

1966

Present : Alles, J.

THE ATTORNEY-GENERAL, Appellant, and
S. M. J. ABDEEN, Respondent

S. C. 578/1966—M. C. Colombo South, 57314/A

*Food Price Order—Publication in Gazette—Form—Control of Prices Act (Cap. 173),
as amended by Act No. 44 of 1957, ss. 4, 8 (1), 8 (6).*

Section 4 of the Control of Prices Act reads as follows :—

“ 4. (1) If it appears to the Controller that there is likely to arise, in any part of Ceylon, any shortage of any article or any unreasonable increase in the price of any article, the Controller may by Order—

(a) fix the maximum price above which that article may not be sold ”

Held, that it is not essential to the validity of a Food Price Order that it should specifically recite that the conditions precedent to the promulgation of the Order were present before the Controller purported to act under it. It would be sufficient if reference is made in the Order to section 4 of the Control of Prices Act under which the Controller acted.

APPEAL from a judgment of the Magistrate's Court, Colombo South.

L. B. T. Premaratne, Senior Crown Counsel, for the complainant-appellant.

M. M. Kumarakulasingham, with *N. S. A. Goonetilleke* and *Mark Fernando*, for the 1st accused-respondent.

Cur. adv. vult.

October 10, 1966. ALLES, J.—

This is an appeal with the sanction of the Attorney-General from an order of acquittal. The accused-respondent was charged with having sold mutton in excess of the maximum price fixed for the sale of mutton under Food Price Order No. C 283 made by the Controller of Prices (Food) under section 4 of the Control of Prices Act and published in Government Gazette No. 11654 of 28th January, 1959 and thereby committed an offence under section 8 (1) of the Control of Prices Act and punishable under section 8 (6) of the said Act as amended by the Control of Prices (Amendment) Act No. 44 of 1957.

There is no dispute in regard to the facts and the learned Magistrate was satisfied beyond reasonable doubt that the accused-respondent sold the mutton above the controlled price. He has however acquitted the accused-respondent on a point of law raised by his Counsel on the ground that the Food Price Order in question, marked P5, cannot be enforced in law as it had not specifically recited that the conditions precedent to the promulgation of the order were present before the Controller purported to act under it.

The operative portions of the Order P5 are in the following terms :—

ORDER

“ By virtue of the powers vested in the Controller of Prices (Food) by section 4 of the Control of Prices Act, No. 29 of 1950, I, K. M. D. Jayanetti, Controller of Prices (Food), do by this Order :

- (i)
- (ii) fix with immediate effect the prices specified
 above which mutton shall not be sold”

The other matters mentioned in P5 have no application to the present case.

Section 4 of the Control of Prices Act No. 29 of 1950 (Cap. 173) reads as follows :—

“ 4. (1) If it appears to the Controller that there is, or is likely to arise, in any part of Ceylon, any shortage of any article or any unreasonable increase in the price of any article, the Controller may by Order—

- (a) fix the maximum price above which that article shall not be sold,”

Food and Price Control Inspector Nagaratnam in cross-examination stated as follows :—

“ I cannot say whether in 1959 there was a shortage of meat or that there was an unreasonable increase in the price of mutton.”

The learned Magistrate in the course of a lengthy judgment, most of which contains excerpts from authorities which were cited to him, at the conclusion of his order held that "the price order which is filed of record has not stated that the conditions precedent under which the Controller acted existed and as his order has been challenged and the prosecution has not been able to adduce any proof by evidence or otherwise that these conditions in fact existed the order cannot be enforced in law." If the Magistrate had paused to consider the order more closely and examined the evidence a little more critically, he might have come to a different conclusion. He appears to have been considerably influenced by the spate of authorities cited before him and in particular the judgment of the Supreme Court of India in *Swadeshi Cotton Mills v. State Industrial Tribunal*¹, from which he has quoted *in extenso* in support of his findings.

