. The Senior Labour Inspector
3rd Circle, Karmika Bhavan,
Bannerghatta Road,
Bangalore.

5. The Senior Labour Inspector
23rd Circle,
Karmika Bhavan,
Bannerghatta Road,
Bangalore.

...APPELLANTS

(By Sri A.G.Shivanna, AGA)

AND:

Vodafone Essar South Ltd
Prestige Blue Chip
Ground Floor, Block 1
No.9, Hosur Road,
Bangalore - 560 029
Represented by its
Head – Legal

Sri Sanjit Naresh Nagarkatti.

...RESPONDENT

(By Sri S.Vijay Shankar, Senior Advocate for Sri
D.M.Gururaj, Advocate)

This Writ Appeal is filed under Section 4 of the
Karnataka High Court Act praying to set aside the order
passed in the Writ Petition No.1901/2009 dated
05.08.2009.

This Writ Appeal coming on for hearing this day, K.L.Manjunath J., delivered the following:-

JUDGMENT

The legality and correctness of the order passed by the learned Single Judge in W.P. No.1901/2009, dated 05.06.2009, is called in question by the State in this appeal.

2. Heard Shri.A.G.Shivaanna, Additional Advocate General for the appellants and Shri.S.Vijay Shankar, learned Senior Counsel appearing for the respondent.

3. For the sake of convenience, the parties would be referred to as per their status before the learned Single Judge.

4. The petitioner is a company incorporated under the Companies Act, 1956 and carrying on the

business *interalia* providing of operating mobile telephone services in the State of Karnataka. The petitioner has obtained license from the Department of Telecommunication, Ministry of Communications, Government of India, vide License No 842-383/2001-VAS/Karnataka, dated 26 09.2001, to provide cellular mobile telephony services in the Telecom Circle of Karnataka. It has also obtained licenses in all other states to provide service within the country under the brand name 'Vodafone'. It is also the case of the petitioner that the petitioner runs telecom services in 60 countries all over the world under the brand name 'Vodafone'. 'Vodafone' has become a popularized trademark and has got its own goodwill in the mobile service.

5. The petitioner aggrieved by Rule-24A of the Karnataka Shops and Commercial Establishments Rules, 1963 (hereinafter referred to as 'Rules'), filed the

writ petition challenging the vires of Rule-24A on the ground that it is ultra-vires to the Rules formulated by the State and it is contrary to the aims and objects of the Karnataka Shops and Commercial Establishments Act. Rule-24A of the Rules reads as hereunder:

“24-A. Exhibition of name Board – The name Board of every establishment shall in Kannada and wherever other languages are also used, the versions in such other languages shall be below the Kannada version. The name Board in Kannada version shall be written more predominantly by providing more space than for other languages, if any:”

6. Rule-26 of the Rules also provides for penalty for contravention of Rule-24A. Contending that on account of Rule-24A, the petitioner who has spent crores of rupees on the sign-boards of the company has to remove all the sign-boards and fresh name boards has to be printed in Kannada, which would take away

the rights of the petitioner, since the name board 'Vodafone' is used by all over 60 countries through out the world. Therefore, the petition came to be filed to declare the provisions of Rules-24A and 26 of the Karnataka Shops and Commercial Establishments Rules, 1963 and Amendment Rule'2008 as void and unconstitutional and violative of Article-13 and 19(1)(a) of the Constitution of India and to issue a writ of certiorari to quash Rules-24A and 26 and also to quash Annexures - C and D, dated 16.01.2009, issued by respondent nos.1 to 5.

7. It was contended by the petitioner before the learned Single Judge that the Karnataka Shops and Commercial Establishments Act, 1961 (hereinafter referred to as 'Act') has been enacted to regulate the service conditions of work and employment in shops and commercial establishment and other incidental matters. When the Act has been enacted for upliftment

of the workmen and employees in the shops and commercial establishment in Karnataka while formulating the Rules, the Rules shall be inconsonance with the aims and objects of the Act and it cannot take away the very object of the Act. Therefore, it was contended that the Rules-24A and 26 are ultra-vires and liable to be struck down.

8. The State contested the matter contending that Rules-24A and 26 cannot be held ultra-vires or unconstitutional and the Government considering the aims and objects and incidental to the objects has directed all the shops and establishment to put the name board in Kannada, more predominantly by providing more space than for any other languages for the benefit of the workmen who work in those establishments. Since employees may not be knowing any other languages other than Kannada. Therefore, it

was contended that either Rule-24A or Rule-26 cannot be held as ultra-vires.

9. The learned Single Judge considering the rival contentions formulated the following question for his consideration:

“Whether Rule-24A of the Karnataka Shops and Commercial Establishments Rules, 1963 is ultra vires as beyond the delegated legislative power?”

10. It was contended by the State that on an earlier occasion, the vires of the Rules were questioned in the case of *Laxman Omanna Bhamane vs. State of Karnataka and Others* reported in *ILR 2002 Vol.2 KLJ 208*, and this Court has upheld the Rule and held that it is not in violation of the Constitution of India. The judgment is reported in *ILR 2002 Vol.2 KLJ 208*. Relying upon this judgment, it was contended before the learned Single Judge that when once the Rule has been

upheld, the same cannot be questioned by the petitioner again.

