

1969

Present : de Kretser, J.

K. THIRUŃAVUKARASU, Appellant, and P. A. S. JAYAWARDENE
(Food and Price Control Inspector), Respondent

S. C. 876/68—M. C. Kegalle, 69062

Sale of matches—Price Order of 23rd July, 1965—Invalidity—Control of Prices Act (Cap. 173), s. 4—Manufacture of Matches Ordinance (Cap. 170), s. 12 and Regulations 42, 43, 44, 53 (1) made under s. 10 (1).

The accused-appellant was convicted of the charge of selling a box of matches containing 50 sticks for -/06 cents when the controlled price for such a box was -/05 cents.

Held, that the relevant Price Order of 23rd July 1965 was bad in law in that it was in conflict with Regulation 43 (1) made under Section 10 (1) of Cap. 170 which enacted that a trader must sell his box of matches with the Government banderol intact. To make a Price Order that requires a trader to fix his price in accordance with the number of sticks in the box which he cannot know with certainty except by breaking the banderol is manifestly unreasonable, and goes beyond the authority given to the Controller of Prices by section 4 of the Control of Prices Act.

¹ (1955) 60 N. L. R. 281.

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

P. Nagendran, with *Wilson Fernando*, for the Accused-Appellant.

Priyantha Perera, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

January 21, 1969. DE KRETZER, J.—

The Magistrate of Kegalle (Mr. Illayperuma) sentenced the accused in this case to one month's R. I. and a fine of Rs. 250 in default six months' R. I. when he found the accused guilty of the charge laid against him namely that he had sold a box of matches containing 50 sticks for 06 cents when the controlled price for such a box is 05 cents. The fact that the accused sold the box in question for 06 cents is not contested, and the point taken before the Magistrate is the same point that is taken in appeal, namely that the relevant price order is bad in Law.

The relevant Price Order found in G. G. No. 14,459 of 23rd July 1965 fixed the price of matches as follows:—Rs. 328 as the maximum price above which a case of matches shall not be sold in Ceylon, ex factory.

Rs. 338 as the maximum wholesale price for a case.

Rs. 360 as the maximum retail price for a case.

It also fixed the price for boxes of matches as follows:—

Box of matches containing not less than 50 sticks	— 05 cents
do.	not less than 40 sticks — 04 cents
do.	not less than 30 sticks — 03 cents
do.	not less than 20 sticks — 02 cents
do.	not less than 10 sticks — 01 cent

It will be observed that under this Price Order a box of matches containing less than 10 matches was not price controlled; that the maximum price Rs. 328 ex factory could apply to any case of matches irrespective of the number of sticks in each match-box making up the case; that the wholesale price could be Rs. 338 for a case quite irrespective of the price paid ex factory for it and quite irrespective of the number of matches in each box that was found in the case.

Counsel's submission is that this Price Order is bad in Law in that it conflicts with the regulations made under section 10 (1) of the Manufacture of Matches Ordinance, Cap. 170 of Vol. 6 of the L. E., which are "as valid and effectual once approval has been duly gazetted as if they were enacted in the Ordinance itself." These regulations are found in Vol. 3 of the Subsidiary Legislation of 1956 and were made and duly gazetted in 1938/1941. Those relevant to this Order are Nos. 43 and 44.

No. 43 (1) forbids the sale by *any* person to another of any matches manufactured in Ceylon unless there is securely fixed to every box of matches so sold a Government banderol issued by the Director. 43 (2) extends the prohibition to sale by licensed manufacturers. Reg. 44 provided for the manufacturer affixing the banderol and sets out the manner it is to be affixed, and the portion relevant to this Order reads : " The banderol must be so fixed as to prevent the box from being opened in the ordinary way without first breaking the banderol ". To sell a box with a broken banderol is an offence punishable under section 12, Cap. 170. Reg. 42 enacts that no more than 50 match-sticks shall be packed in any box sold or offered for sale. It follows then that it is open to a manufacturer to pack them for example in boxes containing 40 sticks or 30 sticks, etc., if he so pleases, and he is the only person who would know the number of sticks each box contains. There is no provision for either the banderol, the label which has to be affixed on each box in terms of Reg. 53 (1) or both to show the number of sticks in the box to which they are affixed. How then, is the retail dealer in these circumstances to fix his selling price ? While it may be possible to ascertain from the manufacturer or the wholesaler how many sticks the boxes in a case offered for sale contain, there can also be times when this information cannot be obtained or may not be vouchsafed. The reasonableness of a Price Order can always be checked by its application to an extreme case. The law enacts that a trader must sell his box of matches with the banderol intact. To make a Price Order that requires him to fix his price in accordance with the number of sticks in the box which he cannot know with certainty except by breaking the banderol is manifestly unreasonable ; and in my opinion goes beyond the authority given to the Controller of Prices by section 4 of Cap. 173 of Vol. 6 of the L. E. The Price Order being invalid I allow the appeal of the accused. The conviction and sentence are set aside.

Appeal allowed.