

counsel have been directed to cause the appearance of their respective clients in the trial Court on 21st November, 1962. There is no question of retrial as the entire trial had been completed. The learned Magistrate shall afford an opportunity to the parties for arguments and then dispose of the case in accordance with law.

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We cannot help observing that when the entire trial had concluded it would have been more proper for the Magistrate to give a finding on merits as well and not to get rid of the case by merely deciding the objection as to the competency of the complaint, which does not appear to have been raised at the proper stage.

H. R. KHANNA, J.—I agree.  
B.R.T.

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FULL BENCH

Before S. S. Dulat, D. K. Mahajan and Gurdev Singh, JJ.

RAM CHANDER,—Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 831 of 1961

*Punjab Shops and Commercial Establishments Act (XV of 1958)—Ss. 2(iv), (viii) and (xxv)—Godown where tea is stored but no sales effected—Whether a shop or commercial establishment.*

1962

Oct., 29th

*Held*, that a godown wherein tea is stored but no buying or selling of tea takes place does not fall within the ambit of the Punjab Shops and Commercial Establishments Act, 1958, inasmuch as it is neither a shop nor a commercial establishment.

*Held*, that a shop is 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 trades it is the buying or selling which is going on in one form or the other

in *presenti* or *in futuro* or even on speculative basis. But in a shop the buying and selling is at the premises or in other words on the spot for cash consideration or may be barter, or on credit. The significant factor is the availability of the goods there and then and so also of services.

*Held*, that only those premises can be said to be a commercial establishment where two minds meet to strike a business deal for profit. It is hardly material by what means they meet. Any trade or business requires two or more individuals dealing with one another and if such dealing does take place in any given premises, or is intended to take place therein, they can be said to be a commercial establishment but not otherwise. The purpose of the meeting of the two minds has to be for profit, though the profit may not be the necessary result. The storing of the goods and writing of accounts by an individual where nothing besides this is done will not make such premises a commercial establishment within the meaning of its definition in the Act.

. Case referred by Hon'ble Mr. Justice Gurdev Singh, on 8th March, 1962, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. S. Dulat, Acting Chief Justice and Hon'ble Mr. Justice D. K. Mahajan, further referred the case to a Full Bench, on 24th September, 1962. The Full Bench consisting of Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice Gurdev Singh finally decided the case on 29th October, 1962.

*Petition under Section 435/439, Criminal Procedure Code, for revision of the order of Shri H. D. Loomba, Additional Sessions Judge, Ambala, dated the 20th March, 1961, affirming that of Shri M. L. Grover, Magistrate, 1st Class, Jagadhri, dated the 31st October, 1960, convicting the petitioner.*

C. K. DAPHTARY AND D. N. AWASTHY, ADVOCATES, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, WITH  
MELA RAM SHARMA, ADVOCATE, for the Respondent.

## JUDGMENT

MAHAJAN, J.—This is a petition for revision and is directed against the conviction and sentence of the petitioner under section 26 of the Punjab Shops and Commercial Establishments Act, 1958 (No. 15 of 1958). Henceforth this Act will be referred to as the Act.

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The petitioner Ram Chander is a salesman of Lipton Tea Company Limited. This Company has salesmen stationed at various places in the Punjab. The place where Ram Chandar, at the relevant time, was stationed was Kalka. The company takes on rent godowns where tea is stocked, either in tins or in packets. The salesmen at various depots are not allowed to sell tea at the godowns or even to book orders at the godowns. What happens at the godowns is that tea is taken out for delivery to the customers in the market where the godown is situate or to markets which are attached to the godown. These markets may be in the rural area or in towns. It may be pointed out that the Act has not been extended to rural areas. The salesman maintains his books in the godown. The tea received, the tea sold and the sale-proceeds received by such salesmen are entered in these books. Statements to this effect are also prepared at the godown and are sent to the head office of the company. Beyond this nothing further happens at the godowns. The procedure for sale prescribed by the company is that the salesman hires out a push-cart or some other kind of transport, puts the tea packets in that vehicle and proceeds to the bazar where his customers are, they being the regular shopkeepers who vend such articles or hotels, restaurants and tea shops. He moves from door to door and either books orders for supply later or gives them the instant supply and receives the price. Whatever quantity of tea is left unsold,

