

1954

Present : Rose C.J. and de Silva J.

URBAN COUNCIL, NAWALAPITIYA, Appellant, and
THE ATTORNEY-GENERAL, Respondent

S. C. 379—D. C. Kandy, 312.

Urban Council—Contract entered into by Chairman—Liability of Council—Urban Councils Ordinance, No. 61 of 1939, ss. 34 (2), 47 (f).

Where the Chairman of an Urban Council ordered a quantity of fish and received it on behalf of the Council—

Held, that the Urban Council was liable to be sued on the contract as the Chairman was, by virtue of section 34 (2) of the Urban Councils Ordinance, the chief executive officer of the Council.

Held further, that buying and selling fish fell within the permitted activities of an Urban Council, within the meaning of section 47 (f).

APPPEAL from a judgment of the District Court, Kandy.

Ivor Misso, for the defendant appellant.

B. C. F. Jayaratne, Crown Counsel, for the plaintiff respondent.

Cur. adv. vult.

September 15, 1954. ROSE C.J.—

This matter relates to a quantity of fish which was alleged to have been delivered by the Director of Fisheries to the Chairman of the Urban Council, Nawalapitiya, on behalf of the Council during the period June, 1944, to November, 1945. The first question that arises for consideration is whether, assuming that the fish was in fact delivered, the Chairman was acting within his authority in ordering the fish and receiving it on behalf of the Urban Council.

The English authorities which were cited in the course of argument are perhaps of little assistance on this matter owing to the specific provisions of the relevant section of the Urban Councils Ordinance, No. 61 of 1939. Section 34 (2) expressly provides that the Chairman of an Urban Council shall be the executive officer of the Council, and all executive acts and responsibilities directed or empowered to be done or discharged by the Council may, unless the contrary intention appears from the context, be done or discharged by the Chairman.

It is true that the proviso to that sub-section states that the Chairman in the exercise of his powers under the section shall act in conformity with such resolutions as may from time to time be passed by the Council. No attempt was made at the trial to establish the existence of any resolution which limited the powers of the Chairman in any particular. *A fortiori* the plaintiff cannot be held to have had notice of any such limitation.

The sole question, therefore, that remains for decision on this aspect of the case is whether buying and selling fish falls within the permitted activities of an Urban Council. The learned District Judge came to the conclusion, after consideration, that the supply of fish to the inhabitants of the town of Nawalapitiya is an act that the Urban Council is permitted to do for the furtherance of the promotion of the public health, welfare and convenience of the town and its inhabitants ; and that therefore this activity is covered by Section 47 (f) of the Ordinance. From this view I see no reason to dissent.

The only remaining question therefore for consideration is whether the plaintiff-respondent has established that the fish in question was delivered to the Chairman.

The decision of this question has no doubt been made more difficult by the unusual delay which attended the institution of the present proceedings. The learned District Judge, however, has applied his mind with care to the relevant considerations for the determination of this matter and has referred in particular to three documents, (P7, P8 and P9), which purport to be letters signed by the then Chairman—Mr. R. E. Jayatileke—relating to these consignments of fish. Some objection was taken to the admissibility of two of these letters, but whatever the merits of these objections may be, one at least of the three letters is clearly admissible, and indeed the contrary was not seriously contended for by learned Counsel for the appellant. Moreover, as regards all three of these documents—which were accepted by the learned District Judge—there seems to be little doubt that they were written on behalf of and signed by Mr. R. E. Jayatileke the then Chairman.

Having regard to the lapse of time since this fish is alleged to have been delivered it is perhaps not altogether unexpected that the proof of its delivery should be lacking in precision. The learned District Judge, however, has considered such evidence as there was with care and he has formed the view that the necessary book entries sufficiently identify the fish in question. Moreover, apart from the evidence of Mr. K. A. Somapala who appears to have been the official in charge of books of the Fisheries Department at the relevant time, he accepts and relies upon the evidence of Mr. K. W. D. Perera, an Inspector of Fisheries of Colombo. This witness states that he was in charge of the despatch of fish from the Department of Fisheries during the period June, 1944, to November, 1945 ; that he despatched fish in accordance with the entries in the relevant books of the Urban Council, Nawalapitiya ; and this was done on the instructions of the Director of Fisheries. He also describes the method used for the actual despatch of the fish by railway.

It seems to me that it would be wrong for this Court to hold that the learned District Judge should not have accepted this evidence. That being so, I consider that the liability of the Urban Council to pay for this fish is established. The appeal must therefore be dismissed with costs.

I would add that I feel a certain sympathy for the present members of the Urban Council if indeed it is true, as was suggested on their behalf, that the Council itself has not had the benefit of any revenues derived from the sale of the fish by the then Chairman. No doubt the Council will consider.

if they have not already done so, what remedies may be available to them against the then Chairman, but, of course, for the reasons that I have already stated, the fact, if fact it be, that the Council have been led into financial loss through the actions of a past Chairman, cannot affect their liability to pay for the value of the goods to the deliverer of them.

DE SILVA J.—I agree.

Appeal dismissed.

