

# IN THE HIGH COURT OF KARNATAKA AT BENGALURU

## ORDER SHEET PART - I

WP 25903/2018 (GM RES)

17038/18

C. Shashikanta

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R.S.A./M.F.A./M.S.A./W.P./C.R.P./C.P.

of .....

Appellant Petitioner LIMITED

UNION OF IND. Respondent

Appellant  
Advocate  
Petitioner

Date of Filing : 12/06/2018

Advocate for Respondent

SANJANTHI SAJAN POOVAYYA

### Office Notes

### Orders of Court

Receipt No: 39045/2018 Court Fee : 100

THIS WP FILED PRAYING TO:-

DECLARE, THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) SECOND AMENDMENT RULES, 2018 NOTIFIED BY G.S.R.331(E) DATED 03.04.2018 (ANNEXURE-A) ISSUED BY RESPONDENT NO.2 AS BEING ILLEGAL, INVALID, VOID AB INITIO AND ULTRA VIRES THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003 AND ULTRA VIRES THE CONSTITUTION OF INDIA; AND AS CONTRARY TO THE TRADE MARKS ACT, 1999.

GRANT AN INTERIM ORDER TO STAY THE OPERATION, EFFECT, IMPLEMENTATION AND EXECUTION OF THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PACKAGING AND LABELLING) SECOND AMENDMENT RULES, 2018



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**AKJ:**

31.08.2018

W.P.Nos.25903/2018 c/w

W.P.No.26091/2018

**ORDER ON INTERIM PRAYER**

Petitioners have sought for declaring the Cigarettes and Other Tobacco Products (Packaging and Labelling) Second Amendment Rules, 2018 (hereinafter referred to as 'Rules' for short) notified and Gazetted by GSR 331 (E) dated 03.04.2018 (Annexure-A) issued by second respondent as being illegal, invalid, void ab initio and ultra vires of Constitution of India and contrary to 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 'Act') and Trade Marks Act, 1999.

2. I have heard the arguments of Sri Sajjan Poovaiah, learned Senior Counsel appearing for petitioners and Sri C Shashikantha, learned Assistant Solicitor General of India appearing for respondents.





3. It is the contention of learned Senior Counsel appearing for petitioners that impugned Rules are exfacie arbitrary and illegal and if same is not stayed, petitioners as well as entire industry would be compelled to incur additional expenditure including foreign expenditure. He would elaborate his submission by contending that under the 2014 Rules which had come into effect from 01.04.2016 same had been challenged by the petitioners and similarly placed persons before this Court in W.P.No.4470/2015 & connected matters and Division Bench of this Court had struck down the amendment Rules 2014 as being in violation of Constitution of India and said judgment which has been challenged by the respondent in various Special Leave Petitions, has resulted in Hon'ble Apex Court granting an interim order of stay of the judgment rendered by Division Bench and subsequently it was made absolute and grant of stay of the judgment would not wipe out the judgment rendered by the Division Bench declaring the Rules as ultra vires of the Constitution and as such, Government of India would





not be empowered to further amend said Rule. By relying upon the following judgments, he prays for granting an interim relief as sought for:

- (i) **AIR 1992 SC 1439:**  
M/S.SHREE CHAMUNDI MOPEDS LTD., vs. CHUCH OF SOUTH INDIA TRUST ASSOCIATION, MADRAS
- (ii) **2007 SCC ONLINE CAL. 267:**  
PIYUSH KANTI CHOWDHURY vs STATE OF WEST BENGAL & OTHERS
- (iii) **AIR 2001 AP 226:**  
GOVERNMENT OF A.P AND OTHERS vs RAMI REDDY AND OTHERS

4. Per contra, Sri C. Shashikanth, learned Assistant Solicitor General of India would submit that very issue now involved are raised in the present writ petitions has been urged by similarly placed persons by filing an interlocutory application in the pending matters before the Hon'ble Apex Court. After hearing the arguments of the learned Advocates appearing for parties, Apex Court has declined to grant the stay of the amended/impugned Rules and has ordered for listing the interlocutory application along with main matter





and as such, he opposes grant of interim prayer as sought for in these writ petitions.

5. There cannot be any dispute to the proposition that interim order staying the operation of the order/judgment under challenge as sought would not operate or would not revive the impugned Act or Rule. However, in the instant case, the fact remains that Union of India in exercise of the power vested under sub-section (1) of Section 7, Section 8, Sub-section (2) of Section 9, Section 10 and Section 31 of the Act, 2003 has amended the Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008 by impugned amendment whereunder the pictorial depiction on the package has been ordered to be depicted as indicated in the amended Rules.