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he brings it back and stores it in the godown. Thus it will be seen that at the godown besides writing accounts and similar statements all that happens is that the tea is either taken out or is put back. No actual selling or any kind of business deal takes place at the godown. No orders are booked there. The entire business is conducted by the salesman outside the godown. In view of the provisions of section 25 of the Act this business cannot be conducted outside the opening and the closing hours. At the relevant time the opening and the closing hours were 9.00 a.m. to 7.45 p.m.

The present prosecution is based on the following facts: On the 9th December, 1958, the petitioner opened the godown at 8.45 a.m. He was according to the Inspector found selling one-pound packet of tea at the premises of the depot to a customer. On this the petitioner was challaned by the Shop Inspector Harkarnail Singh. This complaint came up for trial before a Magistrate stationed at Chandigarh, who convicted the petitioner under section 26 of the Act. The petitioner came up in revision to this Court. His revision was allowed and it was directed that the petitioner be retried. On retrial the case was heard by Magistrate, 1st Class, Jagadhari. Before the learned Magistrate two contentions were raised by the petitioner, namely,—

- (1) that the godown was not a commercial establishment within the meaning of the Act; and
- (2) that there was no sale of the tea-packet at the godown. On the contrary the tea-packet was sent by the petitioner to the customer through his own coolie.

The learned Magistrate on the basis of a Bench decision of this Court in *Makhan Lal v. State* (1) came to the conclusion that the godown in question was a commercial establishment within the meaning of the Act. On the other contention, he, however, came to the conclusion that there was no sale at the godown, but the accused was guilty all the same because he did open the premises before the opening hours, that is before 9 a.m. and did transact business, and, therefore, he committed an offence under section 9 made punishable under section 26 of the Act. Accordingly the accused was sentenced to pay a fine of Rs. 51 or in default of payment of fine to suffer simple imprisonment for 15 days. It will be apparent from this that though the gravamen of the charge was that the packet was sold outside the opening and the closing hours at the godown, the finding is that it was not so sold at the godown. On the contrary, the petitioner was held guilty because he opened the godown at 8.45 a.m. instead of 9 a.m. and did some business there, and that being the drawing up of the voucher.

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An appeal was preferred against this decision to the learned Sessions Judge, Ambala, and it came up for hearing before the Additional Sessions Judge, Ambala. Before him both the contentions were raised including the contention that the petitioner was exempt from the provisions of the Act on account of section 3 of the Act by reason of his work being intermittent. The learned Additional Sessions Judge upheld the decision of the Magistrate and also negatived the contention based on section 3 of the Act. Against this decision the present petition for revision was preferred to this Court.

This petition came up for hearing before my learned brother Gurdev Singh, J. In view of the

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(1) I.L.R. 1960 Punjab 639.

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fact that the Division Bench decision was given under an earlier Act which was replaced by the present Act and also that there were certain material changes in the Act, the learned Judge was of the view that the decision of the Division Bench needed re-examination, particularly when the basis on which the Division Bench distinguished the Supreme Court decision in *Kalidas Dhanjibhai v. The State of Bombay* (2) was no longer available in the Act. The learned Judge, therefore, directed that the petition for revision be heard by a Division Bench. The matter was accordingly placed for hearing before my Lord the acting Chief Justice and myself. After we had heard Mr. Daphtary, learned counsel for the petitioner, for some time, we were of the view that in view of the Division Bench decision it would be proper that the matter is considered by a Full Bench. Accordingly my Lord the acting Chief Justice constituted the present Full Bench and the matter was then argued before us.

At this stage it will be proper to set out the contentions of Mr. Daphtary. He has raised only two contentions:—

- (1) that the godown in question is not an establishment within the meaning of the Act and, therefore, the conviction of the petitioner is not justified; and
- (2) that the work of the petitioner is inherently intermittent and, therefore, he is, in any case, exempt from the provisions of the Act by virtue of clause (g) of section 3 of the Act.

