

(1983) 07 CAL CK 0017
In the Calcutta High Court
Case No : Civil Rule No. 6211 (W) of 1977

Lipton (India) Limited and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 114

West Bengal Shops and Establishments Act, 1963 — Section 2(13)

Citation : AIR 1984 Cal 109 : (1984) 1 CALLT 87 : (1984) 1 CHN 6

Hon'ble Judges : Manashnath Ray, J

Bench : Single Bench

Advocate : B.C. Dutt, R.N. Das and Shib Kumar Mazumdar, for the Appellant;

Judgement

Manashnath Ray, J.—Although this Rule which was obtained on 23-12-1977, challenging a notification dated 12-2-1975 u/s 2(13), West Bengal Shops & Establishments Act, 1963 (hereinafter referred to as the said Act) and the validity of certain provisions of the said Act and the Rule was made ready as regards service on 6-9-1968, Nobody has either appeared for the respondents or taken any steps to file any affidavit-in-opposition on behalf of them. It should be noted that while issuing the Rule, there was an interim order made, restraining the respondents concerned from giving effect to the notice as impeached and from enforcing the provisions of the said Act to their depots/godowns and from taking any Civil and Criminal proceedings against the petitioners for not implementing the provisions of the said Act to their depots until the final disposal of the application, for a limited period and such interim order was thereafter directed to continue on 5th January 1978. till the disposal of the Rule, with a further liberty to the respondents to apply for variation or vacation of the same, with notice to the petitioners.

2. The petitioner 1, Lipton (India) Ltd., (hereinafter referred to as the said Company), is a Company incorporated under the appropriate laws of the United

Kingdom and petitioner 2, is employed as one of the Branch Managers of the said Company's Branch office at Calcutta. It is well known that the said Company carries on the business of blending, packeting and selling teas under its own brands and name all over India. It has been stated that for such purposes, the said Company has its branches at Delhi, Bombay, Madras, Calcutta, Nagpur and Ahmedabad. It was the case of the petitioners that the blending and packeting of tea is done in the factories situated at Calcutta and Madras and throughout the country the said Company has its own depots, where stocks of tea are kept stored and each of such depots is in charge of a salesman employed by the said Company. It has been stated that the nature and functions of work of a salesman to such depots as mentioned above are as here-under:--

(a) The depot is used exclusively for the purpose of storing the petitioner Company's teas which are blended and packed at its factories mentioned above. No sale is made within the depot premises nor are any customers served therein nor is any business transacted therein at all. As a matter of fact, a notice is displayed outside each depot which declares, and the said Company has also specifically directed that "CUSTOMERS ARE NOT SERVED AND SALES ARE NOT ALLOWED INSIDE THESE PREMISES". It was also the case of the petitioners that those depots are not connected with any premises, which would be a shop within the meaning of Section 2(13) of the said Act. Section 2(13) defines "shop" meaning thereby any premises used wholly or in part for the sale of services to customers or for the wholesale or retail sale of commodities or articles, either for cash or on credit, and includes any offices, store rooms, godown or warehouses, whether in the same premises or elsewhere, used in connection with such sale or with the storage of commodities or articles for the purpose of such sale and also includes such other class or classes of premises as the State Government may, after taking into consideration the nature of the work carried on there, by notification, declare to be shops for the purposes of this Act, but does not include an establishment.

Explanation: If any doubt arises as to whether any premises are a shop or a commercial establishment or an establishment for public entertainment or amusement, the question shall be referred to the State Government by the registering authority, suo motu or an application and the decision of the State Government thereon shall be final and it was the specific case of the petitioners that each depot is in charge of one salesman whose duty is to collect the goods from the depot and carry them in the local and outstation markets with the help of a mazdoor or/and handvan, depending on the circumstances and situation of the market. The salesman canvasses the petitioners' tea and supplies to wholesalers and retailers at their respective shops. Since the nature of work of a salesman is inherently intermittent, the petitioner company cannot fix any rigid hours of work for him and from the very nature of things it is not possible to do so. The salesman canvasses the petitioner company's tea at each dealers' premises and supplies the stocks then and there against cash payment. The duties of the salesman include distribution of tea to hot tea shops and canteens

