

1956 Present : Gratiaen, J., and Gunasekara, J.

M. M. ISMAIL, Petitioner, and D. S. MARASINGHE
(Chairman, Village Committee, Hanwella), Respondent

*S. C. 611—Application for a Writ of Mandamus on the
Chairman, Village Committee, Hanwella*

*Butcher—Application for renewal of licence—Refusal by “proper authority” on
ground of a Regulation prohibiting sale of meat—Validity of such refusal—
Mandamus—Butchers Ordinance (as amended by Ordinance No. 44 of 1947
and Acts No. 2 of 1951 and No. 48 of 1953), ss. 2, 7, 13A.*

Although, under section 13A of the Butchers Ordinance, the slaughter of animals may be lawfully prohibited for a specified period in any area, the prohibition in that area of the sale of meat of animals that have been lawfully slaughtered in another area is *ultra vires* the “proper authority”. Therefore, *mandamus* would lie against a “proper authority” if, purporting to act under section 7 of the Butchers Ordinance, he refuses to entertain *in limine* a butcher’s application for the renewal of his annual licence on the ground that an order has been published in the *Government Gazette* “prohibiting the slaughter of animals and sale of meat”.

APPPLICATION for a Writ of *Mandamus* on the Chairman, Village Committee, Hanwella.

H. W. Jayewardene, Q.C., with *S. B. Lekamge*, for the Petitioner.

N. E. Weerasooria, Q.C., with *W. Wimalachandra*, for the Respondent.

Cur. adv. vult.

February 27, 1956. GRATIAEN, J.—

The petitioner had for many years carried on a trade of a licensed butcher in the Village Committee area of which the respondent is at present “the proper authority” within the meaning of section 2 of the Butchers Ordinance (as amended by Ordinance No. 44 of 1947 and Acts No. 2 of 1951 and No. 48 of 1953). He applied to the respondent on 2nd November 1955 for a renewal of his licence for the year 1956, but received a reply dated 19th November 1955 to the effect that the application “could not be entertained” because the respondent, by virtue of the powers vested in him by section 13A of the Ordinance (enacted by section 6 of the amending Act of 1951) had published in the *Ceylon Government Gazette* an order “prohibiting the slaughter of animals and sale of meat” in the area during a specified period which included the whole of the year 1956. The petitioner has now applied to this Court for a mandate in the nature of a Writ of *Mandamus* directing the respondent to entertain his application dated 2nd November 1955 and to deal with it according to law.

The duties of a “proper authority” on receipt of an application for the issue of a licence to carry on the trade of butcher are prescribed by section 7 of the Ordinance (as amended by section 6 of the Ordinance No. 44 of 1947). He shall publish a notice in the *Gazette* setting out the particulars of the application and inviting objections to the issue of a licence. The applicant must then be given an opportunity of meeting such objections, if any. It is only at that stage that he is generally empowered to decide whether or not to allow the application. The applicant has a right of appeal to the Minister against an order of refusal.

A preliminary objection was raised before us to the effect that *mandamus* does not lie in the present case, and that the petitioner's only remedy is by way of appeal to the Minister. Mr. Weerasooriya relied on *Don Carolis v. The Chairman, U. C., Gampaha*¹ in support of this objection, but that authority is clearly distinguishable. In the present case, the respondent had refused to entertain the application *in limine* because he formed the view (as explained in paragraph 6 of his counter-affidavit dated 19th January 1956) that he had no power to grant a butcher's licence during a period covered by his purported prohibition of the slaughter of animals and the sale of meat in the area; in other words, the action taken under section 13A made it impossible for any butcher to carry on his trade lawfully within the Village Committee area during 1956. If this assumption be correct, I agree that *mandamus* would not lie because compliance with the requirements of section 7 before the ultimate and inevitable refusal of his application would obviously be a purposeless formality. If on the other hand, the purported prohibition under section 13A was either wholly or partially *ultra vires* the proper authority, his peremptory refusal to entertain the application (on grounds which were insupportable in law) constituted a breach of his statutory duty to follow the usual procedure before refusing an application which was regular on the face of it.

¹ (1949) 51 N. L. R. 227.

I do not suggest that the failure of any member of the public to object to the issue of a licence automatically divests the proper authority of his discretion independently to refuse it *bona fide* and on reasonable grounds in the interests of the residents of the locality in order to promote the objects of the Butchers Ordinance. But the right of appeal conferred by section 7 (4) presupposes that the proper authority, having complied with section 7 (2) and also (if applicable) with section 7 (3) (a), has made an order under section 7 (3) (b). Perhaps the only justification for refusing to entertain an application *in limine* would be that the application under section 7 (1) had not been made in proper form or, of course, that the carrying on of any part of a butcher's trade in the locality during the relevant period has in fact been prohibited by some person vested with power to interfere so drastically with an occupation which is *prima facie* lawful.

There remains the question whether the purported prohibition of the slaughter of animals and the sale of meat within the limits of the Village Committee area during the year 1956 was *ultra vires* the proper authority.

Section 13A (1) of the Ordinance, which was introduced by section 6 of the amending Act, No. 2 of 1951, passed into law on 23rd February 1951. It is to the following effect :—

“The proper authority for any area may from time to time, by order published in the *Gazette*, prohibit the slaughter of animals in that area or any specific part thereof during any specified period.”

This new section follows immediately after a group of sections (in the original enactment) which are designed to ensure that the slaughter of cattle in the area with a view to the sale of meat for human consumption is strictly supervised in the interests of public health. I should therefore imagine that the power to prohibit the slaughter of animals “from time to time” was primarily granted to promote the same object, e.g., if an epidemic of cattle disease was temporarily prevalent in the area. No argument was addressed to us, however, on behalf of the petitioner suggesting that the power could not be exercised *bona fide* for other reasons, and I shall therefore assume (without deciding) that the order relied on by the respondent was *intra vires* to this limited extent. But Parliament has certainly not delegated to the “proper authority” the power to prohibit *in toto* the exercise of a butcher's trade in the locality. Mr. Weerasooriya very properly did not seek to justify that part of the order which purported to prohibit the sale of meat in the area during 1956 and I am satisfied that it was *ultra vires* the proper Authority.

In the result, the petitioner has made an application for a licence to carry on the trade of a butcher in 1956 in an area in which the slaughter of animals during the relevant period has (let it be assumed) been lawfully prohibited. But there is nothing to prevent the other activities which form part of a licensed butcher's trade from being carried on in the area. For instance, the Ordinance, in its original or amended form does not make it unlawful for a butcher “to expose for sale” in one

area the meat of animals that have been lawfully slaughtered in another part of the Island. Accordingly, the petitioner's application for a licence was not of a kind which the respondent could properly have refused to entertain. The respondent should therefore have followed the normal procedure laid down in section 7 before deciding *bona fide* whether or not there were reasonable grounds for granting or refusing a licence to the petitioner. I would issue a *mandamus* directing him to entertain the application dated 2nd November 1955 and to deal with it thereafter as required by the provisions of the Ordinance. The petitioner is entitled to the costs of this application which I would fix at Rs. 315.

GUNASEKARA, J.—I agree.

Application allowed.