For the sake of clarity it may be repeated that on the question of fact, namely, whether any sale

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(2) A.I.R. 1955 S.C. 62.

took place at the godown there is a concurrent finding by both the Courts below that no sale whatever took place at the godown.

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There is also no dispute as to what actually is done at the godown or the depot as the petitioner's company calls it. The depot is a part so to say of the entire business activity of the company. Its function is to act as a store house for the goods and the keeping of necessary books for the purpose. The books could be written at the depot or by the salesman at home. It is beyond dispute that no sale of goods takes place at the depot or that the depot is used in connection with a shop. At best the depot is a godown-cum-office and the depot-holder is merely an employee of the company. Besides the petitioner no one else works at the depot.

At this stage I may straightaway dispose of the second contention of the learned counsel. This contention only falls for examination if it is held that the petitioner is an employee either in a shop or a commercial establishment. As we are taking the view that the establishment in question is not a commercial establishment or a shop it would be futile to examine this matter any further, and, in any case, Mr. Daphtary was also not really serious about this argument. Be that as it may, it is not necessary to dwell on it any further.

Before examining the only and the principal argument in the case, it will be proper to set out the various provisions of the Punjab Trade Employees Act (No. X of 1940) and the Act, which is the law which replaced the Punjab Trade Employees Act. This is also necessary because the Division Bench decision, the correctness of which has been challenged by the learned counsel, was given under the earlier Act. For this reason I am

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setting out side by side the relevant provisions of both the Punjab Trade Employees Act and the Act. They are as under :—

<i>The Punjab Shops &amp; Commercial Establishments Act, 1958.</i>	<i>The Punjab Trade Employees Act, 1940.</i>
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An Act to provide for the regulation of conditions of work and employment in shops and commercial establishments.

An Act to limit the hours of work of shop assistants and commercial employees and to make certain regulations concerning their holidays, wages and terms of service.

2 (iv) "commercial establishment" means any premises wherein any business, trade, or **Profession** is carried on for profit, and includes journalistic or printing establishments and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on or which is used as **hotel, restaurant, Boarding or eating house, theatre, cinema or other place of public entertainment or any other place which the Government may declare, by notification in the official Gazette to be a commercial establishments for the purposes of this Act ;**

2 (viii) "establishment" means a shop or a commercial establishment;  
2(xviii) "opened" means opened for the service of any customer or for any business connected with the establishment ;

2 (1) (d) "commercial establishment" means any premises wherein any trade or business is carried on for profit; the expression includes journalistic and printing establishments and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on or which are used as theatres, cinemas and for other public entertainments, but it does not include any portion of a factory other than the clerical department thereof or any shop ;

Not defined.

Not defined.



2 (xxv) "shop" means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (LXIII of 1948) ;

3. Nothing in this Act shall apply to—

- (a) offices of or under the Central or State Governments (except commercial undertakings), the Reserve Bank of India, any railway administration or any local authority;
- (b) any railway service, air service, water transport service, tramway, postal, telegraph or telephone service, any system of public conservancy or sanitation or any industry, business or undertaking which supplies power, light or water to the public ;
- (c) railway dining cars ;

2 (1) (p) "Shop" includes any premises where any retail or wholesale trade or business is carried on and includes all offices, warehouses or godowns which are used in connection with such trade or business ;

2-A. Nothing in this Act shall apply to—

- (a) offices of or under the Central or State Government, the Reserve Bank of India, any railway administration or any local authority ;
- (b) any railway service, water transport service, tramway or motor service, postal, telegraph or telephone service, any system of public conservancy or sanitation or any industry, business or undertaking which supplies power, light or water to the public ;
- (c) stalls and refreshment rooms at railway stations or railway dining cars;

