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**REPORTABLE**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION (L) NO. 4162 OF 2022**

- 1. FEDERATION OF RETAIL TRADERS WELFARE ASSOCIATE,**  
a registered Association/Trust through its authorized Signatory Mansukh Bhai, having its Registered office at C/o Bharat Raichand Shah, Memorial Hall, 4th Floor, Sardar Griha Building, LT Marg, Near Crawford Market, Mumbai-400002.
- 2. VIREN SHAH,**  
Indian Inhabitant, President of Federation of Retail Traders Welfare Association a registered Association/Trust having its Registered office at C/o Bharat Raichand Shah, Memorial Hall, 4th Floor, Sardar Griha Building, LT Marg, Near Crawford Market, Mumbai-400002.

...Petitioners

**~ VERSUS ~**

- 1. STATE OF MAHARASHTRA,**  
Through Deputy Secretary to the Government Industries Energy & Labour Department, Mantralaya, Mumbai-400032.
- 1A Additional Chief Secretary,**  
Home Department, Government of

Maharashtra.

**2. MUMBAI MUNICIPAL  
CORPORATION,**

A statutory body incorporated under  
the provision of the MMC Act, 1888,  
Municipal Corporation Buildinger,  
Mahapalika Marg, Mumbai-400001.

**3. MAHARASHTRA NAVNIRMAN  
SENA,**

2nd Floor, Matoshri Towers,  
Padmabai Thakkar Road, Shivaji Park,  
Mahim, Mumbai -400028.

**4. UNION OF INDIA,**

Through the Ministry of Commerce  
and Industry to be served at the office  
of Government Pleader/Addl Solicitor  
General of India having their office at  
Ayakar Bhavan, Mumbai -400021.

...Respondents

**APPEARANCES**

**FOR THE PETITIONER**

**Mr Mayur Khandeparkar,**  
*i/b Dipesh Siroya.*

**FOR RESPONDENT NOS.1 & 1  
(a)-STATE**

**Mr Abhay Patki, Addl GP.**

**FOR RESPONDENT NO.4-UOI  
FOR RESPONDENT -MCGM**

**Mr DP Singh.  
Mr Sagar Patil**

**CORAM : G.S.Patel &  
Madhav J Jamdar, JJ**

**DATED : 23rd February 2022**

**ORAL JUDGMENT (Per GS Patel J):-**

1. The Petition is filed by a Federation of Retail Traders Welfare Association and an individual. It seeks to challenge Rule 35 of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules 2018 framed under the Maharashtra Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2017. The Petition says that this Rule is *ultra vires* Articles 13, 19(1)(a), 19(1)(g) and, for some reason that we cannot readily appreciate, Article 21 of the Constitution of India. Then there is a prayer for a mandamus without a preceding demand for justice, although this has long been settled to be essential before a mandamus can be sought, to restrain Respondents Nos. 1 and 2 from taking any steps to implement the Rule. Respondent No.1 is the State of Maharashtra and the Respondent No.2 is the Mumbai Municipal Corporation.

2. It seems now to have become a habit in this Court to seek the high prerogative remedy of a mandamus without averring that the petitioner has made a demand for justice but this has been denied; or even making a demand at all, let alone explaining how the case fits in the few limited and well-known exceptions to the general rule. So far, we have allowed petitioners to make the necessary amendments. But this dereliction persists, as if writ law of several centuries' vintage is utterly inconsequential. So that there is absolutely no mistaking us on this score, we list a few of the very many decisions that make it plain that a demand for justice and its refusal are a sine-qua-non for the grant of a mandamus: *Commissioner of Income Tax v*

