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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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LPA No.334/2007

UOI & ORS.

..... Appellants  
Through: Mr. Sanjay Jain, ASG with Mr.  
Ruchir Mishra, CGSC, Ms. Noor  
Anand, Adv.

Versus

NATIONAL RESTAURANT ASSOCIATION ..... Respondent

Through: Mr. Lalit Bhasin, Mr. Sanjay Gupta &  
Mr. Tanmaya Nirmal, Advs. for R-1.  
Ms. Ruchi Sindhwani with Ms.  
Bandana Shukla, Advs. for R-2.

AND

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LPA No.343/2007

UOI & ORS.

..... Appellants  
Through: Mr. Sanjay Jain, ASG with Mr.  
Ruchir Mishra, CGSC, Ms. Noor  
Anand, Adv.

Versus

FEDERATION OF HOTEL RESTAURANT .... Respondent

Through: Mr. Lalit Bhasin, Mr. Sanjay Gupta &  
Mr. Tanmaya Nirmal, Advs. for R-1.  
Ms. Ruchi Sindhwani with Ms.  
Bandana Shukla, Advs. for R-2.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**11.02.2015**

1. These appeals impugn the common judgment dated 5<sup>th</sup> March, 2007

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of the learned Single Judge of this Court allowing W.P.(C) No.9528/2003 and W.P.(C) No.6517/2003 (filed by the respondent no.1 in each of these appeals) on the terms mentioned therein. The respondent no.2 in LPA No.334/2007 and the respondent no.4 in LPA No.343/2007 is the Controller of Weights and Measures, Department of Legal Metrology, Government of NCT of Delhi. The respondents no.2 & 3 in LPA No.343/2007 had filed the writ petition from which that appeal arises along with the respondent no.1 therein.

2. The question entailed in the writ petitions from which these appeals arise was whether it is impermissible for the members of writ petitioners i.e. Hotels and Restaurants to charge their customers / guests for the mineral-water packaged and bottled by third parties any price above the maximum retail price (MRP) mentioned thereon. The learned Single Judge held that charging price for mineral-water in excess of MRP printed on the packaging, during the service of customers in hotels and restaurants does not violate any provisions of the Standards of Weights and Measures Act, 1976 (SWM Act) as the same does not constitute a sale or transfer of those commodities by the hotelier or restaurateur to its customers. It was held that the customer does not enter a hotel or a restaurant to make a simple purchase of these

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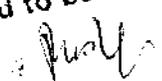
commodities and even though the customer may order nothing beyond a bottle of water or a beverage but his direct purpose in doing so would clearly travel to enjoying the ambience available in the hotel or the restaurant and incidentally to the ordering of any article for consumption.

3. Challenging the aforesaid finding, these appeals were filed. Though the appeals were accompanied with an application for interim relief but while admitting the appeals vide order dated 4<sup>th</sup> August, 2008, the applications for interim relief were dismissed observing that right from 20<sup>th</sup> January, 2004 there was an interim injunction in favour of the writ petitioners who had ultimately succeeded in the writ petition before the learned Single Judge and by way of interim relief *status quo* ante the said interim injunction could not be ordered.

4. During the pendency of the appeals the SWM Act in the light of provisions wherein the writ petitions were decided, was w.e.f. 1<sup>st</sup> April, 2011 substituted with the Legal Metrology Act, 2009.

5. The appeals came up for hearing on 7<sup>th</sup> March, 2013 when the counsel for the appellant sought time to take instructions whether in the light of

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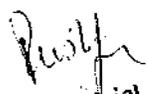


change in law the appeals were to be proceeded with further. Again when the appeals came up for hearing on 31<sup>st</sup> October, 2014, it was *prima facie* observed that in the light of change in law it was not necessary to adjudicate the matter on merits. The learned ASG appearing for the appellant on that date sought time to get instructions as to the action taken regarding the cases initiated under the repealed Act.