In P5 there is a specific reference to section 4 of the Control of Prices Act which contains the conditions precedent for the making of an order under that section. It is therefore idle to suggest that the conditions precedent were not contained in the order. In *Gunawardena v. Kandy Police*², where the appellant was detained on an order made by His Excellency the Governor in pursuance of the powers vested in him by regulation 1(1) of the Defence Regulations, it was held that it was not essential to the validity of the order that it should set out the conditions precedent to the making of the order. In the course of the judgment in that case reference was made to the decision in *Gossett v. Howard*³ where it was held that—

"In the case of special authorities given by statute to justices or others acting out of the ordinary course of the common law, the instruments by which they act, whether warrants to arrest, commitments, or orders, or convictions, or inquisitions, ought, according to the course of decisions, to *show their authority on the face of them by direct averment or reasonable intendment.*"

Moseley, J held that the recital of the number of the regulation under which the order was made in that case amounted to a 'direct averment'. With respect, I am in agreement with that observation of the learned Judge. If such a contention is permissible in a case where the liberty of the subject is affected, *a fortiori* it should be sufficient in a case where there is reasonable cause to believe that there will be a scarcity of controlled commodities or an unreasonable increase in the price of such commodities. I am therefore fortified in my view that in a case of this kind it should be sufficient if reference is made in the Order to the section of the Control of Prices Act under which the Controller acted. It is inconceivable that the accused-respondent in a case of this kind is likely to be ignorant of the fact that he was contravening the provisions of the law in selling the article in excess of the controlled price or that he was prejudiced when the Order referred to section 4 of the Control of Prices

¹ A. I. R. (1961) *Supreme Court* 1381.

² (1944) 45 N. L. R. 399 at 402.

³ (1845) 10 Q. B. 411 at 452.

Act instead of making reference to the conditions precedent contained in section 4. To permit a technical point of law of this nature to succeed would amount to a mockery of the legal process.

The Magistrate was also of the view that Nagaratnam's uncontradicted evidence established that the defence had successfully challenged the Price Order in question. Under section 4 it is the Controller who must be satisfied that the conditions stated therein exist. There is no evidence in this case that the Controller was not so satisfied before he made the order. The passage quoted by the learned Magistrate from Nagaratnam's evidence has no bearing on the question whether the Controller was satisfied or not that the conditions precedent in section 4 existed. I do not think there is any duty cast on Food and Price Control Inspectors to familiarise themselves with the scarcity of controlled articles that may have existed in the distant past, and one can appreciate Nagaratnam's ignorance of the conditions that prevailed in 1959. I am therefore of the view that the learned Magistrate has misdirected himself on the facts when he held that the accused-respondent had successfully challenged the prosecution to prove the conditions precedent.

In the view I have taken of the facts of this case, I do not think it is necessary for me to consider the authorities that have been cited before the learned Magistrate and referred to in the course of the hearing of this appeal. However, since considerable reliance has been placed both by the learned Magistrate and Counsel for the accused-respondent on the decision of the Supreme Court of India in *Swadeshi Cotton Mills v. State Industrial Tribunal* (supra), I wish to make some reference to the dicta laid down in that case. The order, the validity of which was challenged, was one made under section 3 of the Industrial Disputes Act, 1947, which enables the Government to make a general or special order "if, in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment". The orders in question did not contain the above recital although reference was made to section 3 and in the course of the hearing of the appeal the Court permitted affidavits to be filed by the State Government to the effect that the conditions precedent had been satisfied. The Court held at p. 1387 that—

" . . . where certain conditions precedent have to be satisfied before a subordinate authority can pass an order, it is not necessary that the satisfaction of those conditions must be recited in the order itself, unless the statute requires it, though . . . it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal *ab initio* and only a further burden is thrown on the authority passing the order to satisfy the court by other means that the conditions precedent were complied with."

With all respect to the learned Judge who delivered the order of the Court, I am unable to agree that it was necessary to validate any defect in the Order by the filing of an affidavit, because the Order itself contained the section (section 3) under which the State Government acted and was therefore valid on the face of it. For the same reason I have held that, in this case, the reference to section 4 of the Price Control Act indicated that the conditions precedent had been satisfied before the Price Control Order was promulgated. The *ratio decidendi* in the Indian case also has no application to the facts of the present case because I am of the view, on the evidence led, that the defence has not challenged the order.

When the Controller of Prices made his order under section 4 of the Control of Prices Act, the presumption in regard to the regularity of public acts would apply; it must be taken *prima facie* to have been properly made and also that the personal belief of the Controller was satisfied before he made the order; the well-known maxim of *omnia praesumuntur rite esse acta* would apply to such a case.

I therefore allow the appeal of the complainant-appellant and convict the accused-respondent of the charge brought against him. Let the record be remitted to the Magistrate for the purpose of imposing an appropriate sentence on the accused-respondent under section 8 (6) of the Control of Prices Act.

Acquittal set aside.