*Scindia Steam Navigation Co Ltd;*<sup>1</sup> *Kamini Kumar Das Choudhary v State of West Bengal & Ors;*<sup>2</sup> *Saraswati Industrial Syndicate Ltd & Ors v Union of India;*<sup>3</sup> *State of Haryana v Subhash Chander Marwaha & Ors;*<sup>4</sup> *Amrit Lal Berry v Collector of Central Excise, New Delhi & Ors;*<sup>5</sup> *State of Haryana & Anr v Chanan Mal & Ors;*<sup>6</sup> *Mani Subrat Jain & Ors v State of Harayana & Ors;*<sup>7</sup> *RXA De Monte Furtado v Administrator, Goa, Daman & Diu & Ors;*<sup>8</sup> *Director of Settlements, AP & Ors v MR Apparao & Anr;*<sup>9</sup> *Sesa Shipping Ltd & Anr v Board of Trustees of the Port of Mormugao & Anr;*<sup>10</sup> *Jaripatka Dalit Kalyan Mahila M&al v State of Maharashtra & Ors;*<sup>11</sup> *Bharat Petroleum Corporation Ltd & Anr v State of Maharashtra & Ors;*<sup>12</sup> *Qambeer Jeevaji & Ors v State of Maharashtra & Ors;*<sup>13</sup> *The United Goans*

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1 (1962) 1 SCR 788. "...it is well settled that no mandamus will be issued unless the applicant had made a distinct demand on the appropriate authorities for the very reliefs which he seeks to enforce by mandamus and that had been refused."

2 (1972) 2 SCC 420.

3 (1974) 2 SCC 630.

4 (1974) 3 SCC 220.

5 (1975) 4 SCC 714. "...a demand for justice and its refusal must precede the filing of a petition asking for a direction or writ of mandamus..."

6 (1977) 1 SCC 340.

7 (1977) 1 SCC 486. "... It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something..."

8 1982 SCC OnLine Bom 316 : (1983) 2 LLN 623 : 1983 Lab IC 1329.

9 (2002) 4 SCC 638; paragraph 17.

10 (2003) 105 (1) Bom LR 61.

11 (2004) 5 Bom CR 441.

12 (2009) 4 Bom CR 616 : 2009 SCC Online Bom 756.

13 (2010) 5 Mah LJ 484 : (2011) 3 Bom CR 299.

*Shanti Concern v Chief Secretary, Government of Goa & Ors*;<sup>14</sup>  
*Rajasthan State Industrial Development & Investment Corporation &  
Anr v Diamond & Gem Development Corporation Ltd & Anr*;<sup>15</sup>  
*Rajasthan State Industrial Development & Investment Corporation v  
Subhash Sindhi CHSL, Jaipur & Ors*;<sup>16</sup> *Rajesh Punraj Khobragade &  
Ors v State of Maharashtra & Ors*;<sup>17</sup> *Warsi CHS (Proposed) v Mumbai  
Municipal Corporation & Ors*;<sup>18</sup> *DN Jeevaraj v Chief Secretary,  
Government of Karnataka & Ors*;<sup>19</sup> *More Jeevan Yashwant & Ors v  
Mumbai Municipal Corporation & Anr*;<sup>20</sup> *Surendra Govekar & Anr v  
Village Panchayat of Anjuna-Caisua & Ors*;<sup>21</sup> *All India IDBI SC, Nav  
Buddhist & OBC Officers' Welfare Association v IBDI Bank Ltd.*<sup>22</sup>  
There are certainly many more. We may be labouring the point more  
than somewhat, but it seems to us inconceivable that all this learning  
should count for absolutely nothing.

3. In *DN Jeevaraj (supra)*, the Supreme Court put it like this:

“37. In such cases, that might not strictly fall in the  
category of public interest litigation and for which other  
remedies are available, insofar as the issuance of a writ of  
mandamus is concerned, this Court held in *Union of India  
v. S.B. Vohra* [ (2004) 2 SCC 150 : 2004 SCC (L&S) 363]  
that: (SCC p. 160, paras 12-13)

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14 2012 SCC Online Bom 1325.

15 (2013) 5 SCC 470.

