

1969

Present : Samerawickrame, J.

S. SEBASTIAN and 2 others, Appellants, and A. D. A. EDIRIWEERA
(Veterinary Stock Inspector), Respondent

S. C. 1343-1345/66—M. M. C. Colombo, 26685

Municipal Council of Colombo—By-Law prohibiting sale of meat of animals not slaughtered at the Municipal Slaughter House—Validity—By-Law 30 of Chapter XIII of the By-Laws and Regulations—Butchers Ordinance, ss. 3 (a), 4 (1), 14.

By-law 30 of Chapter XIII of the By-laws and Regulations of the Municipal Council of Colombo is not void as being inconsistent with the provisions of the Butchers Ordinance when it restricts the sale of meat to sale only of meat of animals slaughtered in the Municipal Slaughter House.

After v. Ediriweera (70 N. L. R. 334) not followed.

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

G. F. Sethukavalar, with S. G. Wijesekera and A. Puthumanayagam, for the accused-appellants.

H. Wanigatunga, with S. Basnayake, for the complainant-respondent.

Cur. adv. vult.

April 26, 1969. SAMERAWICKRAME, J.—

The first, second and third accused-appellants were jointly charged on the following count:—

“ That they did, at stall No. 26, Edinburgh Market, on the 3rd day of August, 1965, expose for sale 243 lbs. of meat and one heart of a carcass of an animal not slaughtered at the Municipal Slaughter House, Colombo, and thereby committed an offence in breach of s. 30 of Chapter XIII of the Municipal Councils By Laws and Regulations read with s. 267 (2) of the Municipal Councils Ordinance No. 29 of 1947 and punishable under Rule (2) of Chapter 25 of the aforesaid by laws published in *Government Gazette* No. 8212 of 8th April, 1936. ”

After trial, the learned Magistrate found them guilty and sentenced the 1st and 2nd accused-appellants to pay a fine of Rs. 75 each, and the 3rd accused-appellant to pay Rs. 75 as Crown costs. They have appealed against the convictions and sentences.

The only submission made by learned Counsel for the appellants was that the By-law, which is the basis of the charge, was void as being inconsistent with the provisions of the Butchers Ordinance. The By-Law reads :—

“ 30. Except as otherwise provided in these by-laws, no carcase of any animal (or any portion thereof) not slaughtered at a Municipal Slaughter-house shall be brought into a public or private market, or to any place specially licensed as provided in by-law 9 of this Chapter, or sold or exposed for sale in any public or private market or in any such specially licensed place. The provision of this by-law shall not apply to meat, game, or fish imported into the Island. Meat, game or fish so imported shall be sold in any place specially licensed therefor. ”

Section 4 (1) of the Butchers Ordinance states :—

“ No person shall carry on the trade of a butcher except under the authority of an annual licence or a temporary licence in that behalf issued by the proper authority. ”

The term “ butcher ” is defined as follows :—

“ ‘ butcher ’ shall include every person that slaughters animals or exposes for sale the meat of animals slaughtered in Ceylon. ”

The proper authority to issue a licence in respect of an area within the administrative limits of a Municipal Council is the Mayor of the Council or any person authorized in writing on his behalf—*v. de* Section 3 (a) of the Butchers Ordinance.

From the definition of the word “ butcher ” it would appear that the trade of a butcher may involve two different functions ; the slaughter of animals and the exposing for sale of the meat of animals slaughtered in Ceylon.

In regard to the slaughter of animals, Section 14 of the Butchers Ordinance contains the following provision :—

“ No licensed butcher shall slaughter any animal at any place other than—

- (a) the place appointed by the proper authority ; or
- (b) any public slaughterhouse as hereinafter provided ;

nor between the hours of 6 p.m. and 6 a.m. ”

Public slaughterhouses are dealt with in Chapter III of the Butchers Ordinance and have to be certified by the proper authority which has also the power to make regulations in regard to their establishment,

regulation, management and general discipline. The proper authority in regard to slaughterhouses within its administrative limits is the Municipal Council of Colombo. The Council has made By-Laws providing for slaughterhouses which are contained in Chapter XII of the By-Laws and Regulations of the Municipal Council of Colombo. A Municipal slaughterhouse referred to in By-Law 30 is obviously a slaughterhouse provided for in the said By-Laws contained in Chapter XII. It was not suggested, nor is there any evidence, that there is within the Municipal limits of Colombo any other public slaughterhouse or any other place appointed by the proper authority for the slaughter of animals, within the meaning of s. 14 of the Butchers Ordinance. So far, therefore, as a butcher who is licensed under the Butchers Ordinance in respect of any area within the administrative limits of the Municipal Council of Colombo is concerned, the By-Law does not have the effect of restricting the places at which he may slaughter animals.