which generally operate in early hours of the day and also visiting Markets in village interiors. For the purpose of collecting the stock of tea the salesman opens the depot for about half an hour in the morning and after completing his round in the local or outstation markets, he again opens the depot at the end of the day for about another half an hour to put back the unsold stocks. The depot remains locked up for the rest of the period. The opening and closing of the depot depends on the exigencies of business and also upon the timings of trains and biases by which the salesman has to travel for his outstation market working. The petitioner fixes an itinerary for each salesman and he has to visit the area or the market according to the said itinerary. The depot is kept completely closed one day in a week and that day is also a rest day for the salesman. The salesman keeps an inventory of stocks received at and stocks taken out from the depot and sends periodical report to his Branch Office. The salesman is an employee of the petitioner company who is being paid a basic salary, dearness allowance and incentive remuneration (commission) at a particular rate on the quantity of stock sold by him. He is also paid some allowance to reimburse the scheduled expenses to be incurred by him in the course of his duties of canvassing and distributing the petitioner's tea. The salesman is given the benefits of leave, provident fund, gratuity etc., under his terms and conditions of employment and his services are transferable to any place in the Branch territory. It has been claimed by the petitioners that the depot system of distribution and sale of packet teas as mentioned above is a unique system and was developed by them after many years of experience in the tea trade in India.

3. It has been claimed that since no sale, either wholesale or retail nor any business transaction has taken place within any of such depots or any services rendered to the customers therein, those depot premises of the said Company could neither be described as "Commercial establishment", which u/s 2(2) of the said Act, means an advertising commission, forwarding commercial agency, or a department of a factory or of any industrial or commercial undertaking, an insurance company, joint stock company, bank, broker's office or exchange, and includes such other class or classes of concerns or undertakings as the State Government may, after taking into consideration the nature of their work, by notification, declare to be commercial establishments for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement or a shop, the meaning and definition whereof has been mentioned hereinbefore. The petitioners have stated that by a letter of 3-10-80, they represented to the Chief Inspector, Shops & Establishments, West Bengal, seeking confirmation that by their constitution, nature and function they did not come within the meaning of Commercial Establishment/Shop as mentioned above and thereafter, there were several correspondence with the authorities under the said Act for similar confirmation but they proved to be futile and ineffective.

4. The impugned notification bearing No. 636-IR dated 12-2-1975,

which was to the following effect :--

In exercise of the power conferred by Clause (13) of Section 2, West Bengal Shops and Establishments Act, 1963 (West Ben. Act XIII of 1963), the Governor is pleased hereby to declare, after taking into consideration the nature of work carried on in all the premises used as depot for storage of commodities for sale at customers' premises to be shops for the purpose of the said Act, was issued by the authorities concerned.

5. It was claimed by the petitioners that Section 2(13) of the said Act, requires the State Govt. to make specific enquiries in the nature of work carried out on any specific premises/depots, before dealing with the same or declaring the same to be a shop for the purpose of- the said Act. It was claimed, that in the instant case, the Government of West Bengal did not make any enquiry as to the nature of the work carried on by the petitioners in their depots as contemplated by the said Section 2(13) and it has further been alleged that everything has been done in the instant case behind their back and the notification has been issued mechanically, without application of mind in respect of any particular depot premises. It was also submitted by the petitioners that the classes of store-rooms and godowns or warehouses which can come within the meaning of the word "shop" having been clearly defined in the first part of the definition in Section 2(13) of the said Act, the State Government was not authorised to issue such a notification as in this case which would alter, amend or modify the meaning of store-rooms, godowns or warehouses as defined in the said Act or by the provisions of the same.

