

Lipton India Ltd. and Others

Vs

State of Maharashtra and Another

Civil Appeals Nos. 71-72 of 1974

(M. M. Punchhi, K. Vankataswami JJ)

06.08.1996

ORDER

1. The two appellants before us in these respective appeals are Lipton India Ltd. and Brooke 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 (79 of 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 was stocked in those godowns/depots and a salesman appointed would take out tea, load it on a pushcart, 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.

2. The twin challenge of the appellants to the constitutional 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.

3. 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 pushcarts 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 Dholakia, the 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 pushcarts. 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 modus operandi of the appellants still require 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.