

1946

Present : **Howard C.J.**

PINTO, Appellant, and PRICE CONTROLLER, Respondent.

1,456—*M. C. Negombo, 45,620.*

*Control of Prices (Food) Ordinance—Sale of beef without bones—Control of sale of beef in excess of 35 cents—Price Regulations Order.*

Where the accused was charged with selling country beef for 50 cents, a price in excess of the controlled price, viz., 35 cents, and where the defence was that beef without bones, which was sold by him, was not controlled—

*Held*, that the accused had offended against the regulation fixing the price of controlled beef.

**A** PPEAL from a conviction by the Magistrate of Negombo.

*H. W. Jayewardene* for the accused, appellant.

*J. G. T. Weeraratne, O.C.*, for the Attorney-General.

February 13, 1946. HOWARD C.J.—

In this case the appellant appeals from a judgment of the Magistrate, Negombo, convicting him of having sold one pound of country beef for fifty cents, a price in excess of the controlled price for country beef in the Urban Council area of Negombo, in breach of the maximum price for country beef set out in column 2 of the first schedule of the Control of Prices (Food) Ordinance published in *Government Gazette* No. 9,271 dated May 17, 1944. After conviction the Magistrate sentenced the appellant to three months' rigorous imprisonment. It was proved in evidence at the trial that O. E. Perera, a Price Control Inspector, on the day in question went to the appellant's Beef Stall at Galkande Junction and asked for a pound of beef. The appellant cut some beef, weighed it with a one pound weight and gave it to Perera. There were no bones in the beef. Perera asked the price, and the appellant asked him to give 50 cents for the beef. Perera gave a rupee note and received back two 25 cent notes. There was a price list in the appellant's stall which stated that the price of beef was cents 35 a pound. The appellant called no evidence, but his Counsel relied on a point of law that the regulations on which the prosecution founded its case did not apply inasmuch as what was sold to the Price Control Inspector was country beef without bones and not country beef with bones. The same point has been taken before me on appeal.

Paragraphs (ii.) and (vi.) of the Order published in the *Gazette* of May 17, 1944, are worded as follows :—

" I, ———, Controller of Prices (Food), do by this Order—

(ii.) fix the prices specified in columns 2 and 3 of the First Schedule hereto to be the maximum price per pound

above which country beef of the description and grade specified at the heads of those columns shall not be sold within the area specified in the corresponding entry in column 1 of that Schedule ;

- (vi.) direct that when any beef (Australian or country) or any mutton is sold the weight of the bones sold therewith shall not exceed 25 per cent. of the total weight sold : ”

In the First Schedule there is to be found the heading—

“ Maximum Prices for Country Beef ”

Column 1.	Column 2.	Column 3.
Area.	Country Beef, with not more than 25 per cent. bones. Maximum Price per lb.	Country Beef, Dead Weight, Maximum Price per lb.
	Rs. c.	Rs. c.
Negombo Urban Council area .	0 35	0 32

Counsel for the appellant contends that the order does not control the price of country beef without bones. In support of his argument he has cited the cases of *Ummar v. Rambukwella*<sup>1</sup>, *Weerasekere v. Subramaniam*<sup>2</sup> and *Sub-Inspector of Police, Kandy v. Wasira*<sup>3</sup>. In the last case cited the accused was charged with selling two 4 oz. loaves of bread for 15 cents which was in excess of the controlled price for a half pound loaf. It was held that the accused had not offended against the Regulations as the amount of bread controlled was in respect of sixteen and eight ounce loaves. In *Weerasekere v. Subramaniam* the accused was charged with the sale of 8 Sulphapyridine tablets at 50 cents a tablet, a price in excess of the maximum price, in breach of an order made under section 3 of the Control of Prices Ordinance. It was held that the accused had not offended against the provisions of the order as the article controlled was a bottle of tablets (not single tablets). In these two cases it was manifest that what was controlled was not the amounts with which the accused were charged with selling in excess of the specified prices. I do not think that they are relevant so far as the present case is concerned. In *Ummar v. Rambukwella* (*supra*) the accused was charged with selling one and a half pound of mutton including  $\frac{1}{4}$  lb. of offal (*viz.*, suet). The maximum price fixed for mutton without bones was 75 cents per pound and the price charged by the trader for the quantity sold was Re. 1.13. It was held that the accused had not committed an offence. Suet was either mutton or offal. If it was mutton, no offence was committed. If suet was offal, the price of offal was not controlled. . Again I do not think that this decision depending as it did on the question as to whether the price of mutton plus suet was controlled affects the present case. The decision in the present case depends on whether the order controls the price of beef without bones. Paragraph (ii.) fixes the prices specified, &c.

<sup>1</sup> 44 N. L. R. 161.

<sup>2</sup> 44 N. L. R. 545.

<sup>3</sup> 46 N. L. R. 93.

. . . . of the description and grade specified, . . . . &c. Paragraph (vi.) directs that the weight of the bones shall not exceed 25 per cent. of the total weight. In my opinion on a strict interpretation of the order beef without bones is controlled, but a sale is allowed at the controlled price of beef which contains 25 per cent. by weight of bones.

For the reasons I have given I have come to the conclusion that the Magistrate came to the right decision and the appeal is dismissed.

*Appeal dismissed.*