6. It was the further case of the petitioners that since their depot premises are not connected with any other shops and as the selling activities of their salesman take place in the local and outstation markets, the notification as impeached, would have no application to the said Company's depots and accordingly, they made another representation to the Chief Inspector Shops & Establishments. Government of West Bengal, on 6-3-1975, seeking confirmation about the non-applicability of the notification in question to their depots and to the effect their salesman do not come within the purview of the said Act. As there was no reply, the said Company made a further representation on 10-11-1976. It has been stated that in spite of repeated representations, seeking confirmation to the above effect, no final decision in writing has been communicated by the authorities under the said Act, but, on the other hand, the local Inspector of Shops & Establishments have been threatening the said Company's salesman to take proceedings under the said Act, for not registering the depots under the said Act. On such, the said Company again, on 4-11-1977, made a representation and replied to the queries as raised by the Inspector as mentioned above.

7. It was claimed by the petitioners that impugned notification would have no

application to their depots as u/s 2(13) of the said Act, the State Government would not be authorised by notification to declare any class or classes of premises as "shop" and such power, if at all, can be used and exercised in respect of such other class or classes of premises, which would mean and include premises which are connected with or used in connection with an existing shop. It has been contended that since the petitioners have no premises, which is a shop within the meaning of the earlier part of the definition of "shop" u/s 2(13), the depots of the petitioners could not be brought within the purview of the meaning of "such other class or classes or premises" as indicated above. It was also contended that u/s 2(13) of the said Act, the State Government has no power or authority to issue general notice in respect of all the premises used as depots for storage of commodities", more particularly when the said section contemplates the issue of notification in respect of particular premises, which has been considered by them. It was also claimed that if such notification was meant for general application for any "shop" of the said Company, the authorities concerned should have given them the necessary opportunities of hearing before issuing the same and the failure to give such opportunity has rendered the notification to be void and against principles of natural justice. As such, the notification has been claimed to be void and ultra vires Section 2(13) of the said Act.

8. Apart from the above, it was claimed and contended that the functions and characteristic of the depots as mentioned above are such that the provisions of the said Act, which apply to shops, would have no application to the depots as mentioned and indicated above. In fact, it has been claimed that these provisions would be impossible to be applied in the depots of the said Company, not only in a commercial sense, but also from practical point of view as Section 6 (1) and (2) of the said Act impose restrictions on daily and weekly hours of work. The nature of work of the petitioner Company's salesmen, being, inherently intermittent and the salesmen's work also being like travellers/canvassers, it is not possible to fix any hours of work for them. Under the present depot system, the petitioner company only fixes the itinerary for each salesman, the salesman visits the local and outstation markets according to the itinerary and according to the time which he considers suitable. The petitioner company, however, does not expect its salesman to work in excess of the hour of work as provided in the said Act and the itineraries are so fixed that the salesman can do his work well within the hours of work prescribed u/s 6 of the said Act. It has been claimed that Section 2(13) of the said Act requires every employee to be given an interval of rest after every 5 hours of work. Since the hours of work for the salesmen cannot be fixed for the reasons stated above it is not possible to fix the interval of rest for the salesmen. As already explained, the salesman has the liberty of taking his rest for meals, etc., at any convenient time, and Section 6(4) of the said Act requires that the period of work of any employee in a shop so arranged along with his intervals for rest shall not spread over more than 10 1/2 hours in any day. The nature of the petitioner Company's salesman being

inherently intermittent and the salesman's work also being like traveller and canvasser it is not possible to rigidly fix the spreadover of work as required u/s 6(4) of the said Act, apart from claiming that Section 17 of the said Act requires certain Registers and Forms to be maintained at the Establishments as prescribed under the Rules. Since the salesman's work is entirely out door and as no other salesman's works inside the depot premises (which remains closed except for a few minutes in the morning and for a few minutes in the evening when the salesman collects and puts back his stocks of tea). It is not possible to maintain the Registers and Forms at the depot premises. If the salesman required to do clerical job of maintaining the registers and forms their sales work in the market is bound to suffer. In addition to the above it has been stated that Section 13 of the said Act requires overtime wages to be paid to the employees. If the said Act is made applicable to the depots. Section 13 of the said Act would require the petitioner company to calculate and pay overtime wages to the salesman. Since the nature of the work or the work of salesman (and also the mazdoors who assist them in carrying the stock of tea) is inherently intermittent it is not possible to keep a check on the actual hours which to salesman might be said to be working for the purpose of overtime. In view of the above, the provisions of Section 2(13) have also been claimed to be unconstitutional and violative of Article 19(1)(f) and (g) of the Constitution.

