

1974 Present: Pathirana, J., and Sharvananda, J.

A. C. S. M. MOHIDEEN, Accused-appellant

and

K. THIRUNAVUKARASU, Inspector of Police,
Complainant-Respondent

S. C. 949/71—M. C. Colombo 68202/D

Control of Prices Act, section 4—Price Orders made thereunder—Discretion of Controller to fix price “if it appears to the Controller that there is, or is likely to arise in any part of Ceylon, any shortage of any article”—Can Courts review Price Order on ground of it being unreasonable.

Where an order made by the Controller of Prices under section 4(1) of the Control of Prices Act, fixing the price of a pound of beef at Rs. 1.25 as the controlled retail price, was challenged as *ultra vires* on the ground that it was unreasonable because it was below the price that normally prevails in the market—

Held: That the Courts cannot review the order on this ground where the Controller has exercised his discretion under the section.

APPEAL from a conviction at a trial before the Magistrate's Court, Colombo.

S. C. Chandrahasan for the accused-appellant.

Hector S. Yapa State Attorney, for the Attorney-General.

January 25, 1974. PATHIRANA, J.

Mr. Chandrahasan challenges the Price Order No. C. 430 made by the Controller of Prices (Food) under section 4 of the Control of Prices Act (Chapter 173) published in the *Government Gazette Extraordinary* No. 14578/10 dated 26.7.1967 on the ground that it is *ultra vires*. It is submitted that this order is unreasonable and therefore *ultra vires* the Control Prices Act as the price fixed at Rs. 1.25 as the control retail price for a pound of beef without bones is below the price that normally prevails in the market.

We have carefully read section 4 (1) of the Control of Prices Ordinance (Chapter 173). The provision to make an order fixing the maximum price above which an article shall not be sold is laid down in section 4 (1): ‘if it appears to the Controller that there is, or is, likely to arise in any part of Ceylon, any shortage of any article or an unreasonable increase in the price of any article’. This Court cannot review the order of the Controller on the ground of unreasonableness when he exercises his discretion and makes an order under section 4 (1).

An objective test cannot be applied to scrutinise the question whether there is or likely to arise any shortage of any article or any unreasonable increase in the price of any article. Once it appears to the Controller that there is such a situation, then he may exercise his discretion and fix the maximum price above

which that article shall not be sold. No limitations or qualifications are placed in section 4 (1) or in the other sections in the Act on the Controller when he decides to exercise his discretion to fix the maximum price. Besides, section 4 (7) states that where an Order has been approved by the Minister, notification of such approval shall be published in the Government Gazette; and upon such notification, the Order shall be deemed to be valid and effectual as if it were herein enacted.

We are therefore, of the view that an order under section 4 (1) cannot be challenged as *ultra vires* on the ground of unreasonableness. The submission of Mr. Chandrahasan on this ground therefore fails.

We do not see any reason to interfere with the decision of the learned Magistrate on the facts of the case.

On the sentence, we find the accused-appellant has been sentenced to four (4) months' R.I. and to pay Rs. 4,000 as a fine; in default 6 weeks R.I. The sentence of 4 months R.I. will remain. We vary the fine of Rs. 4,000 to a fine of Rs. 2,000 (two thousand) in default 6 weeks' R. I. The default sentence in the event of the fine not being paid, will be consecutive.

Subject to this variation, the appeal is dismissed.

SHARVANANDA, J.— I agree.

Sentence varied.