

1969

Present : Samerawickrame, J.

R. VEERIAH and another, Appellants, and FOOD AND PRICE CONTROL INSPECTOR, BADULLA, Respondent

S. C. 703-704/67—M. C. Badulla, 2612

Control of Prices Act—Sections 4 (1) and 8 (8)—Extent of employer's liability for his employee's offence—Price Order made for an outstation district—Regulation prices according to prices for the time being fixed for the Colombo municipal area—Meaning of words "for the time being"—Validity of the Price Order.

(i) Where an employer and his employee are charged together for selling an article at a price in excess of the controlled price, the employer is not liable under section 8 (8) of the Control of Prices Act for the offence of his employee unless he is charged on that footing and is given an opportunity of proving the matters stated in that statutory provision.

(ii) A Price Order applicable to the Badulla municipal area provided for the fixing of the maximum retail price of red onions according to the maximum retail price for the time being fixed for the Colombo municipal area.

Held, that the Badulla Price Order contemplated not only the Price Order for the Colombo municipal area in existence at the time it was made but also Price Orders for the Colombo municipal area that might be made thereafter.

Held further, that the Badulla Price Order was not invalid on the ground of uncertainty or of being *ultra vires* of the provisions of section 4 (1) of the Control of Prices Act.

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

Nimal Senanayake, with *Bala Nadarajah*, for the accused-appellants.

L. D. Guruswamy, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 25, 1969. SAMERAWICKRAME, J.—

The first and second accused-appellants have been convicted of offences under the Control of Prices Act on the ground that they sold a pound of red onions for 35 cents when the maximum controlled retail price was 31 cents.

Learned Counsel for the appellants submitted that the conviction of the 2nd accused-appellant cannot stand because it is not supported by the evidence. The decoy stated that he purchased the pound of red onions from the 1st accused-appellant and that when he tendered the money he was requested by the 1st accused-appellant to pay the money to the 2nd accused-appellant who, according to the decoy, inquired from the 1st accused-appellant the amount that was payable and received a sum of 35 cents. There is no evidence that the 2nd accused-appellant was aware what commodity it was that the decoy had purchased. The 2nd accused-appellant has given evidence and stated that he did not see the decoy buying the provisions.

Learned Crown Counsel submitted that as the 2nd accused-appellant had stated in evidence that he was the proprietor of the boutique he was, in any event, liable under s. 8 (S) of the Control of Prices Act, but the 2nd accused-appellant was not charged on that footing. Further, that provision provides that the employer will be free from liability if he proves to the satisfaction of the Court that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. As s. 8 (S) of the Act was not relied upon by the prosecution, the 2nd accused-appellant did not have an opportunity of proving these matters. Although there is grave suspicion in regard to the 2nd accused-appellant, I think that he is entitled to the benefit of the doubt and that his conviction must be set aside.

The Price Order relied upon fixed the maximum retail price for red onions in the Badulla municipal area at 3 cents above the maximum retail price for the time being fixed for the Colombo municipal area. Learned Counsel for the appellants submitted that the only meaning that could be given to this Price Order was that the price fixed was 3 cents over the retail price for the Colombo municipal area at the time the Badulla Price Order was made and that as the Price Order in the Colombo municipal area operative on 21st May, 1965, had not been produced, there was no evidence as to the maximum retail price fixed.

The words "for the time being" have different meanings according to the context. Stroud's Judicial Dictionary (Third Edition) states:—

"The phrase 'for the time being' may, according to its context, mean the time present, or denote a single period of time; but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time."

In the case of *The Solicitor-General v. Thangamani Pitchai*¹, Alles, J., considered a Price Order similarly phrased and held that it contemplated not only the Price Order of the Colombo Municipality which was in existence on the date when the Ratnapura Order came into operation but also any Price Order fixing the price of the commodity for the Colombo Municipality which was in force subsequent to that date. With respect, I agree with his decision. I am of the view that the Badulla Price Order contemplated not only the Price Order for the Colombo municipal area in existence at the time it was made but also Price Orders for the Colombo municipal area that may be made thereafter.

Learned Counsel for the appellants further submitted that if it was intended that the prices at Badulla should fluctuate in the same manner as the Colombo prices, then the Price Order was invalid as it was ambiguous and lacking in certainty. I am unable to see that the Order was ambiguous or lacking in certainty though it may cause traders some inconvenience in that they will have to have recourse to the Price Order for the Colombo municipal area before they could ascertain the prices operative in their area. A Price Order made for an outstation district by relation to the prices in Colombo was considered by Sirimane J., in the case of *K. R. Gnanasivam and another v. A. C. H. Mohamed*², and he held that there was no uncertainty about the prices and that the Order was a valid Order.

Counsel for the appellants also submitted that the fixing of prices for Badulla by reference to the prices fixed for the Colombo municipal area was bad, inasmuch as it was not an exercise of the deputy Controller's function under section 4 (1) of the Act but was in effect a surrender of his functions to the authority fixing the prices for the Colombo municipal area. The function of fixing the prices has been entrusted to the deputy Controller, and it may well be that in the circumstances of a particular trade he may find that the most equitable price to be fixed for his area should be some amount above the prices at which a trader could purchase his goods in the Colombo municipal area in which most wholesalers operate. In the absence of any evidence to show that this mode of fixing prices was unreasonable having regard to the circumstances of a particular trade, I am unable to hold that the deputy Controller by adopting this mode failed to exercise his function and surrendered his authority to the authority fixing prices for the Colombo municipal area. This matter has been considered by Tennekoon, J., in the case of *H. M.*

¹ (1965) 69 N. L. R. 442.

² (1964) 67 N. L. R. 479.

*Podimenike v. The Inspector of Police, Kiriella*¹, and he took the view that this mode of fixing prices was not an unreasonable or improper way of fixing them. With respect, I agree with his view and I hold that the Badulla Price Order was valid.

In view of the findings that I have arrived at it is unnecessary to consider whether s. 4 (7) of the Act which provides that upon a notification of the Minister's approval an Order shall be deemed to be as valid and effectual as if it were enacted in the Act, would have the effect of rendering the Order a valid one in spite of the objections raised to it by Counsel for the appellants.

In the result the conviction and sentence imposed on the 1st accused-appellant is affirmed and his appeal is dismissed. The appeal of the 2nd accused-appellant is allowed and the conviction and sentence imposed on him are set aside.

Appeal of 1st accused dismissed.

Appeal of 2nd accused allowed.