9. The petitioners have further claimed that the notification as impeached would expose them to great and unnecessary hardship, harassment and inconvenience that too without in any way serving or promoting the object of the said Act, which is for regulating holidays and leave of persons employed in Shops and Establishments. It has been stated that the said Company has in fact framed rules for employment or conditions of service of the sales staff and other employees, which are not contrary and detrimental or prejudicial to the conditions of the said Act and as such also, there would be no compelling circumstances, for what the provisions of Section 2(13) of the said Act should or need be exercised. Such exercise of power or forcing the application of the provisions of Section 2(13). has been claimed to be unreasonable and not bona fide. It has also been contended that the applicability of the provisions of Section 2(13) in the facts of this case would be utterly unfeasible and impossible of compliance in respect of the depots of the petitioners and in any event, the said notification will have no application to the petitioners' depots as they are not shops within the meaning of Section 2(13) and more particularly when, these depots are mere store-rooms, used as ancillary to the sale, carried on at the main premises of the petitioners.

10. The meaning of "shop" under the Bombay Shops and Establishments Act, 1948, was construed to be the trade or business contemplated by the main of portion of the definition of "shop" in Section 2 (27) is not any business of selling wherever and however conducted but only those trades where the selling is conducted on denned premises. The very idea of shop in that connotation betokens a room or a place or a building where goods are sold. The rest of the

definition merely links on the main definition ancillary places. such as store rooms, godowns, work places, etc., which are mainly used in condition with the business, and ""business" means the kind of business dennded in the earlier part of the definition, namely, that portion of the business of selling which is confined to selling on some defined premises. It has also been observed that there is no justification for ignoring the limitation which the legislature has placed on the main portion of the definition and holding that "such" relates to a much wider classification of "selling" which the main portion of the definition not only does not envisage but has deliberately excluded in the case of Kalidas Dhanjibhai Vs. The State of Bombay, in which reference was firstly made by Mr. Das, in support of his submissions on the definition of shop as indicated hereinbefore and also for establishing that the object of the said Act was not to bring or rope in small establishments like the depots as involved and also for establishing, that unless there was trading activities there would not be any "shop" and as such, the depots of the petitioners where no trading activity was carried on, could not be claimed to be or treated as "shop" under the said Act. It was further claimed on the basis of the ratio of the Supreme Court determination as indicated above that the wording of Section 2(13) of the said Act, the intention of the legislature was to exclude small depot or the depots as involved in this ease. It was further contended that the above should be the logical conclusion or the interpretation of the section. Thereafter, and secondly, reliance was placed by Mr. Das to the Full Bench determination of the Punjab High Court in the case of Ram Chander Baru Ram Vs. The State, , where it has been held that the depot in that ease could not be said to be a shop within the meaning of Section 2 (xxv), Punjab Shops and Commercial Establishments Act. Such determination was made on the facts that the petitioner, Ram Chander was a salesman of Lipton Tea Company Limited. This Company had salesmen stationed at various places in Punjab. The place where Ram Chander, at the relevant time, was stationed was Kalka. The company took on rent godowns where tea was stocked either in tins or in packets. The salesmen at various depots were not allowed to sell tea at the godowns or even to book orders at the godowns. What happened at the godown was that tea was taken out for delivery to the customers in the market where the godown was situate or to markets which were attached to the godown. These markets might be in the rural area or in towns. The Act had not been exlend-ed to rural areas. The salesman maintained his books in the godown. The tea received, the tea sold and the sale proceeds received by such salesman were entered in these books. Statements to that effect were also (sent) to the head office of the Company. Beyond this, nothing further happened at the godown and the question was whether the godowns of this kind were shops within the meaning of Section 2 (xxv) of the Punjab Shops and Commercial Establishments Act, 1958. In that Act also by the very definition of the word "shop" a commercial establishment was not included within the definition of the word "shop" and a "commercial establishment" meant any premises wherein any business, trade or profession is carried on for profit. The shop meant any premises where any trade or business is carried on or where services are rendered to customers and includes offices,