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| <p>Ram Chander<br/>v.<br/>The State<br/><hr/>Mahajan, J.</p> | <p>(d) offices of lawyers;</p> <p>(e) any person employed about the business of any establishment mentioned in paragraphs (a) to (d) aforesaid ;</p> <p>(f) any person whose hours of employment are regulated by or under the Factories Act, 1948, except the provisions of sub-sections (3), (4) and (5) of section 7 of this Act in so far as they relate to employment in a factory ;</p> <p>(g) any person whose work is inherently intermittent.</p> | <p>(d) offices of lawyers, auditors or registered accountants ;</p> <p>(e) establishments for the treatment or care of the sick, infirm, destitute or mentally unfit ;</p> <p>(f) any person employed about the business of any shop or commercial establishment mentioned in paragraphs (a) to (e) aforesaid;</p> <p>(g) any person whose hours of employment are regulated by or under the Factories Act, 1934, except the provisions of sub-sections (3), (4) and (5) of section 4 of this Act in so far as they relate to employment in a factory ;</p> <p>(h) shops engaged in the supply of gas light on marriages or other ceremonial occasions ;</p> <p>(i) persons employed in managerial capacity or whose work is inherently intermittent such as a traveller, a canvasser, a watchman, a caretaker or a messenger ; and</p> <p>(j) the members of the family of the employer.</p> |
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9. No establishment shall, save as otherwise provided by this Act, open earlier than nine o'clock in the morning or close later than eight o'clock in the evening: Provided that any customer who was in the establishment before the closing hour may be served during the period of fifteen minutes immediately following such hour: Provided further that the State Government may, by order and for reasons to be recorded in writing, allow an establishment attached to a factory to open at eight o'clock in the morning and close at six o'clock in the evening. Provided further that the State Government may, by notification in the Official Gazette, fix such other opening and closing hours in respect of any establishment or class of establishments, for such period and on such conditions, as may be specified in such notification.

25. Save as otherwise provided by any law for the time being in force, it shall not be lawful in any locality to carry on in any place not being an establishment, retail trade or business of any class at any time if it is unlawful in that locality to keep an establishment open for the purpose of such retail trade or business, and, if any person carries on any trade or

6. No shop or commercial establishment shall, save as otherwise provided by this Act, open earlier than six o'clock in the morning or close later than ten o'clock in the evening in summer or open earlier than half past seven o'clock in the morning or close later than half past nine o'clock in the evening in winter: Provided that any customer who was in the shop or commercial establishment before the closing hour may be served during the period of fifteen minutes immediately following such hour.

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15. Save as otherwise provided under any law for the time being in force, it shall not be lawful in any locality to carry on in any place not being a shop or commercial establishment retail trade or business of any class at any time when it would be unlawful in that locality to keep a shop or commercial establishment open for the purpose of such retail trade or business and, if any person carries on any trade or business in contravention of this section, this Act shall apply

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business in contravention of this section, this Act shall apply as if he were the employer of the establishment which was being kept open in contravention of this Act.

26. Subject to the other provisions of this Act whoever contravenes any of the provisions of this Act, or the rules made thereunder and no penalty has been provided for such contravention in this Act, shall be liable, on conviction, to a fine not exceeding one hundred rupees for the first offence, and three hundred rupees for every subsequent offence.

Provided that the fine in respect of every subsequent offence within the same year shall not be less than one hundred rupees in any case.

as if he were the occupier of a shop or a commercial establishment which was being kept open in contravention of this Act.

16. Subject to the other provisions of this Act, whoever contravenes any of the provisions of this Act, or any of the rules made thereunder shall be liable on conviction to a fine not exceeding twenty-five rupees for the first offence and one hundred rupees for every subsequent offence.

The bold portions indicate the change in the Act.

This brings me to the consideration of the question that requires determination, namely, whether the premises in question are an establishment within the meaning of the Act. Establishment according to its definition means a shop or a commercial establishment.