16 (2013) 5 SCC 427.

17 2016 SCC Online Bom 5798.

18 2016 SCC Online Bom 4811.

19 (2016) 2 SCC 653.

20 2017 SCC OnLine Bom 10101.

21 2017 SCC Online Bom 8386.

22 (2017) 3 Bom CR 425 : 2017 SCC Online Bom 1830.

“12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King’s Bench (now Queen’s Bench) directing performance of a public legal duty.

**13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”**

**38. A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd. v. Union of India* [(1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)**

“24. ... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. **Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of**

**alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in Halsbury's Laws of England (3rd Edn.), Vol. 11, p. 106:**

**'198. Demand for performance must precede application. — As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.'**

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution."

*(Emphasis added)*

4. Petitioners and their Advocates who claim that their petition raises intricate questions of Constitutional law but proceed entirely oblivious of the settled law on mandamus deserve no indulgence. We reject the prayer for a mandamus.

5. We turn to the Rule in question. Rule 35 is extracted at page 10 and read thus:

**“35. Name Board to be in Marathi**

The Name Board of every establishment shall be in Marathi language in Devnagari Script and shall essentially be written in the beginning:

Provided that, the employer may also have the Name Board in any other language and script in addition to Marathi in Devnagari Script.

Provided further that, the font size of Name Board in Marathi shall not be less than that of the Name Board in any other languages:

Provided also that, no establishment where liquor is served or sold shall have a Name Board in the name of legends or fort.”

6. There is no dispute about the following. *First*, that establishments or shops less than 10 employees are exempted from requirement of Rule 35. *Second*, that there is no prohibition or bar in Rule 35 to the display in any other language or script of the name of the establishment.

7. Section 29 of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act 2017 says that a failure to comply with this Rule attracts penalties. These are punishable *inter alia* with fine of up to Rs.1,00,000. For continuing contraventions, there is a provision for a fine of Rs.2,000/- per day.



8. The first submission by Mr Khandeparkar on behalf of the Petitioners is that there is no rational nexus between the Rule and the object of either the Act or the Rules. It is submitted that the Rules are intended to carry forward or to further the statutory intent containing in the parent Act. This Rule cannot be traced, he claims, to any provision of the Act. Individuals cannot be put under the disabilities not contemplated by the Act.

9. The second submission is that while any State Government may adopt any one or more of the languages listed in the Article 335 of the Constitution as the language of the State, this is only for official purposes. That State's choice of language cannot be foisted on individual or citizens. The Maharashtra Official Languages Act, 1964 adopted Marathi as the official language for all purposes under Section 5. In this context our attention is drawn toward decision of the Hon'ble Karnataka High Court in *Vodafone Essar South Ltd vs The State of Karnataka*<sup>23</sup> by a learned Single Judge of that Court. We will return to a consideration of this decision a little later.

10. The next submission is that the impugned Rule violates Part III of the Constitution as it impermissibly curtails the freedom of expression of a citizen since it makes it mandatory for an establishment of more than 10 employees to have its name board in Marathi and that too in Devanagari script with font size not less than that of any other language. The submission is that State cannot dictate to any citizen in what language sign board must be displayed. Articles 14 and 19 gave an unfettered right to every citizen to be a

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<sup>23</sup> Writ Petition No. 1901 of 2009.

sole judge of that citizen's mode and medium of expression. Article 14 protects everyone equally.

11. It is then submitted that Article 29 protects the interest of minorities and permits those with the distinct languages, scripts or cultures to conserve and propagate these. A compulsion to display the script other than the choice of minority thus infringes a constitutional guarantee. Therefore, while the State may use any language of its choice as its official language, it cannot force or foist that language on citizens.