store-rooms, godowns or warehouse, whether in the same premises or otherwise, used in connection with such trade or business. On such facts, it would further appear that Mahajan, J. delivering the judgment of the Full Bench, observed that it seems to us that the premises in dispute cannot be said to be a shop. I have come to this conclusion on the basis that before the present enactment was brought on the statute book, the commercial world as well as the man in the street know what the phrases "shop" and "commercial establishment" significant and the legislature which was enacting a measure to protect the employees from overwork was not endeavouring to put a new connection on these phrases but was merely concerned that the definition be left wide and elastic so that there is no evasion of the legislative measure. I, therefore, take a shop to mean a premises where trade or business is carried on in the shape of buying and selling of goods at the spot. It is rather axiomatic that in all trade it is the buying or selling which is going on in one form or the other in present or future or even on speculative basis. But in a shop the buying and selling is at the premises or in other words at the shop for cash consideration or may be barter; or on credit. The significant factor is the availability of the goods there and then and as also of services, apart from observing that it is necessary to closely analyse the definition of "shop" and "commercial establishment." One element is common to both, namely, that there have to be premises wherein in the case of commercial establishment any business, trade or profession is carried on for profit and in the case of a shop where any trade or business is carried on or where services are rendered to customers. The carrying on of trade or business or profession necessarily has to have a close and intimate connection with the premises. It cannot be disputed and indeed it was not. that a trade, profession or business can be carried on without there being premises, but the definition requires the existence of premises and in the case of a shop it includes offices, store-room, godown or warehouses whether in the name premises or otherwise used in connection with such trade or business. In other words, these offices etc.. must have a necessary connection with the premises which is a shop. It should also be noted that the said determination of the Punjab Full Bench was made on the basis of or on a reference to the determination of the Supreme Court in the case of *Kalidas Dhaniibhai v. State of Bombay* (supra). The above determination of the Pimjab Full Bench has further been followed in the case of *The State of Mysore Vs. The Manager, Brooke Bond India Private Ltd.*, to which, reference was also made by Mr. Das. In that case it has been observed that analysing the definitions of "shop" and "commercial" establishment" one element is common to both, viz., that there have to be premises wherein in the case of commercial establishment any business, trade or profession is carried on for profit and in the case of a shop where any trade or business is carried on or where services are rendered to customers.

10-A. Where the premises are used only as a godown for storing goods received from head office, and in which only stock and issue registers are maintained in the premises, and where no sales are effected and no service is rendered to the

customers, they are not shops within the meaning of the Mysore Shops and Establishments Act.

11. Then and lastly. Mr. Das referred to the Special Bench determinations of the Andhra Pradesh High Court in the case of Lipton (India) Ltd. and Another Vs. The Secretary to Govt, Employment and Social Welfare (Labour- I), Andhra Pradesh, Hyderabad and Others, . In that case, which was one under the A. P. Shops and Establishments Act, 1966, after referring to the abovementioned Supreme Court and Punjab Full Bench judgments it has been observed that Godowns like storage depots of Linton (India) Ltd., or Brooke Bond India (Private) Ltd.. cannot be shops within the meaning of Section 2 (21) apart from any notification issued u/s 2 (21) and that it is obvious that "such trade or business" occurring in the inclusive portion of the definition of the word "shop" in Section 2 (21) of the Act must be trade or business of the kind which is carried on any premises and if there are no premises where trade or business is being carried on, there cannot be a shop within the inclusive part of Section 2 (21) and any store-room, godown, warehouse or work place used in connection with the trade or business not being carried on, on any fixed premises cannot be said to be a shop within the meaning of Section 2 (21). It has also been observed in that case that though in the definition of "Commercial establishment" there is no reference to premises where trade or business is being carried on, it is obvious that a commercial establishment must have a trade or business whether carried on, on any defined, premises or not. An establishment which carried on any trade or business on any defined premises or otherwise is a commercial establishment and what distinguished a shop from the commercial establishment is that there must be premises for any establishment to become a shop and that at these premises, trade or business must be carried on. In the absence of premises, there cannot be a shop as far as the main part of the definition is concerned. The offices, store-rooms etc. included in the inclusive definition, must be offices, godowns etc., used in connection with such trade or business, the word "such" necessarily implying by mere grammatical construction trade or business carried on in some premises. On the basis of such determinations of the Andhra Pradesh High Court, not only the notification in this case was claimed to be ultra vires or contrary to the provisions of the said Act, but it was also claimed and contended that the depots as in this case, would not come within the definition of "shop" as in Section 2(13) of the said Act.