In this case, no licence under the Butchers Ordinance appears to have been marked, but there is a statement that Mr. Sethukavalar produced the Butchers licence on behalf of the 3rd accused. The Butchers licence issued to the 3rd accused would not entitle him to slaughter animals outside the administrative limits of the Municipal Council of Colombo as the proper authority that issued the licence to him could only authorize him to carry on that trade of butcher in an area within the administrative limits of the Municipal Council of Colombo.

The Butchers Ordinance makes provision for the slaughter of animals by a licensed butcher within the area of a Municipal Council, or of an Urban Council, or of a Town Council, or of Village Committee or any other area falling within the administrative region of an Assistant Commissioner of Local Government. It also provides for the slaughter of animals by a person other than a licensed butcher on permits issued in terms of the provisions in Chapter II. There is, however, no provision in the Butchers Ordinance which states that only the meat of animals slaughtered under or in terms of the provisions of the Butchers Ordinance may be exposed for sale or sold by a licensed butcher. If a person, other than a licensed butcher, slaughters an animal without a permit, he would no doubt be committing an offence under the Ordinance; but if the carcase of that animal is exposed for sale by a licensed butcher that act would not be a contravention of any provision of the Butchers Ordinance, but the licensed butcher may risk the revocation of his licence.

There is contained in the Ordinance the requirement of a licence before any person exposes meat of animals slaughtered in Ceylon for sale. It appears to me that the Ordinance treats the licence as a *sine qua non* for the sale of meat of animals slaughtered in Ceylon but has no provision in regard to the nature or quality or any other attribute that the meat that is to be exposed for sale should have. It is quite obvious that there must be a wide area in regard to which regulative provisions of some kind are required. To take one instance, an animal which is healthy at the

time it is slaughtered may become verminous later and, so far as the Butchers Ordinance is concerned, there is no provision that prohibits the exposure for sale of such verminous flesh by a licensed butcher.

I am, therefore, of the view that a By-Law dealing with the meat of animals that may be sold or exposed for sale in any public or private market or other specially licensed place within the administrative limits of the Municipal Council of Colombo cannot be said to be inconsistent with the provisions of the Butchers Ordinance for the reason that the Butchers Ordinance has no provision dealing with the matter which is the subject of the By-Law.

It was held in the case of *White v. Morley*¹ that a By-Law is not bad because it deals with something that is not dealt with by the general law. Section 23 of the Metropolitan Streets Act, 1867 made it an offence to obstruct a street by three or more persons assembling for the purpose of betting and the By-Law made by the Glamorgan county council pursuant to the provisions of s. 23 of the Municipal Corporations Act, 1882, prohibited any person from frequenting any street or other public place for the purpose of book-making or betting or wagering. The Court held that the section was a provision relating to traffic in streets and dealing with obstruction, while the By-Law aimed at frequenting a street for the purpose of betting, which was a different thing and a different mischief.

In the case of *Lafier v. Ediriweera*² it was held that this by-law was *ultra vires* as being inconsistent with the Butchers Ordinance and that decision has been followed in S. C. 110/66 M. M. C. Colombo case No. 26938/MPL. These decisions proceed on the view that the provisions of the Butchers Ordinance impliedly authorize the sale of the meat of animals slaughtered in a public slaughterhouse or other place appointed by the proper authority and the By-Law in question restricts the sale of meat only to that of animals slaughtered in the Municipal slaughterhouse and that the By-Law is therefore inconsistent with the provisions of the Ordinance. With respect I am unable to agree with that view. It appears to me that in the absence of any provision in the Ordinance as to the meat of animals that may or may not be exposed for sale by a licensed butcher it is not possible to say that the sale of any category of meat of animals has been impliedly authorized by the provisions of the Ordinance. Accordingly it follows that the By-Law does not prohibit what the provisions of the Ordinance impliedly authorized and that is not inconsistent with such provisions.

I am, therefore, of the view that By-Law 30 of Chapter XIII of the By-Laws and Regulations of the Municipal Council of Colombo is not void as being inconsistent with the provisions of the Butchers Ordinance. The order of the learned Magistrate is therefore affirmed and the appeals are dismissed.

Appeal dismissed.

¹ (1899) 2 Q. B. 34.

² (1966) 70 N. L. R. 331.