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LIPTON INDIA LTD. ETC.

v.

STATE OF MAHARASHTRA AND ANR.

AUGUST 6, 1996

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[M.M. PUNCHHI AND K. VENKATASWAMY, JJ.]

*Bombay Shops and Establishments Act, 1948 :*

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*S.7—Registration of establishments—Prosecution of Companies on failure to get establishment registered—Tea Companies maintaining godowns/Depots in 1968 with—Only one sales-man opening and closing the godown/depot for taking out and putting in tea packets—Salesman loading tea in push-cart and offering sales in the market from door to door—Held, the practice being in use about three decade back, and there being in operation stay granted by this Court, as also days of push-carts and their being operated manually are gone, the companies would not be prosecuted for alleged lapse in not having their establishments registered—However, should the present modus operandi still require registration, they would be obliged to do so on failure of which they would attract prosecution.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 71-72 of 1974.

From the Judgment and Order dated 22.12.72 of the Bombay High Court in Misc. P. No. 621/67 and Special Civil Application No. 528 of 1968.

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G.B. Pai, S.K. Dholkia, O.C. Mathur, Ms. Mcera Mathur for J.B.D. & Co., P.H. Parekh, Arvind Sharma, D.M. Nargolkar, Ms. J.S. Wad and Mugul Mudgal for the appearing parties.

The following Order of the Court was delivered :

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The two appellants before us in these respective appeals are Lipton India Ltd. and Brook Bond India Ltd., two well-known companies dealing in tea. Somewhere in the year 1968, these companies were in doubt as to whether their upkeep of godowns would bring them within the ambit of the Bombay Shops and Establishments Act, 1948, in the presence of only one salesman opening and closing the Godown for taking out and putting in tea packets. The modus operandi suggested by the companies was that tea

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was stocked in those godowns depots and a salesman appointed would take out tea, load it on a push-cart, manually operated by a labourer and sales offered in the market from door to door. At the end of the day, the remainder is brought back and put in the godown/depot. On these facts, opinion of the Government was sought by the companies whether they were required to have their establishments registered under Section 7 of the Act. They were told that they had to, on the failure of which prosecution would be launched. And as we are told prosecutions were launched.

The twin challenge of the appellants to the constitution validity of the notification, supposedly bringing them within the ambit of the Act and the State's view of the matter on the limited activity of the salesman in his godown/depot, a pattern adopted throughout the country, failed before the High Court in writ proceedings which has given rise to these appeals.

From the lengthy pleadings of the parties and the discussion made by the High Court, we would be required to put at rest the legal consequences of the limited activity of the salesman. As is plain, the days of push-carts and their being operated manually by a labourer are over. The prosecution of the companies is also stale as nearly three decades are about to go by. There was a stay operating, as granted by this Court. In these circumstances, Mr. Dholkia, learned senior counsel appearing for the State, is fair enough to state that the companies would not be prosecuted for the alleged lapses in not having their establishments registered under Section 7 of the Act. In view of this stance, Mr. Pai, learned senior counsel, states that the pleaded fact situation does not warrant that there should be a pronouncement as it is part of the past; mobility of goods now being otherwise than by push-carts. In view of the respective stances adopted, we close these matters. The appeals shall be taken to have been disposed of. It is made clear that should the present modues operandi of the appellants still requires registration under Section 7 of the Act, they would be obliged to do so, on the failure of which they would attract prosecutions. No costs.

R.P.

Appeals disposed of.