6. It is also not in dispute that above said 2008 Rules, which came to be amended from time to time insofar as depiction of pictorial warning on the package had been challenged by several petitioners including present petitioners before this Court in



W.P.No.4470/2015 & other connected matters and as already noticed hereinabove, the Division Bench of this Court has set aside the Amendment of Rules, 2014 as unconstitutional and declaring the same as ultra vires of the Constitution of India. Against the said order, several respondents including Union of India have filed Special Leave Petitions and matters are now pending before the Hon'ble Apex court in Special Leave Petition No.8786/2018 and connected matters and the Hon'ble Apex Court by order dated 08.01.2018 has stayed the operation of judgment and order passed by the Division Bench of this Court.

7. In the meanwhile, Union of India has further amended the Rules, which is impugned in the present writ petitions. In the light of this subsequent development having taken place during the pendency of Special Leave Petitions before the Hon'ble Apex Court, Karnataka Beedi Industries Association and Others filed an interlocutory application for a direction to the Union of India not to give effect to 2018 amended Rules

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(impugned Rules) till the disposal of Special Leave Petitions. The contentions raised by the learned Senior counsel in the present writ petitions is similar and identical to the grounds urged in the application filed by the Karnataka Beedi Industries Association before the Hon'ble Apex Court. While examining the said application the Hon'ble Apex Court, by order dated 16.07.2018 has directed the matter to be listed along with main matter during first week of August, 2018.

8. Hon'ble Apex Court while considering the opposition for grant of stay of the judgment rendered by the Division Bench of this Court, has also taken note of the contentions of the respondents therein, who are similarly placed as that of petitioners herein and in particular, the following contentions raised came to be examined:

"Refuting the aforesaid submissions advanced by the learned Attorney General for India and other learned senior counsel and Ms. Aishwarya Bhati, learned counsel appearing for the petitioner, Mr. Kapil Sibal, Mr. C.S. Vaidyanathan and Mr.



Ashok Bhan, learned senior counsel and other learned counsel appearing for the respondents submit that the learned Judges of the High Court though have expressed different opinions on various aspects, they have ultimately agreed for annihilation of the amended Rules for absence of empirical data. It is also propounded by them that grant of stay would tantamount to allowing of the special leave petitions at the stage of notice, which is not called for. Resisting the submission of the learned counsel for the petitioners, it is canvassed by them that the pictorial warning which has been projected, is absolutely horrifying as the pictures would fresco. That apart, when there has been no ban on the sale of the products, the rights of the respondents under Article 19(1)(g) of the Constitution is protected. According to them, the pictorial warning up to 85% is not a reasonable restriction and falls foul of Article 19(1)(g) of the constitution."

9. Said contention having been considered, examined and rejected by granting stay of the judgment passed by the Division Bench, has resulted in petitioners continuing to depict the pictorial warning on Tobacco packages as was existing as per 2014 Rules.

In that view of the matter, question of granting interim prayer as sought for in the present writ petition





particularly when the matter is seized by the Hon'ble Apex Court would not arise.

10. Even on equities, when the contention of learned Senior Counsel appearing for petitioners is examined, it requires to be noticed, that by the amended Rules, which is impugned in the present writ petitions, 85% pictorial depiction on the package, which is to be rotated, is now being sought to be substituted by another two pictorial depictions with a warning of **"Tobacco causes Cancer"** and **"Tobacco causes painful death"** in same percentage. By virtue of the order of Division Bench having been stayed, petitioners and similarly placed persons are undisputedly continuing to depict the pictorial warnings as per the amended Rules 2014, which came into effect from 01.04.2016 till date. As such, if pictorial depiction as per impugned amended Rules 2018 is depicted in the package, no hardship much less inconvenience would be caused to the petitioners. ✓



In that view of the matter, this Court is of the considered view, that it is not a fit case where interim order deserves to be granted. Accordingly, prayer for grant of interim stay of impugned Rules-Annexure-A is hereby rejected.

*Sd/-*  
**JUDGE**



TRUE COPY  
*[Signature]*  
Section Officer  
High Court of Karnataka  
Bangalore - 560 001

- a) The date on which the application was made.....5.9.18
- b) The date on which charges and addl. charges. If any, are called for.....
- c) The date on which the charges and addl. charges. If any, are deposits.....
- d) The date on which the copy is ready 7.9.18
- e) The date of notifying that the copy is ready for delivery .....7.9.18
- f) The date on which copy is delivered to the application 10/9/18