12. Apart from the above, on a reference to the preamble of the said Act and Sections 1 (3), 1 (4) and 2 (12), it was contended by Mr. Das that these provisions would mean and include some premises or a place where trading in tea, in this case, is continued and since no trading in tea by the petitioners from their depots as indicated above is done, as these depots could not come or be roped in u/s 2(13) or any notification as made under the same. Mr. Das also claimed that in this case and before the notification was issued, the authorities concerned should have applied their mind and found out the real nature and character of the business or trade, if any, which was carried on from the depots

in question and that too at least after hearing the petitioners or giving opportunities to them and such not having been done admittedly, there was violation of principles of natural justice apart from mere formation of opinion, if any, mechanically. It was stated by Mr. Das that it is also an admitted fact that even though the petitioners have direction, control and supervision over the employees of the depots, these employees have no fixed hours of work, which is required to be fixed and regulated by Section 7 of the said Act. It was stated by Mr. Das that as such, when such an employee, who stays more than the required hours in a day outside his depot, he is also not paid overtime, which again as required to be paid u/s 13 of the said Act, ordinarily, to every employee under an Establishment. In fact, Mr. Das state-1 that the salesman in the depots are sometime required to spend more time than as scheduled or required, for promoting sale according to the need of the customers and as they have no fixed hours of duty as they are required to go out in every or in many odd hours according to the need and demand of the customers under his jurisdiction. From such submissions of Mr. Das, one thing is certain viz. even if there is no fixed hours of duty of the salesman of a depot, every depot has a specific and specified jurisdiction and his customers, who are not direct consumers of tea from him, are not known, identifiable and definite.

13. Only those premises can be said to be Commercial Establishments where two minds meet to strike a business deal for profit and it is hand by (hardly?) material by what means they meet. There cannot be any doubt that any trade or business requires two or more individuals dealing with one another and if such activity takes place in a given premises, or is intended to take place there, they can be claimed to be or treated as commercial establishment but not otherwise. The purpose of the meeting of the minds as above, in terms of the observations in the case of Ram Chander Baru Ram Vs. The State, , to be for profit even though the profit may not be the necessary result. Thus, it is necessary and imperative that such trade and business as indicated above and to make the premises in question a commercial establishment, there should be trade, business or profession, carried on for profit.

14. A shop, on the other hand, would mean a premises where trade or business is carried on in the shape of bying and selling of goods at the spot. It is rather axiomatic that in all trades it is the buying or selling which should go on or to take place in one for or the other either presently, in for future or even or speculative basis. But in a shop such buying and selling is at the premises or in other words on the spot, for cash consideration or may on barter, or on credit. The significant part is the availability of the goods there and as also the service. The crux of the definition of shop as observed in the case of Bam Chander v. State (supra), is that the business or trade vis a vis the shop, is the actual buying and selling of goods and that-must take place in the premises concerned. The term "shop" is used in a sense where commercial activity is carried on, and for that purpose it must be a place where either business for profit is carried on or services are rendered as observed in the case of Pappi Chetty Raghaviah

Chetty's Charities Vs. The commissioner of Labour, Madras and Another, . The case of Lipton (India) Ltd. and Another Vs. The Secretary to Govt, Employment and Social Welfare (Labour- I), Andhra Pradesh, Hyderabad and Others, , the Company raised objection that their godowns do not come within the definition of "shop" and each objection was upheld and referring to "any offices, godowns, store-rooms, etc." included in inclusive definition, it has been pointed out those offices, godowns etc. must be used in connection with such trade or business, the word "such" necessarily implying by mere grammatical construction trade or business carried on in some premises.