In order to determine this question 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 a 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 rooms, godowns or warehouses whether in the same 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. The other requirement is that what should be carried on in these premises is trade or business or rendering of services to customers in the case of a shop, and in the case of a commercial establishment a trade or business or profession has to be carried on for profit. So far as the present case is concerned, no services are to be rendered or were in fact rendered to any one or more customers and, therefore, this requirement is lacking in this case even if it be assumed that the present premises are a shop. Once this element is eliminated, the remaining two elements, that is, carrying on of trade or business are common both to a shop as well as to a commercial establishment. But a shop according to the definition does not include a commercial establishment. Therefore, the same premises cannot be at the same time a shop as well as a commercial establishment. They can only be one or the other. Hence the question arises, what then is a shop? This phrase as understood by a common man denotes nothing more and nothing less than a premises where goods are bought or sold. Where their price is paid or is to be paid, that is, the purchase or sale is either on cash or credit basis. It cannot be said that when goods are being sold to customers no service is

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being rendered. Most likely, this additional element has been specifically introduced into the definition of the shop for the reason that there are certain places known as shops, for instance, tinsmith's shop or a mechanic's shop, where services are sold instead of goods, or, may be partly goods are sold and partly services are rendered. It is primarily for this reason that in the definition of shop, in addition to the carrying on of trade or business, another alternative requirement is envisaged, namely, the rendering of services to the customers. As already mentioned both shop and commercial establishment have a common feature, namely, that they denote premises where trade or business is carried on. But one is distinct from the other. Thus at this stage it will be proper to determine whether the premises in question are a shop or a commercial establishment.

It seems to me 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 knew what the phrases "shop" and "commercial establishment" signified; and the legislature which was enacting a measure to protect the employees from overwork was not endeavouring to put a new connotation 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 trades it is the buying or selling which is going on in one form or the other *in presenti* or *in futuro* or even on speculative basis. But in a shop the buying and selling is at the premises or in other words on the spot for cash consideration or may be barter, or on credit. The significant

factor is the availability of the goods there and then and also of services.

So far as the present premises are concerned no buying or selling of tea takes place in them, as would be the case in a shop. The depot in question is not attached to any shop within the meaning of the definition so as to artificially make it a shop. It is merely a store-house or a godown for tea provided to facilitate the sales of the company's product. The goods stored are sold in the market from place to place and from shop to shop. But the fact remains that no sale takes place in the depot. Why is it necessary then to provide a depot to the salesman, if it is not to facilitate sale of tea, argues the State counsel? He maintains that, as it facilitates sales, it is a shop. The necessity of such a depot is to ensure that the company's goods are sold at a uniform price all over, and that no retail seller has to add up the incidental charges to the price which would be the case if he had to go and buy them at the depot. It is no doubt true that in a larger sense the depot does facilitate sales. It is a link in carrying on of trade or business, but then every such link will not make every premises, where it is carried on, a shop. A railway wagon brings goods to a shop, but it cannot be said to be a shop, though the goods are carried by the owner of the shop and are stored there for ultimate sale when they reach him. This is one instance and it is needless to multiply them. The crux of the definition 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.

It is well known in the commercial world that salesmen act in two ways that is, they book orders and send the same to the principals who supply the goods either against cash or on credit. This method has its drawbacks, that is, the transport bottleneck. The goods may or may not reach in time.

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The buyer may not be able to anticipate his full requirements. The goods may not be available to the customers. The other method is that the goods are stocked with the salesman. He can meet the market demand as and when it arises. It facilitates the buyers who retail the goods. The salesman keeps in touch with his customers in the area under his beat and sees that the goods are stocked with the dealers all the time. The salesman has areas which are within the jurisdiction of the Act as well as areas which are outside the jurisdiction of the Act, e.g., the rural areas. All he does at the depot is to take out or replace the goods or maintain an account regarding their disposal, that is, a stock register and a cash register. But the actual buying or selling is not done at the depot; it is done at the establishments of his customers. No one else works at the depot. The depot may remain closed for days together. The salesman does not complain that by this process he is made to work more than what the Act contemplates. As a matter of fact he has complete authority so far as his working hours are concerned. He regulates them according to his convenience. Therefore, it will be apparent that this depot cannot be rightly called a shop. The State counsel did realise the implications of this matter and therefore laid greater stress on the alternative argument that the depot is, in fact, a commercial establishment.

