

1955

Present: Basnayake, A.C.J.

S. G. DE SILVA (Revenue Inspector, Municipal Council of Kurunegala),  
Petitioner, and KURUNEGALA CO-OPERATIVE STORES, LTD.,  
Respondent

*S. C. 283—Application for Revision in M. C. Kurunegala, 6,974*

*Offensive trade or business—Requirement of licence—Meaning of “trade or business”—  
By-law—Municipal Councils Ordinance, No. 29 of 1947, ss. 148 (1), 267.*

By a by-law made under sections 148 and 267 of the Municipal Council Ordinance, “storing grain, for purposes other than as forage, in quantity exceeding 5 cwt.” was one among a number of trades or businesses which were declared to be offensive trades or businesses for the carrying on of any of which it was necessary to obtain a licence.

*Held*, that unless the trade or business declared to be offensive was carried on for the sake of earning profits there would be no infraction of the by-law. Storage, therefore, of grain by a co-operative society as an incident of the trade of retailing rice could not fall within the ambit of the by-law.

**A**PPPLICATION to revise an order of the Magistrate’s Court, Kurunegala.

*N. B. Weerasooria, Q.C.*, with *J. Mututantri*, in support.

No appearance for Respondent.

*Cur. adv. vult.*

November 8, 1955. BASNAYAKE, A.C.J.—

This is an application by the Revenue Inspector of the Municipal Council of Kurunegala (hereinafter referred to as the applicant), praying that the order of acquittal of the accused respondent, the Kurunegala Co-operative Stores, Ltd. (hereinafter referred to as the respondent), be set aside, in the exercise of the powers of this Court under section 357 of the Criminal Procedure Code, and that a re-trial be ordered.

The applicant complained to the Magistrate’s Court of Kurunegala that on the 22nd day of December, 1954, the respondent carried on the trade or business of storing grain for purposes other than as forage in quantity exceeding 20 cwt. without a licence from the Municipal Commissioner in breach of section 148 (1) of the Municipal Councils Ordinance No. 29 of 1947, and did thereby commit an offence punishable under section 148 (3) of that Ordinance.

Section 148 (1) referred to above provides as follows:—

“No place shall be used within any municipality for any of the following purposes, namely, for boiling offal or blood, or as a soap-house, oil-boiling-house, dyeing-house, tannery, brick, pottery or lime kiln, sago manufactory, gun-powder manufactory, manufactory of fireworks, or other manufactory or place of business from

which either offensive or unwholesome smells arise, or for any purposes which are calculated to be dangerous to life, or as a yard or depot for hay, straw, wood, coal, cotton, bones, or inflammable oil, or for any other trade or business which the Council may, by means of by-laws, declare to be an offensive or dangerous trade or business for the purposes of this section, except under a licence from the Council, which is hereby empowered, at its discretion from time to time, to grant such licences, and to impose such terms therein as to the Council may appear expedient”.

By a by-law made under sections 148 and 267 of the Municipal Councils Ordinance a number of trades or businesses have been declared to be offensive trades or businesses. That by-law reads—

“The following trades or businesses are hereby declared to be offensive trades or businesses for the purposes of section 148 of the Municipal Councils Ordinance No. 29 of 1947”.

A list of 57 trades or businesses declared to be offensive, another of 26 declared to be dangerous, and a third of 24 declared to be both dangerous and offensive are appended to the by-law. Of these the 52nd item within which the prosecution seeks to bring the respondent reads—

“Storing grain, for purposes other than as forage, in quantity exceeding 5 cwt.”.

The respondent successfully contended before the learned Magistrate that the by-law does not apply to it inasmuch as it is not carrying on the trade or business of storing grain. The evidence discloses that rice is brought to the respondent's store from the authorised wholesale dealer, the Co-operative Wholesale Union, for the purpose of retailing to the rice-ration book holders attached to it. A quantity of 56 bags of rice is brought each week in three or four instalments. Each instalment is distributed within a day or two of its receipt. On the date alleged in the complaint, there were 17½ bags of rice at the time the applicant visited the store.

The by-law declares the trade or business of storing grain to be an offensive trade or business. Where the expression trade is, as in this context, used in juxtaposition to the expression business, it must be understood to be used in the sense of buying and selling with a view to earn profits and not in its wider sense. The expression business in this context has a wider connotation than trade. It would embrace all activities carried on for the purpose of earning profits or gains and would include those caught up in the expression trade. Every trade is in a sense a business but every business is not a trade. Having regard to the list of items attached to the by-law the expression business may in this context be defined as any activity which occupies the time, attention, and labour of a person, whether corporate or not, for the purpose of obtaining profits or gains. Unless the trade or business declared to be offensive is carried on for the sake of earning profits there would be no

infraction of the by-law. Now it is clear that the respondent does not carry on the activity of storing rice for the purpose of obtaining profits or gains by such storing. Its object is to sell the rice at a profit. For that purpose it is necessary that it should bring it to its store in reasonable quantities which would enable it to cater for the needs of its clientele without interrupting its service to them. The temporary storage of each instalment of rice brought to its store, for so long as it is necessary to retail it, is incidental to its trade of retailing rice and it cannot be rightly said that such storage constitutes the trade or business of the respondent. Storage of grain as an incident of the trade of retailing rice does not bring a person within the ambit of the by-law which forbids the carrying on of the trade or business of storing grain except with a licence.

In order to fall within the ambit of that by-law the main activity of a person should be the storing of grain and obtaining profits or gains by the activity of storing alone. It is clear that the respondent's main activity is not the storing of grain with a view to earning profit. It has therefore not committed any offence against the by-law. The applicant's prayer cannot be granted and is refused.

*Application refused.*