15. Thus on the basis of the above determinations and observations it is evident that a "shop" means any premises where goods are sold either by retail or wholesale or where services are rendered to customers, and includes an office, a store-room, godown, warehouse or work place, whether in the same premises or otherwise (mainly used) in connection with such trade or business, but does not include a factory, a commercial establishment, residential hotel, restaurant, waiting house, theatre or other places of public amusement or entertainment. So, a "shop" may also be primarily a place where goods are bought and sold and such word denotes a building, primarily used for the retail sale of goods. The term "shop" does not include a workshop. The ratio decidendi in cases in which the property is used for more than one purpose is to find out the primary or main purpose for which it has been used. Use of a residential property as business premises for transacting the business of commercial agency as observed in the case of Sant Singh v. Gobind Ram AIR 1923 Lah 209, does not alter the nature of such property and it would not in consequence of such usage be considered to be shop property. The ordinary meaning of word "shop" in terms of the determinations as above and also in terms of the determinations in the case of Amulya Pal v. R. M. Boy 54 CWN 850, would be that it is a place where goods are stored and sold by retail dealers, and not a stall or an open space.

16. The definition of the word "shop" under the Acts as considered and construed in the determinations as maintained hereinbefore are more or less in the same terms as under the said Act. Thus, the determinations in those cases or the ratio of those determinations can well and easily be made applicable in respect of the depots of the petitioners as in this case. A "shop" must therefore be one where trade or selling is conducted or carried out in a defined premises i. e. the same must be a place or room or a building, where goods are sold. Thus, the depots of the petitioners, where no trading activities are conducted or any legal evidence is available to that effect and more particularly when the evidence as available being otherwise would not be "shop", in terms of or under the said Act and the submissions of Mr. Das to the effect that the legislative intent behind Section 2(13) of the said Act, was not to rope in such small shops/depots of the petitioners, would not be without any substance.

17. I am of the view that the Punjab Full Bench determination, as referred to hereinbefore, can be duly and aptly applied to the facts of this case and on the

basis of such determination or applying the tests as laid down therein, viz., to determine and find out the essential characteristics of a "shop", the depots of the petitioners must have the benefits of that determination, which again was arrived at, after due and necessary consideration of the other earlier determinations on the point and as such, depots of the petitioners, as in this case, cannot be shops within the meaning of Section 2(13) of the said Act. It cannot but and should be held that while issuing the impugned notification in this case, there was no legal evidence available for due application of mind and in any event, because of the character of the concerned notification and the statute the petitioners were entitled to have opportunities to make representation or at least of being heard. Mere statement in the notification, without making available to Court, the relevant materials, that the depots of the petitioners, after taking into consideration the nature of work carried on in all the premises used as depots, as indicated for sale at customers' premises for the purpose of the said Act, would not be enough. The authorities has due and every facilities to satisfy the Court, with the basis of satisfaction and they having elected not to avail of such opportunities, the presumption in law must be drawn against them.

18. Such and above being the position, even though I do not hold and find the impugned notification to be ultra vires the provisions of the said Act, yet the same should not be given effect to or acted upon, without due compliance with the principles and rules as indicated above. In fact the provisions of Section 2(13) of the said Act authorises the issue of notification after taking into consideration the nature of work carried on at the concerned shop and that presupposes a hearing, and necessary consideration after opportunities, before the necessary declaration in respect of a "shop" is made. This was not admittedly done in this case.

19. The Rule is thus made absolute. There will be no order as to costs. This order will not of course prejudice the authorities concerned from issuing a notification duly and after complying with the requirements of the statute and as indicated in this determination.