After giving the matter my careful consideration I am clearly of the view that the depot in question cannot be said to be a shop within the meaning of the definition in the Act.

Before dealing with the next question, namely whether the depot is a commercial establishment as defined in the Act, it will be proper to consider as to what the terms trade and business imply in the context.



Now, the expression trade or business are terms of a very wide import. There are a host of activities which are carried on by persons engaged in trade or business but if one of the activities is isolated it may or may not, in a given set of circumstances, amount by itself to be either a trade or a business. Moreover, those activities may be carried on at places to which the Act applies or at places outside the operational area of the Act, or those activities may be carried on outside the jurisdiction of the State to which the Act applies. Therefore, in a broader sense all activities connected with any trade or business, however insignificant they may be, would be part of that trade or business and if any one of those activities may be carried on in a place which, strictly speaking, is a residential house, the same would fall within the ambit of the definition of either a shop or a commercial establishment though that isolated activity by itself may not, strictly speaking, be trade or business. Therefore, the pertinent question that requires determination is, has the term "trade or business" to be interpreted in a very wide sense as to include each and every part of the business activity? Or is it to be understood in the context to have been used to denote something more comprehensive, that is, an integrated activity a substantial part of which in the language of the commercial world is carried on to bring profit? Or in other words, does it denote a major part of the activity which is undertaken for profit? It will be seen from the definition of the phrase "commercial establishment" that an integrated trade or business activity must take place at the given premises for profit. Activities though connected with trade or business in premises in an isolated form like the activity of a business traveller would not make the same a commercial establishment. Similarly, the residence of a businessman will not become a commercial establishment merely because he is think-

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ing out schemes and making plans to either evolve new business or to enlarge the existing one. No one can deny that it is business activity. To put it shortly, only those premises can be said to be a commercial establishment where two minds meet to strike a business deal for profit. It is hardly material by what means they meet. Any trade or business requires two or more individuals dealing with one another and if such dealing does take place in any given premises, or is intended to take place therein, they can be said to be a commercial establishment but not otherwise. The purpose of the meeting of the two minds has to be for profit, though the profit may not be the necessary result.

The next question then arises: whether the premises in question are covered by the definition of the phrase "commercial establishment". By now we are quite familiar with the definition. It requires premises wherein trade or business is carried on for profit. Can it be said that what happens at the depot directly results in profit? The answer is no. Profit results from what happens in the bazar, or at the places wherein the salesman is indulging in his real activity, that is the sale of tea. Indirectly the godown has connection with the trade or business, as I have already said trade or business in its larger sense has a very wide scope and will embrace practically all type of human activity. But surely that is not what the definition is intended to cover. The activity must have relation to the premises and must be carried on for profit as its ultimate object, in the premises. Viewed in this light the premises in question cannot be said to be falling, within the definition. To demonstrate my point, I put it to the State counsel the case of a hawkar, who goes to the wholesale market and buys some merchandise. He vends it during the prescribed hours from door to door. After those

hours he goes to his only room where he lives, cooks his food and sleeps. He keeps his unsold wares in this room and writes his accounts after the prescribed hours. His room, if a wider meaning is to be given to the phrase "commercial establishment" will become a commercial establishment and he must close it up beyond the prescribed hours. Then where is he to live? On the road, says the counsel. But does the Act contemplate this? The simple answer would be: no. It is for this reason that section 25 of the Act has been enacted and to my mind furnishes the key to the problem with which we have been dealing. Thus the storing of the goods and writing of accounts by an individual where nothing besides this is done will not make such a premises a commercial establishment within the meaning of the definition. To hold to the contrary would be to go counter to the purpose and the scheme of the Act. Section 25 is an ample safeguard and has been enacted for that purpose. I would, therefore, hold that the depot is not a commercial establishment

The learned counsel for the State laid very great stress on the fact that in *Makhan Lal's case* in similar circumstances and practically on the identical facts it was held by a Division Bench of this Court that the depot in question in that case was covered by the provisions of the Act. It may be mentioned at the very outset that the learned Judges in that case did not decide the question whether the depot was a shop or a commercial establishment. They proceeded on the basis that it was one or the other. I have already held that it is neither and it is not necessary to repeat my reasons all over again. Mr. Justice Dua, who wrote the judgment in *Makhan Lal's case* did realise the force of the contention raised by the counsel for the petitioner in that case that the phrases "shop" and "commercial establishment" were susceptible to both the broader and a narrower interpretation.