11. By way of reply, it was contended by the counsel for the petitioner before the learned Single Judge that the judgment in the case of Laxman Omanna Bhamane vs. State of Karnataka and Others, has no application to the facts of this case. Because what was considered in Laxman Omanna Bhamane's case is concerning Article-29(1) of the Constitution of India and did not consider the point raised the present case in considering the seriousness of Rules-24A and 26. Therefore, it was contended in Laxman Omanna Bhamane's case the Court had no occasion to consider the effect of Rule-24A read with Rule-26.

12. Considering the aim and the objects of the Act, the learned Single Judge considering the arguments advanced by the then learned Advocate

General and the learned Senior Counsel came to the conclusion that Rule-24A and 26, are not inconsonance with the aims and objects of the Act and are liable to be struck down. Accordingly, the writ petition came to be allowed and Rule-24A and 26 of the Rules, so far as imposing penalty for violation of Rule-24A was declared as ultra-vires. Aggrieved by the same, the present writ appeal is filed.

13. Shri.A.G.Shivanna, learned Additional Advocate General reiterating the grounds urged before the learned Single Judge contends that the learned Single Judge has committed an error in allowing the writ petition. According to him, Rule-24A and Rule-26 of the Rules, are not unconstitutional and violative of Article-13 and 19 of the Constitution of India. According to him, when the aim and objects of the Act is for regulation of the condition of the workmen and employees in the shops and commercial establishment,

the State thought it fit that the name boards shall be in Kannada for better understanding of the workmen who are working in such establishments.

14. He further submits that the learned Single Judge did not consider that in the adjoining states like Maharashtra and Tamil Nadu, similar Rules are framed and such Rules are not challenged. Therefore, the learned Single Judge should have held that for a better upliftment of the Kannada language and for the benefit of the workmen, the Rule has been framed and cannot be considered as ultra-vires. In such circumstances, he contends that the order of the learned Single Judge suffers from error and therefore he requests this Court to dismiss the appeal.

15. Per contra, Shri.S.Vijay Shankar, learned counsel appearing for the respondents submit that the judgment in the case of Laxman Omanna Bhamane has

no application to the facts of this case. Because there was no occasion for the learned Single Judge to decide the above said case of Rules-24A and 26 being ultra vires of the Act. While considering Laxman Omana Bhamane's case this Court considering only Article-29 of the Constitution of India held that the Rule was not violative of Article-29 of the Constitution of India. He further submits that merely because the commercial establishment in Tamil Nadu and Maharashtra have not challenged similar and identical Rules, it cannot be a ground for this Court to dismiss the petition.

16. According to him, even if the case of the State is accepted that the persons who are working in establishment does not know any language other than Kannada and for their benefit, the Rule has been introduced, it is not the case of the respondent-petitioner that they have not put their board in Kannada language. The contention before the learned

Single Judge was that as per Rule-24A the name board of the establishment shall be more predominantly in Kannada by providing more space than for other languages. Therefore, he contends that on account of such Rule the respondent-petitioner is unable to use his brand name which is predominant in all 60 countries and on account of the same, it would infringe the professional rights of the petitioner.

17. He further submits that as rightly held by the learned Single Judge the aims and objects of the Act is altogether different and Rule-24A and 26 are not framed inconsonance with the aim and objects of the Act. According to him, the name board of the respondent-petitioner contains Kannada language also, but it is below the English language and more predominantly the logo of 'Vodafone' is in English in all 60 countries is predominantly put in English at the top. Therefore, by putting the name board in Kannada

written below the English language will not in any way affect the regulation of the workmen, who work in such establishments. Therefore, he requests, the Court to dismiss the appeal.

18. Having heard the counsel for the parties, we are of the view that no error is committed by the learned Single Judge in allowing the writ petition for the following reason:

The learned Single Judge has rightly pointed that the judgment in the case of Laxman Omanna Bhamane has no application to the present facts of the case. Because what was considered in the aforesaid judgment was vis-à-vis Article-29 of the Constitution of India. While considering Article-29 of the Constitution of India, the Court has upheld Rule-24A as then existed. The learned Single Judge has also come to the conclusion that the State has got right to frame Rules under the

Act for better understanding and implementation of the Act. But Rules cannot prevail over the aims and objects of the Act. He also came to the conclusion that the appellant in a hurry to make a Kannada display board on the establishment has substituted Rule-24A by amendment by ignoring the limitation. He has also come to the conclusion that under the guise of delegated legislative power, the State cannot traverse beyond its limits of delegation nor frame such Rule which was not even contemplated under the provisions of the Act. In such circumstances, he came to the conclusion that these two Rules are ultra-vires and in violation of Article-19(1) of the Constitution of India.

19. The learned Single Judge after considering the aims and objects of the Act and the Amended Rules and in consideration various decisions cited by the learned counsel appearing for both the parties, has allowed the writ petition. Therefore, this Court cannot

hold that an error is committed by the learned Single Judge, more particularly, in the background of the Act. When an Act is enacted to regulate the working conditions of the common workmen and employees working in the shops and commercial establishment in Karnataka, the State could not have framed the Rules in the manner in which the name board of such establishments shall be there. Therefore, we do not find any merit in this appeal. Accordingly, the appeal is dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

JJ