6. The appellant has filed an affidavit of the Director of Legal Metrology of Department of Consumer Affairs, Government of India drawing attention to Section 57 of the Legal Metrology Act and contending that the violations under the erstwhile SWM Act can thereunder be proceeded with further.

7. The matters were listed on 9<sup>th</sup> February, 2015 when learned ASG informed that no prosecutions all over India could be initiated for violation by hotels and restaurants of the provisions of SWM Act (and as per which according to the appellant hotels and restaurants even when supplying packaged mineral-water to their customers in the hotels / restaurants are required to only charge the MRP printed on the said packaged mineral-water bottle and no more) owing to the interim injunction in the writ petitions and contending that the said prosecutions would now be initiated in the event of

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succeeding in these appeals. A list, of notices issued was handed over and it was also pointed out that queries were also raised in the Parliament as to why no action for such violations was being undertaken.

8. We enquired the limitation for initiating such action.

9. We were informed that the limitation is of six months for first offence and there is no limitation for initiating prosecution for a second offence. The offences are however punishable with fine or imprisonment.

10. The counsel for the respondents points out that there was a provision for compounding of the offence under the SWM Act.

11. We have enquired whether not the said limitation would have expired in all the cases where notices are stated to have been issued.

12. The learned ASG draws attention to Section 470 of the Code of Criminal Procedure, 1973 sub Section (2) whereof provides for exclusion of time during which the prosecution has been stayed by an injunction or order.

13. We have however enquired whether the same would be applicable for the period after the judgment of the learned Single Judge.

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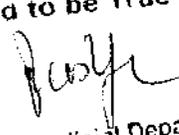


14. Though the learned ASG answers in the affirmative but we have our doubts. In our *prima facie* view Section 470 (2) providing for extension of limitation period for commencing prosecution will have to be strictly construed and may not apply to a situation as the present. However we hurry to say that we are not rendering any opinion nor are we required to. The said observations are only in formation of our opinion that even if the appellant, in the event of success in these appeals, would be able to initiate prosecutions, considering the nature of the offence, it would not be a worthwhile exercise for the state machinery and resources to be embroiled and expended therein. Rather we are of the opinion that the appellant, if of the opinion that under the new Act i.e. Legal Metrology Act it is entitled to take action against hotels / restaurants for sale of packaged mineral-water within the hotel / restaurant at more than MRP, should concentrate thereon.

15. The learned ASG states that the concerned provisions in the new Act are same as in the old Act and the judgment of learned Single Judge may come in the way of the appellant.

16. The counsel for the writ petitioners is agreeable to our disposing of these appeals with observations that the judgment of the learned Single

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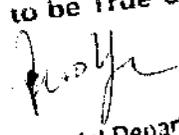
  
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Judge shall not come in the way of the appellant enforcing the provisions of the new Act even if identical or similar to of the old Act and it being left to be adjudicated in the proceedings if any initiated under the new Act whether hotels / restaurants, are entitled to do so or not.

17. We accordingly dispose of these appeals in following terms:
- A. Owing to the change in law, there is no need to set aside or affirm the judgment of the learned Single Judge.
  - B. However the question of law adjudicated by the learned Single Judge is left open for adjudication in any fresh proceeding under the new law and the judgment of the learned Single Judge shall not be a precedent in any such adjudication even if the concerned provisions of the old and the new law are identical / similar.
  - C. The appellant shall however not be entitled to initiate any proceeding / prosecution for violation of the old law in this respect, even if notices of such violation were issued, as in our opinion, considering the nature of offence, the long time which has elapsed and the doubt which has arisen whether such

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prosecution will be within the prescribed time, it is not deemed expedient that the state resources in this regard, which are already strained, be expended thereon.

No costs.

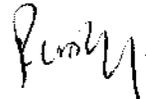
**CHIEF JUSTICE**

**RAJIV SAHAI ENDLAW, J.**

**FEBRUARY 11, 2015**

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