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The learned Judge however adopted the broader interpretation on the ground that the legislation in question was a social welfare legislation. In my view the broader interpretation is not justified and I have already elaborated my reasons for the same. It cannot be disputed that this legislation does come in conflict with the fundamental right of a citizen to carry on his trade, business or profession unhampered. Of course, this right is subject to reasonable restrictions that may be placed and the Act in question is certainly a piece of legislation which puts reasonable restrictions on the individual's right to carry on trade, business or profession unhampered, but I do not see how a broader interpretation can be put on this legislation on the basis that it is a social welfare legislation. The concept of social welfare is both elastic and relative. Moreover, in view of the penal consequences involved under the Act, the other rule will come into play, namely, that penal statutes should be strictly construed. Thus on this score as well there would be no justification to put a broader interpretation on the definition of commercial establishment even on the ground that the legislation is a social welfare legislation, even if that be a ground for doing so. To me it appears, therefore, that it is the narrower interpretation which alone is justified.

The other reason which prevailed with the learned Judge was that the rent paid for the depot was treated under the Income-tax Act as business deduction and, therefore, the depot would naturally be a commercial establishment. This reasoning loses sight of the fact that the expenses in connection with the residence of an employee are also treated as business expenses by the Income-tax Department and it can hardly be suggested that the residence of the employee would, therefore, become a commercial establishment.

With utmost respect to my learned brother, it appears to me that both these considerations are extraneous to the very scheme of the Act. These considerations would have been material if the Act had been enacted to cover all aspects of business activity, but that is not the case. It is only the material part of that activity which either results in the buying or selling of goods or any deal which results in profit and has intimate connection with the premises wherein it is carried on which is sought to be covered by the Act. Therefore, keeping in view the entire scheme and the purpose of the Act, with all respect and due deference to my learned brothers who decided *Makhan Lal's case*, I am unable to agree with the view that they have adopted in that case, namely, that the depot in question in that case, as in the present, is either a shop or a commercial establishment.

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The Supreme Court decision in *Kalidas's case* was also strongly relied upon by the petitioner's counsel in *Makhan Lal's case* for the view that the depot in question in that case did not fall within the ambit of the Act. That decision was distinguished by Dua J. on the ground that in the Bombay Act there was a provision in the form of section 5 enabling the Government to include by notification in the official Gazette any establishment or class of establishments to which or any person or class of persons to whom the Bombay Act or any of its provisions were to apply or not to apply. At the time when the decision in *Kalidas's case* was given, no such similar provision was to be found in the Punjab Act and that was one reason which prevailed with the learned Judge in *Makhan Lal's case* to give an extended meaning to the definition of a shop and a commercial establishment in that Act. So far as the Act as it stands at present is concerned, a provision analogous to section 5 in the Bombay Act has been incorporated in section 2(4) of the

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Act which defines "commercial establishment". Therefore, the reason for giving the extended meaning to the definition of commercial establishment no longer holds good.

After giving the entire matter my full and careful consideration I am definitely of the view that the present depot does not fall within the ambit of the Act inasmuch as it is neither a shop nor a commercial establishment.

The result, therefore, would be that this petition for revision is allowed and the order of the Additional Sessions Judge, Ambala, and that of the Magistrate, Ambala are set aside. The fine, if paid, shall be refunded.

Daulat, J.

S. S. DULAT, J.—I agree and have nothing to add.

Gurdev Singh, J.

GURDEV SINGH, J.—I also agree.

B.R.T.