12. Finally, it is submitted that Marathi as a language is constitutionally recognized. It is at Serial 13 of the VIII Schedule to be read with Articles 344 and 351 of the Constitution. But the Devanagari script is not so recognised. Marathi as a language be written in many scripts. There can be no compulsion to use only the Devanagari script. In this context reference is invited to decision of Allahabad High Court in *Raza Buland Sugar Co. Ltd vs Municipal Board, Rampur* for the proposition that there is difference between a language and a script. That may be true, but it is of little consequence to this matter.

13. We do not find the slightest substance in any of these submissions. The Act and its purpose has been wholly misunderstood. The Act replaces an older statute and does so for specific reasons. The Statement of Objects and Reasons of the Act says this:

The Maharashtra Shops and Establishments Act (LXXIX of 1948) is enacted to **consolidate and amend the law relating to the regulation of conditions of work and employment** in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments.

2. The recent information and technology have revolutionized the mode of trading whereby it is possible to sell goods and services online without any physical, and geographical limitations and time limitations being available for twenty-four hours. Therefore, the provisions of the said Act of keeping a shop or establishment closed for a business on one day of the week and to restrict the opening and closing hours of establishments have become obsolete. **It has become necessary to provide even platform for offline business to compete with online business and to permit to operate shops and establishments for twenty-four hours and all days in a week. It will help employment generation at large and to increase Gross Domestic Product.**

3. In line with the “ease of doing business” policy of the Government, it is necessary that the marginal and small establishments engaging less than ten employees need to be liberalized from registration under the Act and to provide all the services under the Act online based on self-declaration and self-certified documents. **It is also necessary that the employees in the shops and establishments should have uniform working conditions. All the welfare measures should be applicable to workers so as to improve their health and well being which in turn will increase their productivity.**

**Also due to the increase in the literacy percentage of women, numerous avenues for job and employment for women workers are available. Allowing them to work in night shift on par with that of men workers subject to certain reasonable terms and conditions particularly regarding their health, safety and honour will increase their earning capacity resulting in their empowerment.**

4. The Central Government has also circulated a model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016, which has been finalised after detailed deliberations and consultation process, to all the State Governments for consideration.

5. In view of the above, the Government of Maharashtra considered it expedient to enact a new law, on the lines of the model Bill circulated by the Central Government, for regulation of conditions of employment and other conditions of service of workers employed in various establishments by repealing the existing Maharashtra Shops and Establishments Act.

6. The Bill seeks to achieve the above objectives.

*(Emphasis added)*

14. The Rules are framed under Section 37(1) to advance these objects. There is a definite public purpose that is sought to be achieved by Rule 35 if read correctly. What the Petition wholly fails to recognise is that this requirement is not meant to benefit retail traders but is meant for the convenience and benefit of workers and the public who approaches these retail outlets. These are persons who, in the estimation of the State Government and as a matter of

policy, are more likely to be familiar with Marathi as written in the Devanagari script. We are mindful that there are parts of the country where there is a practice of not using any other language or script other than the local script. That is not the case here. No other language or script is prohibited or banned. The requirement, therefore, of displaying a commercial name in Marathi and in the Devanagari script is a reasonable requirement, with a rational nexus to the object of the Act.

15. We expressly reject the argument that there is no nexus at all between the Rule and the object of the Act. As we have noted there is broader public purpose. It is rational. While that nexus may not be apparent to the Petitioners, it is quite self evident to us. As to the decision of learned Single Judge in regard to corresponding Rule introduced in Karnataka by an amendment, with respect we find ourselves unable to agree with the reasoning. We also note that the provision there was to show the name board in Kannada language more predominantly by providing more space than for any other language. There was also fact that this was sought to be introduced merely two days' notice. The relevant Rule said that the name board of every establishment shall be 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.

