

1946

Present : Dias J.

WEKUNAGODA, Appellant, and DE ALWIS, Respondent.

960—*M. C.*, Galle, 648.

*Food Control—Regulation 11 (6) in Part III of the Food Control Regulations—
Meaning of “forthwith”.*

By regulation 11 (6) in Part III of the Food Control Regulations “Every authorised distributor, wholesale dealer or importer shall keep such books or registers and make such entries therein as the Food Controller may require, and shall forthwith produce such books or registers for inspection on demand made by the Food Controller or by any person authorised by him for the purpose.”

Held, that the word “forthwith” in the Regulation means “in a reasonable time”. What is “reasonable” must depend on the circumstances of each case. The word “reasonable” is to be interpreted, not as meaning reasonable from the point of view of its effect upon the person to whom or in relation to whom the act is done, but reasonable from the point of view of the person who is called upon to do it.

¹ (1844) 174 *English Reports* 952.

A PPEAL against a conviction from the Magistrate's Court, Galle.

N. E. Weerasooria, K.C. (with him *H. Wanigatunga* and *B. G. S. David*) for the accused, appellants.

A. C. M. Ameer, C.C., for the complainant, respondent.

Cur. adv. vult.

October 25, 1946. DIAS J.—

There is no dispute on the facts of this case. The only question is whether the facts prove the offence charged.

Regulation 11 (6) in Part III. of the Food Control Regulations provides :—

“ Every authorised distributor, wholesale dealer or importer shall keep such books or registers and make such entries therein as the Food Controller may require, and shall *forthwith* produce such books or registers for inspection on demand made by the Food Controller or by any person authorised by him for the purpose.”

Five accused were charged with committing a breach of this rule which is punishable under section 6 of the Food Control Ordinance (Cap. 132). The second to the fifth accused have been acquitted. The first accused was convicted and fined a sum of Rs. 100. He appeals against that conviction and sentence.

What happened was this. On Saturday, February 9, 1946, Price Control Inspector Weerakoon armed with the letter P 5 signed by the Assistant Government Agent, Galle, who is also the Deputy Food Controller, went to the wholesale establishment of Messrs. Wekunagoda & Co. of which the appellant is the manager, and asked that the “ Flour Register ” should be handed to him for removal for inspection. This was at noon. The inspector was told that as the first accused was absent at the time, the request could not be complied with until he returned. The first accused returned at about 1 P.M. which would be about the time the shop would cease work for the day. After the letter P 5 had been explained to him, the first accused pointed out that this was a Saturday and that the time was 1 P.M. and that great inconvenience would be caused if the register was removed, particularly as the “ Flour Return ” had to be made on the Monday without which the firm could not obtain its supply of flour.

It was pointed out that on Monday morning the register would in the normal course be sent to the Kachcheri when the inspector could obtain it from the Kachcheri. It was also pointed out that a temporary register could not be kept as that would only show the flour issue from 1 P.M. onwards, whereas the return would have to show a full account of all the flour issued.

Without conceding the reasonableness of this request, or initialling the register so that it could not be tampered with between Saturday and Monday, or without asking for a copy or inspecting the register at once, the inspector obtained the statement P 6 from the first accused and reported the matter to the authorities, who instituted this prosecution.

It was argued that Regulation 11 (6) only authorised the inspection of registers in the shop or place of business and that it was illegal to demand its removal from the shop. This contention has been rightly dropped.

The Regulation requires that the distributor, dealer or importer should “forthwith” produce the register for inspection. In the circumstances of this case, can it be said that the first accused failed “forthwith” to produce the register?

This word has been interpreted in a series of cases. In *Soysa v. Anglo-Ceylon & General Estates Co.*,¹ it was construed to mean not “within a period reasonable in the circumstances”, but “without any delay that can possibly be avoided”. In *Fernando v. Nikulan Appu*², on the other hand, it was held to mean “in a reasonable time”. What is “reasonable” must depend on the circumstances of each case. The word “reasonable” is to be interpreted, not as meaning reasonable from the point of view of its effect upon the person to whom or in relation to whom the act is done, but reasonable from the point of view of the person who is called upon to do it. The person who is to do the act must do it as soon as he reasonably can. When the act is one which in its nature can be done without any delay at all, and there are no special circumstances occasioning delay, the act must be done at once. In such a case, all that it is necessary to inquire is whether the act was done without any delay that could possibly be avoided.

In *Gunasekera v. Arsecularatne*³ a search warrant directed the officer to whom it was directed to enter “forthwith” and search a certain house. The search, however, was not carried out until nearly a month later. Ennis J., said: “Then again *Soysa v. Anglo-Ceylon & General Estates Co.* was cited to show that the word “forthwith” should be construed as meaning “without any delay that can possibly be avoided” and it was urged that in this case there was a delay which could not be said to be unavoidable. . . . I have considered this question closely and I have come to the conclusion that the warrant was still valid and that the Magistrate by specifying the time within which the warrant should be returned, had considered what the warrant meant in directing an act to be carried out forthwith.” In *de Silva v. Seenathumma*⁴ in construing the word “forthwith” in section 756 of the Civil Procedure Code which requires that an appellant shall “forthwith” give notice to the respondent, it was held that the notice of security must be tendered or filed on the day on which the petition of appeal is received by the Court, and the case of *Fernando v. Nikulan Appu* (*supra*) was cited with approval.

¹ (1916) 19 N. L. R. 374.

² (1920) 22 N. L. R. 1.

³ (1924) 26 N. L. R. at p. 68.

⁴ (1940) 41 N. L. R. 241 (Five Judges).

I am of opinion that the word "forthwith" as used in Regulation 11 (6) is used in the sense in which it was interpreted to mean in *Fernando v. Nikulan Appu* (*supra*), that is to say, when the act is one which can be done without any delay at all, and there are no special circumstances occasioning delay, documents, must be made available for inspection at once. This is a question of fact. As I have said before, there is no dispute on the facts which show that there were circumstances which occasioned delay. The accused therefore performed the act as soon as he reasonably could be expected to comply with the order. Therefore the provisions of Regulation 11 (6) have been complied with.

I therefore quash the conviction and acquit the accused.

Appeal allowed.

