

1954

Present : Gratiaen J.

T. O. D. JANSEN, Appellant, and SANITARY INSPECTOR,
DEHIWELA-MT. LAVINIA U. C., Respondent

S. C. 435—M. C. Colombo South, 43,471

Dangerous or offensive trade—Requirement of licence—By-laws—Local Government Ordinance (Cap. 195), ss. 164, 168 (10) (k)—Urban Councils Ordinance, No. 61 of 1939, s. 248.

By-law 1 made by an Urban Council under section 168 (10) (k) of the Local Government Ordinance declared the manufacture of tiles or bricks to be included within the category of "dangerous or offensive trades". By-law 2 prohibited the carrying on of a "dangerous or offensive trade without an annual licence which the Chairman shall issue to all persons complying with the conditions provided for the issue of such licences". There were, however, no by-laws prescribing the conditions applicable to the manufacture of tiles.

Held, that the requirement of a licence under by-law 2 could not be said to apply to the trade of manufacturing tiles unless and until "the conditions provided for the issue of annual licences" for that particular trade were duly prescribed.

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

N. E. Weerasooria, Q.C., with *R. A. Kannangara*, for the accused appellant.

H. W. Jayewardene, with *P. Ranasinghe*, for the complainant respondent

Cur. adv. vult.

March 2, 1954. GRATIAEN J.—

This is an appeal against a conviction for an alleged contravention of a by-law made by a local authority. The appellant was charged with having carried on a "dangerous and offensive trade" (to wit, the manufacture of tiles) on 17th August 1952 within the limits of the Dehiwela-Mt. Lavinia Urban Council "without an annual licence issued by the Chairman of the Council".

The relevant by-laws were made by the Council in 1929 under sections 164 and 168 of the Local Government Ordinance (Cap. 195) and are still in operation by virtue of section 248 of the Urban Councils Ordinance No. 61 of 1939. The relevant provisions are to the following effect:—

- (a) by-law 1 declared the "manufacture of tiles or bricks" to be included within the category of "offensive or dangerous trades";
- (b) by-law 2 prohibited *inter alia* the carrying on within the limits of the Council of "any dangerous or offensive trade" without an annual licence from the Chairman, "which licence the Chairman shall issue to all persons complying with the conditions provided for the issue of such licences".

The appellant had, during the year 1950, constructed a cement tile factory in Dehiwela at considerable expense with the formal approval of the Chairman. In March 1951 he was also granted a permit to use Convent Lane,

Dehiwela, for the transportation of manufactured tiles by lorry from the factory site. Shortly afterwards the supply of electricity to the premises was also arranged. Since the factory was first established, the appellant has manufactured approximately 1,000 tiles a day. It is not suggested that the particular process of manufacture adopted by him is *per se* obnoxious or detrimental to the health of residents in the locality, but I appreciate that the council is legally empowered by section 168 (10) (k) *bona fide* to “deem” an activity to be “dangerous or offensive” which is not so in fact.

In October 1951 an unexpected development took place. The Chairman *peremptorily*, and without prior intimation, called upon the appellant “to obtain a licence” to carry on his established “trade” “within a fortnight”. The appellant explained that he was not aware that a licence was required, and asked for information as to the formalities which he should comply with in order to regularise his position. On 3rd November 1951 the Chairman replied that “a licence to run a tile factory at No. 42/5, Peter’s Place, Dehiwela *cannot be issued*, as these premises come within a residential area”. There the correspondence seems to have ended, and the evidence indicates that the appellant continued to manufacture tiles in his factory without objection from the Council until this prosecution was instituted on 8th August 1952.

The learned Magistrate took the view, although with undisguised regret, that the by-law alleged to have been contravened absolutely prohibited the manufacture of tiles within the limits of the Council except under the authority of a written licence from the Chairman. He accordingly convicted the appellant, but imposed on him only a nominal sentence in view of the quite remarkable conduct of the local authority in having expressly sanctioned the erection of an expensive factory for the manufacture of tiles without disclosing its opinion that the structure could not lawfully be used for the purposes for which it was to be constructed.

While sharing the learned Magistrate’s condemnation of the attitude taken up by the local authority, I am glad to say that I have come to the conclusion that, upon a proper construction of the by-law which the appellant is alleged to have contravened, his conviction cannot be sustained.

Section 168 (10) (k) of the Local Government Ordinance empowered the Council to promote “public health and amenities” within the limits of its jurisdiction by making by-laws for “the regulation, supervision, inspection and control” (*but not, be it noted, for the total prohibition*) “of trades deemed to be offensive or dangerous by the District Council”. *Prima facie*, therefore, the by-laws previously referred to in my judgment were *intra vires*, but it is necessary to give by-law 2 a reasonable interpretation which restricts its application to the legitimate objects which a conscientious local authority must be assumed to have intended to further.

The by-law prohibits the carrying on of a “dangerous or offensive trade without an annual licence which the Chairman *shall*” (the words are imperative) “issue to all persons complying with *the conditions prescribed for the issue of such licence*”. These words clearly presuppose that, before the by-law can operate in respect of any particular trade, the local

authority has duly prescribed the conditions under which it may be carried on. If these conditions have been prescribed, a person complying with them would be entitled *as of right* to obtain a licence from the Chairman ; and the licence while in operation, serves as a certificate of compliance with the conditions previously prescribed. If the conditions are subsequently contravened by the licensee, there is power to cancel the licence.

The same set of by-laws meticulously prescribes the conditions under which certain other trades (e.g. bakeries) may be carried on within the limits of the Council. But the prosecuting Inspector has admitted in his evidence that "*there are no conditions in the by-laws which the accused would have to comply with before a licence is issued*". In such a situation the requirement of a licence is manifestly purposeless.

I do not rule that by-law 2 is *ultra vires*. But in my opinion it cannot be said to apply to *the trade of manufacturing tiles* unless and until "*the conditions provided for the issue of annual licences*" for that particular trade have been duly prescribed. The alternative interpretation suggested on behalf of the Council must be rejected as unreasonable.

According to the correspondence filed of record, the Chairman informed the appellant that a licence to manufacture tiles in a "residential area" could not be issued. That might well have been a reasonable condition to impose in regard to any particular trade which the Council "deems" to be "dangerous" or "offensive", but according to the evidence, no such condition has in fact been prescribed.

It was argued by Mr. Jayawardena that the charge against the appellant relates to the year 1952, whereas the correspondence deals with a situation which arose in the previous year. I appreciate this point, but the evidence in the lower Court has not established that the position had altered in any respect before the date material to the charge. No by-laws have yet been passed, apparently, prescribing the conditions applicable to the manufacture of tiles within the limits of the Dehiwela-Mt. Lavinia Urban Council, and for that reason by-law 2 is not yet in operation as far as the appellant's "trade" is concerned.

I allow the appeal and quash the conviction.

Appeal allowed.