16. We cannot divorce the operation of that Rule from the sheer geographical ambit to which it applies, i.e. the State of Maharashtra. Marathi is not merely the official language of the State Government;

it is undeniably the common language and the mother tongue of the State. It has its own extremely rich and diverse cultural tradition extending to every field of endeavour from literature to theatre and beyond. There are texts that are in Marathi and these are expressed and written in Devanagari. Indeed, and not to put too fine a point on it, even in this High Court, we permit documents to be produced in the original Marathi in Devanagari script although the language of the High Court is English. We do not insist on translations unless required by a particular Bench or Judge. It is the right of every litigant who comes to this Court to place before the Court a document in Marathi. Translations are made available on request for the convenience of the Court. To say, therefore, that there is some sort of invidious discrimination is equally wholly untrue. If any retailer wishes to carry on a trade or business in Maharashtra it must be subject to such conditions that the Government of Maharashtra seeks to impose uniformly on all. Clearly, there is no discrimination under Article 14.

17. Rights under Article 19(1)(a) are not, as the Petition quite wrongly puts it, absolute or unfettered. There is Article 19(2) to take into consideration.

18. The distinction sought to be drawn between language or script is, to our mind an argument of their desperation. A name written in Roman script cannot be said to be in Marathi. The natural script for Marathi is Devanagari. And Devanagari itself was preceded by another script. Marathi is never naturally written in the Roman script. Obviously, there are situations where the language and script will go hand in hand.

19. We cannot but held wonder what is the real intent and purpose of this Petition at all, particularly given the fact that Rule has been in existence since 2018. Certainly the 1st Petitioner, a Federation of Retail Traders and Welfare Association, could not have been unaware of the existence of the Rule. Indeed, this Rule existed even prior to 2018, though its operation was stayed. The point is that the Petitioners could not have become aware of this Rule only in February 2022.

20. It is in this context that we are persuaded by Mr Patki's limited address on behalf of the 1st Respondent to take a closer look at paragraphs 12 to 14 of the Petition. They read as follows:

“12. The Petitioners state that it is pertinent to note whenever elections are going to be held Political parties comes out with an idea/strategy to consolidate its Marathi Manoos pitch. This time also same is been done by the Respondent by amending the rule No.35 as pursuant to the said amendment the said rule shall be applicable even to the small shops that employ 10 or less workers. It seems that Respondents forgets that in a city of Mumbai Marathi population are downgrading their mother tongue to such a level that legal methods are used to implement its use where its applicability has always been under the scanner.

13. The Petitioners state that the it is pertinent to note that thousands of Marathi medium schools are closed because of lack of effort to offer the new generation to study Marathi. In Mumbai alone, the number of students in the Marathi medium schools has come down to one third of its strength 10 years ago. According to a report, there were 35, 181 students in the academic year 2019-20, down from 1,02,

214 in 2010-11. Most of Marathi schools are turning into 'English mediums'. In most of schools of Mumbai which are now converted IB board Marathi is an optional subject.

14. The Petitioners state that they welcome decision of Respondents but the question is if the Marathi (medium) schools don't survive, how will resident who can read signs placed on the roads, squares and shops. Some 130 Marathi medium schools in Mumbai have shut. It is sad to note that the political parties only and only during the election times uses Marathi agenda and when are in power do not take any steps to strengthen these schools?"

21. Mr Patki is right. This quite clearly lays bare the true intentions of these Petitioners. And they are not bona fide. They are not legal. They appear to be entirely politically motivated, for what purpose we do not know. But we strongly deprecate the mindless deployment of such ad hominem assaults on the very people the Petitioners have chosen to live amongst and to do business with.

22. We do not think appropriate to exercise our discretion under Article 226 of the Constitution of India.

23. We reject the Petition. Because of the wholly inappropriate and deplorable inclusion of paragraphs 12 to 14 in this Petition, we deem this appropriate case to make an award of costs against the Petitioners, who are directed to pay an amount of Rs.25,000/- into the Chief Minister's Relief Fund within one week from today. If the costs are not paid, liberty to Mr Patki to apply.



24. All concerned will act on production of a digitally signed copy of this order.

**(Madhav J. Jamdar, J)**

**(G. S. Patel, J)**